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109TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 109–174
Part 1

USA PATRIOT AND TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 3199

together with

DISSENTING VIEWS

JULY 18, 2005.—Ordered to be printed

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109TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 109–174, Part 1

USA PATRIOT AND TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005

JULY 18, 2005.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3199]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3199) to extend and modify authorities needed to combat terrorism, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005".

SEC. 2. REFERENCES TO USA PATRIOT ACT.

A reference in this Act to the USA PATRIOT ACT shall be deemed a reference to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

SEC. 3. USA PATRIOT ACT SUNSET PROVISIONS.

(a) IN GENERAL.—Section 224 of the USA PATRIOT ACT is repealed.

(b) SECTIONS 206 AND 215 SUNSET.—Effective December 31, 2015, the Foreign Intelligence Surveillance Act of 1978 is amended so that sections 501, 502, and 105(c)(2) read as they read on October 25, 2001.

SEC. 4. REPEAL OF SUNSET PROVISION RELATING TO INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.

Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108458; 118 Stat. 3742) is amended by—

(1) striking subsection (b); and

(2) striking "(a)" and all that follows through "Section" and inserting "Section".

SEC. 5. REPEAL OF SUNSET PROVISION RELATING TO SECTION 2332B AND THE MATERIAL SUPPORT SECTIONS OF TITLE 18, UNITED STATES CODE.

Section 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108458; 118 Stat. 3762) is amended by striking subsection (g).

SEC. 6. SHARING OF ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION UNDER SECTION 203(B) OF THE USA PATRIOT ACT.

Section 2517(6) of title 18, United States Code, is amended by adding at the end the following: "Within a reasonable time after a disclosure of the contents of a communication under this subsection, an attorney for the Government shall file, under seal, a notice with a judge whose order authorized or approved the interception of that communication, stating the fact that such contents were disclosed and the departments, agencies, or entities to which the disclosure was made.".

SEC. 7. DURATION OF FISA SURVEILLANCE OF NON-UNITED STATES PERSONS UNDER SECTION 207 OF THE USA PATRIOT ACT.

(a) ELECTRONIC SURVEILLANCE.—Section 105(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(e)) is amended—

(1) in paragraph (1)(B), by striking ", as defined in section 101(b)(1)(A)" and inserting "who is not a United States person"; and

(2) in subsection (2)(B), by striking "as defined in section 101(b)(1)(A)" and inserting "who is not a United States person".

(b) PHYSICAL SEARCH.—Section 304(d) of such Act (50 U.S.C. 1824(d)) is amended—

(1) in paragraph (1)(B), by striking "as defined in section 101(b)(1)(A)" and inserting "who is not a United States person"; and

(2) in paragraph (2), by striking "as defined in section 101(b)(1)(A)" and inserting "who is not a United States person".

(c) PEN REGISTERS, TRAP AND TRACE DEVICES.—Section 402(e) of such Act (50 U.S.C. 1842(e)) is amended—

(1) by striking "(e) An" and inserting "(e)(1) Except as provided in paragraph (2), an"; and

(2) by adding at the end the following new paragraph:

"(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order, or an extension of an order, under this section may be for a period not to exceed one year.".

SEC. 8. ACCESS TO CERTAIN BUSINESS RECORDS UNDER SECTION 215 OF THE USA PATRIOT ACT.

(a) ESTABLISHMENT OF RELEVANCE STANDARD.—Subsection (b)(2) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended by striking "to obtain" and all that follows and inserting "and that the information likely to be obtained from the tangible things is reasonably expected to be (A) foreign

intelligence information not concerning a United States person, or (B) relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities.".

(b) CLARIFICATION OF JUDICIAL DISCRETION.—Subsection (c)(1) of such section is amended to read as follows:

"(c)(1) Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of records.".

(c) AUTHORITY TO DISCLOSE TO ATTORNEY.—Subsection (d) of such section is amended to read as follows:

"(d)(1) No person shall disclose to any person (other than a qualified person) that the United States has sought or obtained tangible things under this section.

"(2) An order under this section shall notify the person to whom the order is directed of the nondisclosure requirement under paragraph (1).

"(3) Any person to whom an order is directed under this section who discloses that the United States has sought to obtain tangible things under this section to a qualified person with respect to the order shall inform such qualified person of the nondisclosure requirement under paragraph (1) and that such qualified person is also subject to such nondisclosure requirement.

"(4) A qualified person shall be subject to any nondisclosure requirement applicable to a person to whom an order is directed under this section in the same manner as such person.

"(5) In this subsection, the term 'qualified person' means—

"(A) any person necessary to produce the tangible things pursuant to an order under this section; or

"(B) an attorney to obtain legal advice with respect to an order under this section.".

(d) JUDICIAL REVIEW.—

(1) PETITION REVIEW PANEL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

"(e)(1) Three judges designated under subsection (a) who reside within 20 miles of the District of Columbia, or if all of such judges are unavailable, other judges of the court established under subsection (a) as may be designated by the Presiding Judge of such court (who is designated by the Chief Justice of the United States from among the judges of the court), shall comprise a petition review panel which shall have jurisdiction to review petitions filed pursuant to section 501(f)(1).

"(2) Not later than 60 days after the date of the enactment of the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005, the court established under subsection (a) shall develop and issue procedures for the review of petitions filed pursuant to section 501(f)(1) by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted ex parte and in camera and shall also provide for the designation of an Acting Presiding Judge.".

(2) PROCEEDINGS.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is further amended by adding at the end the following new subsection:

"(f)(1) A person receiving an order to produce any tangible thing under this section may challenge the legality of that order by filing a petition in the panel established by section 103(e)(1). The Presiding Judge shall conduct an initial review of the petition. If the Presiding Judge determines that the petition is frivolous, the Presiding Judge shall immediately deny the petition and promptly provide a written statement of the reasons for the determination for the record. If the Presiding Judge determines that the petition is not frivolous, the Presiding Judge shall immediately assign the petition to one of the judges serving on such panel. The assigned judge shall promptly consider the petition in accordance with procedures developed and issued pursuant to section 103(e)(2). The judge considering the petition may modify or set aside the order only if the judge finds that the order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the order, the judge shall immediately affirm the order and order the recipient to comply therewith. A petition for review of a decision to affirm, modify, or set aside an order by the United States or any person receiving such order shall be to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall immediately provide for the record a written statement of the reasons for its decision and, on petition of the United States or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

"(2) Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The judge considering a petition filed under this subsection shall provide for the record a written statement of the reasons for the decision. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of National Intelligence.

"(3) All petitions under this subsection shall be filed under seal, and the court, upon the government's request, shall review any government submission, which may include classified information, as well as the government's application and related materials, ex parte and in camera.".

SEC. 9. REPORT ON EMERGENCY DISCLOSURES UNDER SECTION 212 OF THE USA PATRIOT ACT.

Section 2702 of title 18, United States Code, is amended by adding at the end the following:

"(d) REPORT.—On an annual basis, the Attorney General shall submit to the Committees on the Judiciary of the House and the Senate a report containing—

"(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and

"(2) a summary of the basis for disclosure in those instances where—

"(A) voluntary disclosure under subsection (b)(8) was made to the Department of Justice; and

"(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.".

SEC. 10. SPECIFICITY AND NOTIFICATION FOR ROVING SURVEILLANCE AUTHORITY UNDER SECTION 206 OF THE USA PATRIOT ACT.

(a) INCLUSION OF SPECIFIC FACTS IN APPLICATION.—Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by striking "where the Court finds" and inserting "where the Court finds, based upon specific facts provided in the application,".

(b) NOTIFICATION OF SURVEILLANCE OF NEW FACILITY OR PLACE.—Section 105(c)(2) of such Act is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) that, in the case of electronic surveillance directed at a facility or place that is not known at the time the order is issued, the applicant shall notify a judge having jurisdiction under section 103 within 10 days after electronic surveillance begins to be directed at a new facility or place, and such notice shall contain a statement of the facts and circumstances relied upon by the applicant to justify the belief that the facility or place at which the electronic surveillance is or was directed is being used, or is about to be used, by the target of electronic surveillance.".

SEC. 11. PROHIBITION ON PLANNING TERRORIST ATTACKS ON MASS TRANSPORTATION.

Section 1993(a) of title 18, United States Code, is amended—

(1) by striking "or" at the end of paragraph (7);

(2) by redesignating paragraph (8) as paragraph (9); and

(3) by inserting after paragraph (7) the following:

"(8) surveils, photographs, videotapes, diagrams, or otherwise collects information with the intent to plan or assist in planning any of the acts described in the paragraphs (1) through (7); or".

SEC. 12. ENHANCED REVIEW OF DETENTIONS.

Section 1001 of the USA PATRIOT ACT is amended by—

(1) inserting "(A)" after "(1)"; and

(2) inserting after "Department of Justice" the following: ", and (B) review detentions of persons under section 3144 of title 18, United States Code, including their length, conditions of access to counsel, frequency of access to counsel, offense at issue, and frequency of appearance before a grand jury".

SEC. 13. FORFEITURE.

Section 981(a)(1)(B)(i) of title 18, United States Code, is amended by inserting "trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or" after "involves".

SEC. 14. ADDING OFFENSES TO THE DEFINITION OF FEDERAL CRIME OF TERRORISM.

Section 2332b(g)(5)(B)(i) of title 18, United States Code, is amended—

(1) by inserting ", 2339D (relating to military-type training from a foreign terrorist organization)" before ", or 2340A" ; and

(2) by inserting "832 (relating to nuclear and weapons of mass destruction threats)," after "831 (relating to nuclear materials),".

SEC. 15. AMENDMENTS TO SECTION 2516(1) OF TITLE 18, UNITED STATES CODE.

(a) PARAGRAPH (c) AMENDMENT.—Section 2516(1)(c) of title 18, United States Code, is amended—

(1) by inserting "section 37 (relating to violence at international airports), section 175b (relating to biological agents or toxins)" after "the following sections of this title:";

(2) by inserting "section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities)," after "section 751 (relating to escape),";

(3) by inserting "section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 13611363 (relating to damage to government buildings and communications), section 1366 (relating to destruction of an energy facility)," after "section 1014 (relating to loans and credit applications generally; renewals and discounts),";

(4) by inserting "section 1993 (relating to terrorist attacks against mass transportation), sections 2155 and 2156 (relating to national-defense utilities), sections 2280 and 2281 (relating to violence against maritime navigation)," after "section 1344 (relating to bank fraud),"; and

(5) by inserting "section 2340A (relating to torture)," after "section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts),".

(b) PARAGRAPH (p) AMENDMENT.—Section 2516(1)(p) is amended by inserting ", section 1028A (relating to aggravated identity theft)" after "other documents".

(c) PARAGRAPH (q) AMENDMENT.—Section 2516(1)(q) of title 18, United States Code is amended—

(1) by inserting "2339," after "2332h,"; and

(2) by striking "or 2339C" and inserting "2339C, or 2339D" .

SEC. 16. DEFINITION OF PERIOD OF REASONABLE DELAY UNDER SECTION 213 OF THE USA PATRIOT ACT.

Section 3103a(b)(3) of title 18, United States Code, is amended—

(1) by striking "of its" and inserting ", which shall not be more than 180 days, after its"; and

(2) by inserting "for additional periods of not more than 90 days each" after "may thereafter be extended".

PURPOSE AND SUMMARY

H.R. 3199, introduced by Chairman F. James Sensenbrenner, Jr., on July 11, 2005, would reauthorize the expiring provisions in the USA PATRIOT Act and two provisions in the Intelligence Reform and Terrorism Prevention Act of 2004 that would expire within the next two years, as amended. The bill extended the sunset for 10 years on two of the provisions that had amended the Foreign Intelligence Surveillance Act relating to Foreign Intelligence Surveillance Court orders for roving wiretaps and for business records.

H.R. 3199 is based on four years of extensive oversight consisting of hearing testimony, Department of Justice Inspector General reports, briefings, and oversight correspondence. Since April of this year alone, this Committee has heard testimony from 35 witnesses during 11 hearings on the USA PATRIOT Act. That testimony and related oversight has demonstrated that the USA PATRIOT Act has been an effective tool against both terrorists and criminals intent on harming innocent people, and therefore deserves to be reauthorized with some modifications. H.R. 3199 accomplishes this objective by reauthorizing provisions set to sunset and making some improvements. The bill modifies the following provisions of USA PATRIOT Act: (1) Section 203(b) to allow for notification to a court that criminal wiretap information has been shared; (2) sec-

tion 206 to clarify when and where law enforcement is authorized to use a multi-point or roving wiretap; (3) section 207 to further extend the maximum duration of orders for electronic surveillance and physical searches targeted against all agents of foreign powers who are not U.S. persons; (4) section 212 to require an annual report to the House and Senate Judiciary Committees by the Attorney General, which sets forth the number of accounts subject to a section 212 disclosure and a summary of the basis for disclosure in certain circumstances; (5) section 215 to clarify that the information likely to be obtained is reasonably expected to: be (A) foreign intelligence information NOT concerning a U.S. person or (B) relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities; (6) section 215 to clarify that a FISA 215 order may be challenged; (7) section 215 to clarify that a recipient of a 215 order may consult with a lawyer and the appropriate people necessary to challenge and comply with the order; (8) section 215 to clarify that the order will only be issued "if the judge finds that the requirements have been met;" (9) section 215 to set up a judicial review process that authorizes the judge to set aside or affirm a 215 order that has been challenged. The bill makes permanent sections 201, 202, 203 (b) and (d), 204, 207, 209, 212, 214, 217, 218, 220, 223, and 225, which were scheduled to sunset on December 31, 2005, and extends until December 31, 2015 the sunset of sections 206 and 215. In addition, the bill makes permanent section 6001 of the Intelligence Reform and Terrorism Prevention Act (IRTPA), which provides an additional definition for "Agent of a Foreign Power," to cover the "lone wolf" under 50 U.S.C. 1801(b)(1). The legislation repeals section 6603(g) of the IRTPA, which would sunset section 6603, the "Additions to Offense of Providing Material Support to Terrorism". Finally, H.R. 3199 would enhance security of mass transportation; Department of Justice Inspector General review, and Judicial and Congressional oversight.

BACKGROUND AND NEED FOR THE LEGISLATION

The terrorist attacks on the World Trade Center and the Pentagon took more than 3,000 lives, caused billions in economic losses, triggered U.S. military intervention in Afghanistan to topple the Taliban regime, and led to the passage of the USA PATRIOT Act and other anti-terrorism bills. Another example of anti-terror legislation that enhanced law enforcement authorities and improved information sharing was the "Homeland Security Act of 2002,[1]" which created the Department of Homeland Security. This legislation incorporates H.R. 4598, the "Homeland Security Information Sharing Act" to further improve information sharing with Federal and state and local officials. The Homeland Security Act also updated law enforcement authorities by including: H.R. 3482 (107th), the "Cyber Security Enhancement Act of 2002," which increased penalties for cybercrimes and cyberterrorism, and H.R. 4864 (107th), the "Anti-Terrorism Explosives Act," which strengthened penalties for the unlawful possession of explosive materials.

[1] Pub. L. No. 107–296.

To respond to terrorist threats, Congress also has passed legislation to tighten security at America's airports,[2] to fundamentally reform the Immigration and Naturalization Service,[3] and to enhance border security.[4] Congress also created the National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"), an independent, bipartisan commission created in 2002 to examine the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. In July 2004, the Commission issued "The 9/11 Commission Report: Final Report of the National Commission on Terrorists Attacks Upon the United States." The 9/11 Commission noted that most of the USA PATRIOT Act provisions are "relatively noncontroversial, updating America's surveillance laws to reflect technological developments in a digital age. Some executive actions that have been criticized are unrelated to the Patriot Act. The provisions in the Act that facilitate the sharing of information among intelligence agencies and between law enforcement and intelligence appear, on balance, to be beneficial. Because of concerns regarding the shifting balance of power to the government, we think that a full and informed debate on the Patriot Act would be healthy."[5]

In addition to these legislative initiatives, the House Committee on the Judiciary has conducted nearly a 100 hearings to better protect the American people against terrorist attacks since September 11, 2001. Many of those hearings examined legislative initiatives that were adopted as part of the "Intelligence Reform and Terrorism Prevention Act of 2004,"[6] which responded to the 9/11 Commission Report and was signed into law on December 17, 2004, and H.R. 418, the "Real ID Act of 2005," which passed the House by a roll call vote of 229 to 198.[7]

1. Congressional Response—the USA PATRIOT Act

To better equip Federal law enforcement and the intelligence community with the resources necessary to confront these modern threats, Chairman Sensenbrenner introduced H.R. 2975, to "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," on October 2, 2001. H.R. 2975 was reported unanimously by the Judiciary Committee. The House and Senate combined their versions of the legislation into H.R. 3162, the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," (USA PATRIOT Act). This legislation incorporated provisions of H.R. 3004 (107th), the "Financial Anti-Terrorism Act," which increased penalties for money laundering and financing terrorist organizations; and H.R. 3160 (107th), the "Bioterrorism Prevention Act of 2001," which provided law enforcement personnel greater resources to assess and prevent biological attacks on American soil. The USA PA-

[2] Air Transportation Safety and System Stabilization Act, Pub. L. No. 107–42, 115 Stat. 230 (2001).
[3] Barbara Jordan Immigration Reform and Accountability Act, 107th Cong. (2002).
[4] Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. No. 107–173, 116 Stat. 543 (2002).
[5] The 9/11 Commission Report: Final Report of the National Commission on Terrorists Attacks Upon the United States p. 394 (2004).
[6] Pub. L. No. 108–458, 118 Stat. 3638 (2004).
[7] Roll no. 27.

TRIOT Act was signed into law by President Bush on October 26, 2001.[8]

The USA PATRIOT Act modernized investigative tools to effectively fight the advanced technologies used by terrorists and criminals. The USA PATRIOT Act also greatly improved information sharing between law enforcement and the intelligence community.

A. Investigative Authorities

The USA PATRIOT Act was designed to assist in the prevention of future terrorist activities as well as in the prevention of a broad range of criminal activity that often furthers those activities. The law increased penalties for Federal terrorism offenses and provided for extended post-incarceration supervised release for persons convicted of such offenses. The bill strengthened Federal money laundering laws, added new terrorism offenses, updated the bioterrorism laws, funded first responders, and modified immigration law to increase the Federal Government's ability to prevent foreign terrorists from entering the United States. The Act also streamlined and updated the investigative authorities for law enforcement and the intelligence community.

"Many of the tools the Act provides to fight terrorism have been used for decades to fight organized crime and drug dealers, and have been reviewed and approved by the courts. As Sen. Joe Biden (D–DE) explained during the floor debate about the Act, 'the FBI could get a wiretap to investigate the mafia, but they could not get one to investigate terrorists. To put it bluntly, that was crazy! What's good for the mob should be good for terrorists.'"[9]

Another example of an authority that was codified in the Act is the long-standing discretionary authority of Federal judges to grant law enforcement the authority to use "roving wiretaps" to investigate ordinary crimes, including drug offenses and racketeering, under Federal criminal law. When a judge issues a roving wiretap order, law enforcement can apply the wiretap to a particular suspect, rather than a particular phone or communications device. Drug dealers often use a cell phone, throw it away and use another cell phone, to carry out their illegal activity. Thus, without the authority to use a roving wiretap law enforcement would not be able to effectively investigate these crimes.

Prior to the enactment of the USA PATRIOT Act, a Federal judge could issue an order for a wiretap in a national security or an intelligence investigation similar to a wiretap in a criminal case. The law, however, failed to contain authority similar to the criminal law that allowed a Federal judge to issue a "roving wiretap" order in a national security or an intelligence case. International terrorists and spies are just as sophisticated as drug dealers and are trained to thwart surveillance by rapidly changing locations and communication devices such as cell phones. Accordingly, the USA PATRIOT Act authorized the courts the discretion to grant agents permission to use the same techniques in national security investigations to track terrorists that are used in criminal cases.[10]

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[8] Pub. L. No. 107–56, 115 Stat 272 (codified as amended in scattered sections of 18 U.S.C. (2003)).

[9] http://www.lifeandliberty.gov/, citing the (Cong. Rec., 10/25/01).

[10] http://www.lifeandliberty.gov/.

B. Information Sharing

A lack of full, free, and timely information sharing between Federal law enforcement and intelligence agencies had been a problem, long before the 9/11 attacks. Prior to the 9/11 attacks, the Government had made attempts to improve information sharing. For example, different centers, such as the National Drug Intelligence Center, have been created to focus on sharing information on specific issues. While these centers helped, Government-wide improvement was still needed. The lack of information sharing stemmed from the distinct historical roles and cultures of law enforcement and the intelligence community, and from certain legal restrictions.

After the 9/11 attacks, criticism increased that the Intelligence Community, especially the CIA and FBI, failed to share pertinent intelligence information, and as a result, had failed to "connect the dots" in a way that might have uncovered and enabled prevention of the attacks. The criticism was twofold: First, collecting agencies had not integrated and evaluated all the relevant information they had. Second, they had failed to ensure that relevant information they had collected was shared with other agencies that would need it to prevent attacks such as those that occurred.

The Administration and the Congress took immediate action to reduce statutory impediments to sharing appropriate information. First, the USA PATRIOT Act,[11] began to break down the barriers to facilitate information sharing between Federal law enforcement officials and the Intelligence Community. "The premise of the USA-Patriot Act is that information about foreign terrorists acquired by law enforcement agencies, including grand jury information, should be available to intelligence agencies. Analysts would be able to put together the larger picture of groups plotting against U.S. interests." [12]

As mentioned earlier, H.R. 4598, the "Homeland Security Information Sharing Act" continued the effort to break down barriers by requiring the President to create procedures to strip out classified information so that state and local officials may receive relevant information without clearances. H.R. 4598 also incorporated H.R. 3285, the "Federal-Local Information Sharing Partnership Act of 2001," to remove the barriers for state and local officials to share law enforcement and intelligence information with Federal officials. H.R. 4598 was added to the Homeland Security Act, which became Public Law No. 107–296.

2. Implementation and Use of the USA PATRIOT Act

Since enactment of the USA PATRIOT Act, the Department of Justice has used many of the tools authorized in the Act in a comprehensive campaign to detect and prosecute those who have committed, or seek to commit, terrorist crimes. For example, as of the fall of 2004, the Department of Justice has conducted terrorism investigations that have resulted in the charging of 310 defendants with criminal offenses, of whom 179 have already been convicted. These investigations have led to the discovery and disruption of over 150 terrorist cells. In addition, the tools provided by the USA

[11] Pub. L. No. 107–56, 115 Stat. 242.

[12] Richard Best, Intelligence and Law Enforcement: Countering Transnational Threats to the U.S. CRS Report #RL30252, December 3, 2001, p. 30.

PATRIOT Act have enabled the Federal Government to remove from the United States over 515 individuals who were linked to the September 11th investigation. The Federal Government has also been able to secure at least 23 convictions or guilty pleas as the result of 70 terrorist financing investigations. Importantly, these examples, and all other activities conducted under the authorities of the USA PATRIOT Act, have occurred without a single substantiated allegation of civil liberties violations on the part of Department of Justice employees.[13]

A. Oversight Hearings during the 109th Congress

During the 109th Congress, the Committee on the Judiciary held 2 Full Committee and 8 Subcommittee oversight hearing on all of the provisions of USA PATRIOT Act that will expire on December 31, 2005 and several that are not subject to the sunset.

FULL COMMITTEE HEARINGS

1. May 6, 2005, Hearing with Attorney General Gonzales

On May 6, 2005, Attorney General Gonzales testified before the Full Committee on the Judiciary. That hearing focused on the use of the law enforcement authorities granted under the USA PATRIOT Act; whether these tools have, thus far, proved useful to the Government's efforts in fighting terrorism; whether existing safeguards have been effective in preventing civil liberties violations; and whether modifications to the Act are needed.

2. June 8, 2005, Hearing with Deputy Attorney General James B. Comey

On Wednesday, June 8, 2005, at 10:00 a.m., the Committee on the Judiciary held its 11th oversight hearing on the Reauthorization of the USA PATRIOT Act with Deputy Attorney General James B. Comey testifying on the need to Reauthorize the USA PATRIOT Act provisions set to expire on December 31, 2005. This hearing followed the 10 subcommittee hearings and provided Members and the Department of Justice the opportunity to address any unanswered questions regarding the USA PATRIOT Act.

3. June 10, 2005, Hearing continuation of June 8, 2005

In accordance with House Rule XI, section 2 (J)(1), additional witnesses designated by the minority were called to testify on the subject of the "Reauthorization of the USA PATRIOT Act," as an extension (or a continuation) of the Committee's June 8, 2005 hearing. The witnesses were: Carlina Tapia-Ruano, American Immigration Lawyers Association; Dr. James J. Zogby, Arab American Institute; Deborah Pearlstein, U.S. Law and Security Program; and Chip Pitts, Amnesty International USA.

[13] As of the September 13, 2004 Report Congress on the Implementation of Section 1001 of the USA PATRIOT Act, only one allegation of civil liberties violations may be related to the use of a USA PATRIOT Act provision, and the investigations relating to this allegation are still underway.

SUBCOMMITTEE HEARINGS

1. April 19, 2005, Hearing on Sections 203 (b) and (d) of the USA PATRIOT Act and Their Effect on Information Sharing

The Subcommittee on Crime, Terrorism, and Homeland Security of the Committee on the Judiciary held a hearing on sections 203 (b) and (d) that addressed information sharing. These sections responded to the need to improve information sharing. Four witnesses—Mr. Barry Sabin, Chief of the Counterterrorism Section of the Criminal Division of the Department of Justice; Ms. Maureen Baginski, Executive Assistant Director of the FBI for Intelligence; Congressman Michael McCaul; and Timothy Edgar, the National Security Policy Counsel for the American Civil Liberties Union—testified.

Specifically, section 203 facilitates effective sharing of information collected through the use of criminal wiretaps, grand juries, and other criminal investigations, with Executive Branch officials. To protect privacy, the USA PATRIOT Act: (1) limits such disclosures to foreign intelligence and counterintelligence information, as defined by statute; (2) restricts disclosure to officials with a need to know in performance of official duties; and (3) retains the limitations on public or other unauthorized disclosure. Prior to passage of the USA PATRIOT Act, the law hampered law enforcement from sharing information with or receiving information from other government agencies outside of law enforcement that might nevertheless relate to terrorist activities or national security.

Sec. 203(b) deals with information obtained through a criminal wiretap. The section amended section 2517 of title 18 to allow law enforcement officials to share foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in subsection (19) of section 2510 of this title) obtained through a criminal wiretap with law enforcement, intelligence, protective, immigration, national defense, or national security personnel for use only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. This language was similar to section 103 of H.R. 2975 that passed the House Judiciary Committee unanimously in October 2001.

Sec. 203(d) addresses information obtained through a criminal investigation. This section permits law enforcement officials to share foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in subsection (19) of section 2510 of this title) obtained through a criminal investigation, for use only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. This language was similar to section 154 of H.R. 2975 that passed the House Judiciary Committee unanimously in October 2001.

2. April 21, 2005, Hearing on—Crime, Terrorism, and the Age of Technology—(Section 209: Seizure of Voice-Mail Messages Pursuant to Warrants; Section 217: Interception of Computer Trespasser Communications; and Section 220: Nationwide Service of Search Warrants for Electronic Evidence)

The Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on section 209, 217, and 220 of the USA PATRIOT Act. Four witnesses—Laura Parsky, Deputy Assistant Attorney General of the Criminal Division, U.S. Department of Justice; Steven M. Martinez, Deputy Assistant Director of the Cyber Division, Federal Bureau of Investigation; James X. Dempsey, Executive Director of the Center for Democracy and Technology; and Peter Swire, Professor of Law, Mortiz College of Law, the Ohio State University—testified.

In 1986, Congress enacted the Electronic Communications Privacy Act (ECPA) to update the 1968 Wiretap Act, recognizing that emerging technologies—such as electronic mail and voice mail—had rendered the 1968 statute outdated and inadequate. These 1986 modifications made the criminal code "technology neutral" to address future telecommunications technologies. "Technology neutral" means law enforcement investigative authorities remain the same regardless of the technology used by the criminal to facilitate illegal activity. Thus, law enforcement uses the same procedures to seek a court order for a wiretap of a computer or a phone used by the criminal.

As expected, cyber technology has advanced rapidly. As a result, people communicate quickly and effectively. Unfortunately, technology has also facilitated crime and terrorism.

Understanding these problems, the USA PATRIOT Act updated criminal law to address these new challenges. These updates also were designed to help law enforcement assess whether unlawful conduct is the result of criminal activity or terrorist activity and to respond appropriately. Some of these provisions are set to expire on December 31, 2005. The April 21, 2005 hearing covered three of those provisions: Sections 209, 217, and 220.

Sec. 209. Seizure of Voice-Mail Messages Pursuant to Warrants. Section 209 amended 18 U.S.C. § 2703 (a) and (b) by adding language to cover stored wire communications—such as a voice mail. Section 209 updated the law to clarify that the criminal code remains technology-neutral. Section 209 clarified that stored voice mail is, in fact, a stored communication, and therefore is covered by 18 U.S.C. § 2703. This language is similar to section 102 of H.R. 2975 that passed the House Judiciary Committee unanimously.

Sec. 217. Interception of Computer Trespasser Communications. The courts have long recognized that providers of communications services possess a "fundamental right to take reasonable measures to protect themselves and their properties against the illegal acts of a trespasser." Bubis v. United States, 384 F.2d 643, 648 (9th Cir. 1967). Computer owners, however, often lack the expertise, equipment, or financial resources required to monitor attacks, and thus had no way to exercise their rights to protect themselves from unauthorized attackers—who could be terrorists or criminals engaged in attacking critical infrastructure, or the economy. Prior to the enactment of the USA PATRIOT Act, the law was unclear as to whether a victim of computer trespassing was allowed to request

law enforcement assistance in monitoring unauthorized attacks as they occur.

These attacks come in many forms that cost companies and citizens millions of dollars and endanger public safety. For instance, denial-of-service attacks, where the objective of the attack is to disable a computer system, can shut down businesses or emergency responders or national security centers. This type of attack causes the target site's servers to run out of memory, and become incapable of responding to the queries of legitimate customers or users. The victims of these computer trespassers should be able to authorize law enforcement to intercept the trespassers' communications, similar to a store owner who authorizes the police to stop an intruder. To correct this problem, and help to protect national security, section 217 of the Act amended the wiretap statute to allow victims of computer attacks to authorize persons "acting under color of law" to monitor trespassers on their computer systems in a narrow class of cases.

Sec. 220. Nationwide Service of Search Warrants for Electronic Evidence. Prior to the enactment of the USA PATRIOT Act, Rule of the Federal Rules of Criminal Procedure of Criminal Procedure 41 required that the "warrant" be obtained "within the district" where the property to be searched is located. An investigator, for example, located in Boston who is investigating a suspected terrorist in that city, might have to seek a suspect's electronic e-mail from an Internet service provider (ISP) account located in California. The investigator would then need to coordinate with agents, prosecutors, and judges in the district in California where the ISP is located to obtain a warrant to search. Time delays caused by the need to coordinate with numerous parties could be devastating to an investigation, especially where additional criminal or terrorist acts are planned.

Section 220 of the Act amended 18 U.S.C. §2703 to authorize the court with jurisdiction over the investigation to issue the warrant directly, without requiring the intervention of its counterpart in the district where the ISP is located. Before and after the USA PATRIOT Act, 18 U.S.C. §2703(a) requires a search warrant to compel service providers to disclose unopened e-mails. The USA PATRIOT Act did not affect the requirement nor the probable cause standard for a search warrant,[14] but rather addresses investigative delays caused by the cross-jurisdictional nature of the Internet. This language is similar to section 108 of H.R. 2975 that passed the House Judiciary Committee unanimously.

3. April 26, 2005 Hearing—Have Sections 204, 207, 214 and 225 of the USA PATRIOT Act, and Sections 6001 and 6002 of the Intelligence Reform and Terrorism Prevention Act of 2004, Improved FISA Investigations?

On Tuesday, April 26, 2005, the Subcommittee held a hearing to examine sections 204, 207, 214, and 225 of the USA PATRIOT Act, and sections 6001 and 6002 of the Intelligence Reform and Terrorism Prevention Act of 2004. Three witnesses—the Honorable

[14] The government must receive court authorization through a search warrant to search or seize property or a person, with limited exceptions. For a search warrant to be issued, the government must provide sworn affidavit to the magistrate that grounds exists or there is probable cause to believe ground exist—i.e., a crime is or is about to be committed.

Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania; James Baker, Office for Intelligence Policy and Review, U.S. Department of Justice; and Suzanne Spaulding, Managing Director, the Harbour Group, LLC—testified.

Sec. 204. Clarification of Intelligence Exceptions from Limitations on Interception and Disclosure of Wire, Oral, and Electronic Communications (18 U.S.C. 2511(2)(f)). This section amended section 2511(2)(f) of the Federal criminal code, which provided that Federal criminal law relating to law enforcement electronic surveillance (chapter 119, title 18) and access to stored communications and communications transactions records (chapter 121, title 18) did not affect the use of the Foreign Intelligence Surveillance Act (FISA) for intelligence purposes. Section 204 is a technical clarification amendment, which added that chapter 206 of title 18 is also covered by section 2511(2)(f). Thus, Federal criminal law relating to the use of pen registers and trap and trace devices under chapter 206 did not affect the use of FISA for intelligence purposes.

Sec. 207. Duration of FISA Surveillance of Non-United States Persons Who Are Agents of a Foreign Power. Prior to enactment of the USA PATRIOT Act, the government had 90 days to carry out surveillance under a FISA court order and 45 days to conduct a physical search under FISA, before seeking an extension. Because it often takes longer than these established periods to get on the premises or to conduct electronic surveillance and the delay in reapplying for an extension or new order posed a threat to national security, this provision added 30 days to the authorized period for surveillance from 90 days to 120 days. It also extended the period for physical searches from 45 days to 90 days.

Sec. 214. Pen Register and Trap and Trace Authority Under FISA. Section 214 of the Act amends 50 U.S.C. § 1842 (Section 402 of the Foreign Intelligence Surveillance Act of 1978 (FISA)). Section 1842 is the pen register and trap and trace provision in the FISA that is modeled after Federal criminal law provisions (18 U.S.C. § 3121 et. seq.). A pen register gathers out-going telephone or Internet-dialed numbers and a trap and trace gathers incoming numbers. This is the least intrusive method of electronic surveillance. Section 214 amends FISA (the pen register and trap and trace provisions) to mirror similar provisions that currently exist in criminal law (18 U.S.C. § 3121 et. seq.). Prior to the enactment of the USA PATRIOT Act, the "pen register and trap and trace" provisions of FISA went beyond the criminal law requirement of certification of relevance, and required the Government to provide information that demonstrated that the communication instrument (e.g., a telephone line) has been or was about to be used to contact a "foreign power" or agent of a foreign power. This was a greater burden than exists in even a minor criminal investigation.

Section 214 clarifies that an application for pen register and trap and trace authority under FISA will be the same as the pen register and trap and trace authority defined in the criminal law. It requires the *attorney for the government* to certify to the court that the information sought *is relevant* to an ongoing FISA investigation. The statutory burden under FISA of having to show that the telephone line has been, or is about to be used, to contact a foreign power or terrorist is eliminated to conform to the existing and less burdensome criminal standards. The attorney for the government

still must certify the information sought is relevant to an ongoing FISA investigation, which continues to be directed at an agent of a foreign power. This section codifies lawfulness of court authorized pen register and trap and trace device use for non-content communications over telecommunication technology other than by telephone.[15] Section 214 of the Act is substantively similar to section 155 of H.R. 2974, the House version that passed the Judiciary Committee unanimously. Section 214 includes protections for U.S. persons, which prohibit the investigation from being conducted based solely on activities protected by the First Amendment.

Sec. 225. Immunity for Compliance with FISA Wiretap. While Federal criminal wiretap law immunizes those who assist law enforcement in the execution of a criminal wiretap interception order, 18 U.S.C. 2511(2)(a), this section provides immunity to anyone who complies with a FISA surveillance (wiretap) order.

Section 6001 of the Intelligence Reform and Terrorism Prevention Act. Individual Terrorists as Agents of Foreign Powers. This section amends the definition of "Agent of a Foreign Power" under section 50 U.S.C. § 1801(b)(1) (the Foreign Intelligence Surveillance Act of 1978) by adding new subparagraph C. Section 1801(b)(1) defined "Agent of a foreign power" for any person other than a United States person, who—

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities;

Section 6001 of the Intelligence Reform and Terrorism Prevention Act added new subparagraph C to the definition, which states "Agent of a foreign power" for any person other than a United States person, includes a person who "engages in international terrorism or activities in preparation thereof." This new definition is to reach "lone wolf" terrorists who are non-U.S. persons who engage in international terrorism, regardless of whether they are affiliated with an international terrorist group. To address concerns about the provision, the USA PATRIOT Act sunset applies and, had H.R. 3199 not removed the sunset provision, the definition would have expired on December 31, 2005.

When FISA was enacted in the 1970s, terrorists usually were members of distinct, hierarchical terror groups. Today, the "lone wolfs" often are not formal members of any group. Instead, they are part of a movement, such as a Jihad Against America, and occasionally act alone. FISA authority was updated to reflect this new threat.

It should be noted that this section does not change the requirement for a judicial finding of probable cause that the tar-

[15] 50 U.S.C. 1842.

get is an agent of a foreign power. See section 1805(a)(3) and (b). The new definition requires that for a non-U.S. person to be deemed an agent of a foreign power, that person must be engaged in or preparing to engage in international terrorism. Thus, under the probable cause requirement currently in law and the new definition in this section, before a judge can issue a FISA order for surveillance there must be a showing of probable cause that the person is engaged or preparing to engage in international terrorism.

Section 6002 of the Intelligence Reform and Terrorism Prevention Act. Additional Semiannual Reporting Requirements Under the Foreign Intelligence Surveillance Act. The section also includes additional reporting requirements to the House and Senate Judiciary Committees regarding the use of FISA.

4. April 28, 2005, Hearing—Have Sections 206 and 215 Improved FISA Investigations?

On Thursday, April 28, 2005, the Subcommittee held a hearing to examine sections 206 and 215 of the USA PATRIOT Act. Four witnesses—the Honorable Kenneth L. Wainstein, U.S. Attorney for the District of Columbia; James Baker, Office for Intelligence Policy and Review, U.S. Department of Justice; Robert Khuzami, former Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York; and Greg Nojeim, the Associate Director and Chief Legislative Counsel of the American Civil Liberties Union's Washington National Office—testified.

Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978. This section amends 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) to update the authority to allow a court to authorize a "roving wiretap" "in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person," that a common carrier, landlord, custodian, or other person not specified in the Court's order be required to furnish the applicant information and technical assistance necessary to accomplish electronic surveillance in a manner that will protect its secrecy and produce a minimum of interference with the services that such person is providing to the target of electronic surveillance." This language was the same as the language in section 152 of H.R. 2975 that passed the House Judiciary Committee unanimously in the 107th Congress.

Federal judges have had the discretion for decades to grant law enforcement the authority to use "roving wiretaps" to investigate ordinary crimes, including drug offenses and racketeering, under Federal criminal law. When a judge issues a roving wiretap order, law enforcement can apply the wiretap to a particular suspect, rather than to a particular phone or communications device.

While international terrorists and spies are just as sophisticated as drug dealers and are trained to thwart surveillance by rapidly changing locations and communication devices such as cell phones, the law prior to the USA PATRIOT Act did not contain authority similar to the criminal law that allowed a Federal judge to issue a "roving wiretap" order in a national security or intelligence case. As a result, the Government had to return to the FISA court for

an order that named the new carrier, landlord, etc., before effecting surveillance each time the terrorist or spy threw away his or her cell phone and used a different cell phone. Under section 206 of the USA PATRIOT Act, the FBI presents the newly discovered carrier, landlord, custodian, or other person with a generic order issued by the court, and the FBI can then effect FISA coverage as soon as it is technically feasible.

Sec. 215. Access to Records and Other Items Under the Foreign Intelligence Surveillance Act. Prior and subsequent to enactment of the USA PATRIOT Act, law enforcement could obtain records from all manner of businesses through grand jury-issued subpoenas. Targets of grand jury investigations do not have standing to challenge a grand jury subpoena directed at a third party. This access includes libraries and bookstores, *for records relevant to criminal inquiries.* For example, in the 1997 Gianni Versace murder case, a Florida grand jury subpoenaed records from public libraries in Miami Beach. In the 1990 Zodiac gunman investigation, a grand jury in Queens, New York, subpoenaed records from the library at Fifth Avenue and 42d Street in Manhattan. Investigators believed that the gunman was inspired by a Scottish occult poet, and wanted to learn who had checked out his books. Section 215 of the USA PATRIOT Act created similar authority, but with more stringent requirements. Section 215 provides the FISA court discretion to issue an order for *business records* related to "international terrorism and clandestine intelligence activities." These judicial orders conceivably could be issued to bookstores or libraries, but section 215 does not single them out. Section 215 has a very narrow scope that can only be used: (1) "to obtain foreign intelligence information not concerning a United States person"; or (2) "to protect against international terrorism or clandestine intelligence activities." 50 U.S.C. § 1861(b)(2).

> FBI agents cannot obtain records under section 215 *unless they receive a court order*. Grand jury subpoenas, by contrast, do not require judicial approval. Agents cannot use section 215 to unilaterally compel libraries or any other entity to turn over their records. Agents must obtain such documents only by appearing before the FISA court and convincing the court that these business records are needed. See 50 U.S.C. § 1861(b). Section 215 goes to great lengths to preserve the First Amendment rights of libraries, their patrons, and other affected entities. It expressly provides that the FBI cannot conduct investigations "of a United States person solely on the basis of activities protected by the first amendment to the Constitution of the United States." 50 U.S.C. § 1861(a)(2).
>
> Section 215 provides for thorough congressional oversight. Every six months, the Attorney General is required to "fully inform" Congress on the number of times agents have sought a court order under section 215, as well as the number of times such requests were granted, modified, or denied. See 50 U.S.C. § 1862.

On April 28, 2005, the United States Attorney for the District of Columbia testified that some of the 9/11 hijackers used libraries in the United States. He stated:

> Investigators have received information that individuals believed to be 9/11 hijackers Wail Alshehri, Waleed Alshehri, and

> Marwan Al-Shehhi visited the Del Ray Public Library in Del Ray Beach, Florida. Wail Alshehri and Waleed Alshehri entered the library one afternoon in July of 2001, and asked to use the library's computers to access the Internet. After about an hour a third man, Marwan Al-Shehhi, joined the two. Waleed and Wail Alshehri were hijackers aboard American Airlines Flight 11, while Al-Shehhi was the pilot who took control of United Airlines Flight 175, both of those flights crashed into the World Trade Center on September 11th. * * * In addition, investigators tracing the activities of the hijackers determined that on four occasions in August of 2001, individuals using Internet accounts registered to Nawaf Alhazmi and Khalid Almihdhar, 9/11 hijackers, used public access computers in the library of a state college in New Jersey. The computers in the library were used to review and order airline tickets on an Internet travel reservations site. Alhazmi and Almihdhar were hijackers aboard American Airlines Flight 77, which took off from Dulles Airport and crashed into the Pentagon. The last documented visit to the library occurred on August 30th, 2001. On that occasion, records indicate that a person using Alhazmi's account used the library's computer to review September 11th reservations that had been previously booked."

On April 6, 2005 the Attorney General testified before the House Committee on the Judiciary and stated that the FISA court has granted the Department's request for a 215 order 35 times as of March 30, 2005. He went on to state that the Department has not sought a section 215 order to obtain library or book store records, medical records, or gun sale records. He also explained that the provision to date has been used only to obtain driver's license records, public accommodation records, apartment leasing records, credit card records, and subscriber information, such as names and addresses, for telephone numbers captured through court-authorized pen-register devices.

5. April 28, 2005, Hearing—Section 218 of the USA PATRIOT Act—If it Expires Will the "Wall" Return?

On Thursday, April 28, 2005, the Subcommittee held a hearing, which focused on section 218 of the USA PATRIOT Act. Some have argued that Section 218 contributed to lowering the "Wall," and is set to expire on December 31, 2005. The "Wall" is a metaphorical term that described the legal and administrative constraints created to separate the operations of law enforcement and the intelligence community. Four witnesses—the Honorable Patrick Fitzgerald, U.S. Attorney for the Northern District of Illinois; David Kris, former Associate Deputy Attorney General for the Department of Justice; Kate Martin, Director of the Center for National Security Studies; and Peter Swire, Professor of Law at Ohio State University—testified.

Section 218 amended 50 U.S.C. § 1804(a)(7)(B) and 1823(a)(7)(B) (the Foreign Intelligence Surveillance Act) to improve information sharing between law enforcement and the intelligence community. The Foreign Intelligence Surveillance Act limited surveillance and physical search orders to instances where authorities certified that "the purpose" of the order was for foreign intelligence gathering;

subsequent case law raised a question of whether it was sufficient to meet "the purpose" requirement that foreign intelligence gathering was "the primary purpose" or whether "the purpose" requirement could be satisfied perhaps when a criminal investigation was not the primary purpose, 743 F.2d 59; 952 F.2d 565. Section 218 makes it clear that foreign intelligence gathering must be "a significant" reason for a FISA application, but need not be the primary purpose, as the courts had interpreted the law to mean.[16] Section 218 of the USA PATRIOT Act has helped to lower the "Wall" that prevented sharing of information between law enforcement and the intelligence community. This section is subject to the December 31, 2005 sunset.

6. May 3, 2005, Oversight Hearing on Sections 201, 202, 213, and 223 of the USA PATRIOT Act and Their Effect on Law Enforcement Surveillance

On Tuesday, May 3, 2005, the Subcommittee on Crime, Terrorism, and Homeland Security for the Committee held a hearing on the USA PATRIOT Act. The hearing focused on the effect of sections 201, 202, 213, and 223 on law enforcement surveillance. Although section 213 does not sunset, the Committee reviewed this section of the USA PATRIOT Act to accommodate a request of the Minority. Section 213 covers delayed notice search warrants. Four witnesses—the Honorable Michael J. Sullivan, U.S. Attorney for the District of Massachusetts; Chuck Rosenberg, Chief of Staff to the Deputy Attorney General; Heather MacDonald, John M. Olin Fellow at the Manhattan Institute; and the Honorable Bob Barr, former Representative of Georgia's Seventh District—testified.

This hearing examined sections 201, 202, and 203 of the USA PATRIOT Act that relate to criminal wiretaps and section 213 that relates to when notice is provided for certain criminal search warrants. Sections 201, 202, and 223 expire on December 31, 2005. Section 213 does not sunset.

A. The Wiretap Provisions Set To Expire

1. Criminal Wiretap Authority Before the USA PATRIOT Act

"Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–2522 (1994 & Supp. II 1996), requires the government, unless otherwise permitted, to obtain an order of a court before conducting electronic surveillance. The government is permitted to seek such orders only in connection with the investigation of the criminal offenses enumerated in section 2516 of title 18."[17]

For Federal investigations, section 2516 distinguishes between wire (i.e., telephone) and oral (i.e., face-to-face conversation) communications, and electronic communications (i.e., conversation using a computer). The USA PATRIOT Act did not change these distinctions.

- *For wire and oral communications,* section 2516(1) allows designated senior officials in the Department of Justice to authorize an application for a court order to approve interception

[16] In re: Sealed Case No. 02–001, FIS Ct. Rev., No. 02–001, 11/18/02, reversing 71 CrL 615.
[17] October 17, 2000, Memorandum for the Counsel, Office of Intelligence Policy and Review, U.S. DOJ.

of wire and oral communications where the interception may provide evidence of certain Federal offenses known as "wiretap predicates." Wiretap predicates are enumerated crimes for which Congress has authorized law enforcement to use a wiretap over a wire or when oral communications occur.

• *For wiretapping electronic communications,* Congress authorized Federal investigators, under 18 U.S.C. § 2516(3), to apply for a court order for interception of electronic communications where the interception may provide evidence of any Federal felony.

2. Wiretap Authority as amended by the USA PATRIOT Act

The USA PATRIOT Act added to the wiretap predicates under sections 201 and 202, and added safeguards under section 223 designed to prohibit the unauthorized disclosure of information obtained under the Government's updated surveillance authority.

Sec. 201. Terrorism as a predicate act for authorization of wiretaps. This section added new "wiretap predicates" under section 2516 of title 18 of the Federal criminal code that relate to crimes of terrorism. Section 201 provides the courts discretion to grant a wiretap for the interception of wire, oral, or electronic communications in the investigation of: (1) possible crimes relating to chemical weapons under 18 U.S.C. § 229 and (2) possible crimes relating to terrorism under 18 U.S.C. §§ 2332, 2332a, 2332b, 2332d, 2339A, or 2339B. While some crimes involving terrorism were already wiretap predicates, others were not. The USA PATRIOT Act closed the gap with respect to the use of this key investigative tool that significantly enhances law enforcement ability to prevent a terrorist attack and prosecute crimes connected with it. Such authority already existed for a number of other less serious crimes, such as trafficking automobile parts. Prior to the enactment of the USA PATRIOT Act, law enforcement could already conduct wiretaps on electronic communications under section 2516(3) for these felonies. The USA PATRIOT Act changed the law to now permit wiretaps on wire and oral communications as well.

Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse. This section adds a new "wiretap predicate" under section 2516 of title 18 of the Federal criminal code for serious computer hacking offenses, including cyberterrorism. Specifically, the wiretap predicate is for crimes under section 1030 of title 18 when the violation is a felony that relates to computer fraud and abuse. Prior to the USA PATRIOT Act, law enforcement could already conduct wiretaps on electronic communications under section 2516(3) for such felonies. The USA PATRIOT Act changed the law to now also permit wiretaps on wire and oral communications.

3. Wiretap Authority that Remained Unchanged by the USA PATRIOT Act

Sections 201 and 202 of the USA PATRIOT Act in no way change the strict limitations on how wiretaps may be used. Congress enacted Title III of the Omnibus Crime Control and Safe Streets Act

of 1968[18] that outlines what is and is not permissible with regard to wiretapping and electronic eavesdropping.[19] Title III restrictions go beyond Fourth Amendment constitutional protections and include a statutory suppression rule to exclude evidence that was collected in violation of Title III.[20] Except under limited circumstances, it is unlawful to intercept oral, wire, and electronic communications.[21] Accordingly, under the Act, Federal and state law enforcement may only use wiretaps under strict limitations.[22] Congress created these procedures to allow limited law enforcement access to private communications and communication records for investigations consistent with Fourth Amendment rights. Title 18 U.S.C. § 2518 sets strict procedures for the use of a wiretap. Section 2518(1) requires the application to be made under written oath or affirmation to a judge of competent jurisdiction. Section 2518(1)(b) requires that the application set forth, among other things, "a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued. . . ." These facts should include, among other things, the "details as to the particular offense that has been, is being, or is about to be committed" and "the identity of the person, if known, committing the offense and whose communications are to be intercepted."[23] Section 2518(3) also includes requirements that for the judge to issue a wiretap order the judge must believe (1) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of [title 18]; (2) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception; and (3) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.[24] To further protect privacy, law enforcement is required "to minimize the interception of communications not otherwise subject to interception [that is, noncriminal conversations] under this chapter, and must terminate upon attainment of the authorized objective."[25]

Sec. 223. Civil Liability for Certain Unauthorized Disclosures. This section is similar to section 161 of H.R. 2975 that passed the House Judiciary Committee unanimously. Section 223 includes safeguards designed to prevent the unauthorized disclosure of information obtained under the Government's updated surveillance authority, by amending the criminal code to provide for administrative discipline of Federal officers or employees, as well as by allowing for civil actions to be brought against the United States for damages by any person aggrieved by such disclosures.

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[18] Omnibus Crime Control and Safe Streets Act, 87 Stat. 197 (1968)(codified as amended at 18 U.S.C. §§ 2510–2520 (1970).

[19] Charles Doyle & Gina Stevens, Congressional Research Service, Library of Congress, Privacy: An Overview of Federal Statutes Governing Wiretapping and Electronic Eavesdropping, at 6 (2001).

[20] 87 Stat. 197, 18 U.S.C. §§ 2510–2520 (1970 ed.).

[21] 18 U.S.C. § 2511.

[22] 18 U.S.C. § 2518.

[23] 18 U.S.C. § 2518(1)(b).

[24] 18 U.S.C. § 2518 (emphasis added).

[25] 18 U.S.C. § 2518(5).

B. Delayed Notice

1. Pre-existing Authority for Delayed Notice

Contrary to reports, the USA PATRIOT Act did not create delayed notice search warrants. Delayed notice search warrants have been used for decades prior to enactment of the USA PATRIOT Act. In 1979, the U.S. Supreme Court expressly held in Dalia v. United States that the Fourth Amendment does not require law enforcement to give immediate notice of the execution of a search warrant.[26] The Department of Justice states that three Federal Courts of Appeals had considered the constitutionality of delayed-notice search warrants since 1979 and upheld their constitutionality.[27]

2. What Delayed Notice Means

A delayed notice search warrant simply means that a court has expressly authorized investigators to delay notifying a suspect that a search warrant has been executed (i.e., a court-ordered search has occurred). The search warrant is the same, regardless of when the suspect receives notice. Thus, before a search warrant is issued, whether notice is delayed or not, a Federal judge must find that there is probable cause to believe the property to be searched or seized constitutes evidence of a criminal offense.

3. Section 213 Creates a Uniform Nationwide Standard for a Court To Authorize Delayed Notice

Congress included section 213 in the USA PATRIOT Act to create a uniform nationwide standard for the issuance of these warrants. Under section 213 there are limited circumstances when a court may delay notice. These circumstances are the same predicate circumstances permitted in an application for delaying notice in a search warrant for stored communications under section 2705(a)(2) of title 18, which predated the USA PATRIOT Act. For a court to permit a delay in the notice of a search of a suspect's property, the investigator or prosecutor must show that there is reasonable cause to believe that if the suspect is notified at the same time as the search one of the following situations may occur:

- Notification would endanger the life or physical safety of an individual;
- Notification would cause flight from prosecution;
- Notification would result in destruction of, or tampering with, evidence;
- Notification would result in intimidation of potential witnesses; or
- Notification would cause serious jeopardy to an investigation or unduly delay a trial.

4. Notification Required Within a Reasonable Period of Time

The subject of the search must be notified within a reasonable period of time as determined by the court. Congress retained dis-

[26] See *Dalia* v. *United States,* 441 U.S. 238 (1979); see also Katz v. United States, 389 U.S. 347 (1967).

[27] April 4, 2005 U.S. Department of Justice letter to Senator Spector. p. 3 citing See *United States* v. *Freitas,* 800 F.2d 1451 (9th Cir. 1986); *United States* v. *Villegas,* 899 F.2d 1324 (2d Cir. 1990); *United States* v. *Simons,* 206 F.3d 392 (4th Cir. 2000).

cretion for the courts to review the facts and determine what a reasonable period time is to delay the notice, as that is necessarily dependent upon the facts of each case. According to the Department of Justice, the shortest period of time for which the Government has requested delayed-notice for a search warrant is 7 days and the longest is 180 days. This figure is from a survey of the 94 U.S. Attorneys' Offices for a period between April 1, 2003, and January 31, 2005.

In an April 4, 2005, letter to Senator Specter, the Department of Justice provided statistics on the number of search warrants granted and the number of those for which delayed notice was sought and granted:

- 32,529 search warrants were handled by U.S. District Courts during a 12-month period ending September 30, 2003, according to the Administrative Office of the U.S. Courts.
- 61 search warrants had delayed notice in a comparable 14-month period—between April 2003, and July 2004, according to a Department survey of the U.S. Attorney Offices.
- When comparing the two periods, delayed notice under section 213 was granted for only 0.2 percent of the total search warrants handled by the courts.
- 155 search warrants had delayed notice in the period from enactment of the USA PATRIOT Act on October 26, 2001 through January 31, 2005—a period of more than three years.
- Assuming that the number of search warrants was the same for three years, the number would be 0.15 percent of the total search warrants handled by the courts.
- Of the 98 U.S. Attorneys' Offices, 48 Offices never used a delayed notice search warrant under section 213 and only 40 Offices—less than half of the total number of U.S. Attorneys' Offices—used a delayed notice search warrant under any authority.
- Of the 40 Offices that used section 213, 17 used section 213 only once.

7. Tuesday, May 5, 2005—Oversight Hearing on Section 212 of the USA PATRIOT Act That Allows Emergency Disclosure of Electronic Communications To Protect Life and Limb

On Thursday, May 5, 2005, the Subcommittee held a hearing on section 212 of the USA 1PATRIOT Act. Section 212 of the USA PATRIOT Act allows computer-service providers to disclose electronic communications in life-threatening emergencies to law enforcement and is scheduled to expire on December 31, 2005.

Four witnesses—the Honorable William Moschella, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice; Willie Hulon, Assistant Director of the Counterterrorism Division, Federal Bureau of Investigation; Professor Orrin Kerr, Professor of Law at the George Washington University Law School; and James X. Dempsey, Executive Director of the Center for Democracy and Technology as the witness for the Minority—testified.

This hearing examined section 212 of the USA PATRIOT Act that allows computer-service providers to disclose information under emergencies that threaten life or limb. To understand the effect of section 212, following is an explanation of the prohibitions for disclosing stored electronic communications that existed before

and exist after enactment of the USA PATRIOT Act. The 1986 Electronic Communications Privacy Act (ECPA) to authorize Government access to e-mail and other electronic communications "in storage." Section 2701(a) of that chapter makes it a Federal offense to unlawfully access stored communications. Subsection (c) of 18 U.S.C. § 2701 provides exceptions to the prohibitions in (a). Those exceptions include conduct authorized by the person or entity providing a wire or electronic communications service; conduct authorized by a user of that service with respect to a communication of or intended for that user; and exceptions described in sections 2702, 2703, 2704, and 2518 of title 18.

Subsection 2702(a) restricts voluntary disclosure of customer communications or records, unless the disclosure falls under one of the specified exceptions in subsections 2702(b) or 2702(c). Subsection 2702(b) provides exceptions for disclosure of the contents of a communication. Subsection 2702(c) provides exceptions for the disclosure of customer records. Under section 2702(c) a provider covered by subsection 2702(a) may divulge a record or other information pertaining to a subscriber to or customer of such service that does not include the contents of communications covered by subsections 2701(a)(1) or (a)(2).

Section 2703 provides the standards for Government access to electronic communications in storage. Section 2703(a) requires a search warrant to compel service providers to disclose unopened e-mails.

Sec. 212. Emergency Disclosure of Electronic Communications to Protect Life and Limb. Section 212 of the USA PATRIOT Act amended sections 2702 and 2703 of title 18. Prior to enactment of the USA PATRIOT Act, there were two basic problems with the disclosure rules for stored electronic communications. First, the law contained no provision allowing electronic communications service providers to voluntarily disclose communications when necessary to protect life and limb. Thus, "for example, an Internet service provider ("ISP") independently learned that one of its customers was part of a conspiracy to commit an imminent terrorist attack, prompt disclosure of the account information to law enforcement could save lives. Since providing this information did not fall within one of the statutory exceptions, however, an ISP making such a disclosure could be sued civilly."[28]

Second, while the law allowed communications service providers to protect their rights and property by disclosing stored communications that contained content, the law did not allow them to disclose communications that contained "non-content" records for such protection. Allowing providers to disclose content, but not non-content communications, to protect their rights and property had, according to the Department of Justice, substantially hindered providers' ability to protect themselves from cyber-terrorists and criminals.

The USA PATRIOT Act addresses both issues. To resolve the first problem addressing life and limb emergencies, section 212 amends subsection 2702(b) to authorize communications service providers to voluntarily disclose the stored "content" and "non-con-

[28] Field Guidance on New Authorities That Relate to Computer Crime and Electronic Evidence Enacted in the USA PATRIOT Act of 2001, Computer Crime and Intellectual Property Section (CCIPS), U.S. Dept. of Justice.

tent" communications of their customers or subscribers if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay. This language was later amended in 2002 under the "Cyber Security Enhancement Act," which was introduced by Mr. Lamar Smith, then Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security.[29]

The Cyber Security Enhancement Act contains a section that made a conforming amendment to the USA PATRIOT Act to allow communications services providers to disclose communications to government entities in emergency situations where the provider in good faith believes that there is a danger of death or physical injury. For customer communications, the USA PATRIOT Act creates an exception that allows emergency disclosures to "law enforcement," when the provider reasonably believes there was immediate danger. For customer records, however, the USA PATRIOT Act creates a broader exception allowing disclosure of such records to "a governmental entity." This section changes the emergency exception for disclosing customer communications to include other Government agencies, such as emergency response personnel, health officials, and the Department of Defense. Thus, the provider could contact, for instance, the Centers for Disease Control as well as law enforcement. It should be noted that section 212 does not impose an affirmative obligation to review customer communications in search of such imminent dangers.

As to the second problem regarding property rights of the communications services provider, section 212 amends the law to allow communications services providers to disclose non-content information (such as the subscriber's login records). "It accomplishes this change by two related sets of amendments. First, amendments to sections 2702 and 2703 of title 18 simplify the treatment of voluntary disclosures by providers by moving all such provisions to 2702. Thus, section 2702 now regulates all permissive disclosures (of content and non-content records alike), while section 2703 covers only compulsory disclosures by providers. Second, an amendment to new subsection 2702(c)(3) clarifies that service providers do have the statutory authority to disclose non-content records to protect their rights and property. All of these changes will sunset December 31, 2005."[30]

8. Tuesday, May 10, 2005, Oversight Hearing on the Prohibition of Material Support to Terrorists and Foreign Terrorist Organizations and on the DOJ Inspector General's Report on Civil Liberty Violations Under the USA PATRIOT Act

On Tuesday, May 10, 2005, the Subcommittee on Crime, Terrorism, and Homeland Security for the Committee on the Judiciary held a hearing on the USA PATRIOT Act. This hearing examined the prohibition of material support to terrorists and foreign terrorist organizations and the requirement of the Department of Jus-

[29] The Cyber Security Enhancement Act was incorporated into the Homeland Security Act of 2002.

[30] Field Guidance on New Authorities That Relate to Computer Crime and Electronic Evidence Enacted in the USA PATRIOT Act of 2001, Computer Crime and Intellectual Property Section (CCIPS), U.S. Dept. of Justice.

tice Inspector General (IG) to report every six months on any violations of civil liberties. Four witnesses—the Honorable Glenn Fine, Inspector General of the Department of Justice; the Honorable Gregory G. Katsas, Deputy Assistant Attorney General, Civil Division of the Department of Justice; Mr. Barry Sabin, Chief of the Counterterrorism Section of the Criminal Division of the Department of Justice; and Ahilan Arulanantham, Staff Attorney for the American Civil Liberties Union of Southern California—testified.

The hearing focused on section 805(a)(2)(B) of the USA PATRIOT Act as amended by section 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004, which covers Material Support, and section 1001 of the USA PATRIOT Act, which requires the IG to report to the Congress ever six months on whether the IG has found any civil liberty violations.

A. Section 1001 of the USA PATRIOT Act

Section 1001 requires the Inspector General of the Department of Justice to submit a semiannual report. This section does not sunset, but does help the Committee understand the existence and extent of civil liberty abuses by the Department of Justice. Specifically, section 1001 directs the IG to investigate claims of civil rights or civil liberties violations allegedly committed by the Department of Justice. Since enactment of the USA PATRIOT Act, the IG has issued six semi-annual reports. In the sixth (and most recent) report, which was issued in March 2005, the IG had yet to find any violations under the USA PATRIOT Act.

1. Background

Section 1001 of the USA PATRIOT Act is based upon a proposal that emerged during consideration of anti-terrorism legislation by the House Judiciary Committee. The Committee report explains, "In the wake of several significant incidents of security lapses and breach of regulations, there has arisen the need for independent oversight of the Federal Bureau of Investigation. Oversight of the Federal Bureau of Investigation is currently under the jurisdiction of the Department of Justice Office of Professional Responsibility. This section directs the Inspector General of the Department of Justice to appoint a Deputy Inspector General for Civil Rights, Civil Liberties. This section also directs the Deputy Inspector to review all information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees of the Department of Justice, which could include allegations of inappropriate profiling at the border," H.Rept. 107–236, at 78. (2001).

2. The Department of Justice Office of Inspector General

The Office of the Inspector General (OIG) in the Department of Justice is an independent entity that reports to both the Attorney General and Congress. The OIG's mission is to investigate allegations of waste, fraud, and abuse in DOJ programs and personnel and to promote economy and efficiency in DOJ operations. The OIG has jurisdiction to review programs and personnel in all DOJ components. Since its creation in 1989, the OIG has had the authority to conduct audits and inspections in all DOJ components and investigations of employee misconduct in all components except the FBI and the Drug Enforcement Agency (DEA). On July 11, 2001, the

Attorney General expanded the OIG's jurisdiction to include criminal and administrative investigations of FBI and DEA employees.

3. Section 1001

Section 1001 of the USA PATRIOT Act provides the following:

The Inspector General of the Department of Justice shall designate one official who shall:

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice;

(2) make public through the Internet, radio, television, and newspaper advertisements information on the responsibilities and functions of, and how to contact, the official; and

(3) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report on the implementation of this subsection and detailing any abuses described in paragraph (1), including a description of the use of funds appropriations used to carry out this subsection.

To undertake the responsibilities designated to the OIG by section 1001, the OIG established the Special Operations Branch in its Investigations Division to help manage the OIG's investigative responsibilities outlined in the USA PATRIOT Act. The Special Operations Branch receives civil rights and civil liberties complaints via mail, e-mail, telephone, and facsimile. Once a complaint is received, it is reviewed by the Investigative Specialist and ASAC responsible for USA PATRIOT Act complaints. After review, the complaint is entered into an OIG database and a decision is made concerning its disposition. The more serious civil rights and civil liberties allegations that relate to actions of a DOJ employee or contractor are assigned to an OIG Investigations Division field office for investigation. The OIG has approximately 120 series 1811 special agents who conduct investigations of criminal violations and administrative misconduct. Because of its limited resources, the OIG refers some complaints involving DOJ employees to internal affairs offices in DOJ components, such as the FBI and the Bureau of Prisons (BOP) for appropriate handling. Certain referrals require the component to report the results of their investigation to the OIG. In most cases, the OIG notifies the complainant of the referral. Complaints outside the OIG's jurisdiction that identify a specific issue for investigation are forwarded to the appropriate investigative entity.

In addition, the OIG has referred complainants to a variety of police department internal affairs offices. Since passage of the USA PATRIOT Act, the OIG also has been in close communication with the DOJ Civil Rights Division's National Origin Working Group (NOWG) to Combat the (Post–9/11 Discriminatory Backlash). The NOWG regularly forwards complaints alleging civil rights and civil liberties abuses to the OIG for review. Many of the complaints forwarded by the NOWG are the result of media database searches.

When an allegation received from any source involves a potential violation of Federal civil rights statutes by a DOJ employee, the complaint is discussed with the DOJ Civil Rights Division for prosecutorial review. In some cases, the Civil Rights Division accepts the case and requests additional investigation by either the OIG or

FBI. In other cases, the Civil Rights Division declines prosecution.[31]

4. Complaints Processed This Reporting Period

From June 22, 2004, through December 31, 2004, the period covered by the sixth report, the OIG processed 1,943 complaints that were sent primarily to the OIG's section 1001 e-mail or postal address. Of these complaints, 1,748 did not warrant further investigation or did not fall within the OIG's jurisdiction. Approximately three-quarters of the 1,748 complaints made allegations that did not warrant an investigation. For example, some of the complaints alleged that Government agents were broadcasting signals that interfere with a person's thoughts or dreams or that prison officials had laced the prison food with hallucinogenic drugs. The remaining one-quarter of the 1,748 complaints in this category involved allegations against agencies or entities outside of the DOJ, including other Federal agencies, local governments, or private businesses. The OIG referred those complaints to the appropriate entity or advised complainants of the entity with jurisdiction over their allegations.

Consequently, 195 complaints involved DOJ employees or components and made allegations that required further review. Of those complaints, 170 raised management issues rather than alleged "civil rights" or "civil liberties" abuses and were referred to DOJ components for handling. For example, inmates complained about the general conditions at Federal prisons, such as the poor quality of the food or the lack of hygiene products. Twelve of the 195 complaints did not provide sufficient detail to make a determination whether an abuse was alleged. The OIG requested further information but did not receive responses from any of these 12 complainants. Finally, the OIG requested that the BOP investigate one of the complaints and report to the OIG on the investigation's findings. That complaint involved an inmate who complained that he was sexually harassed by a correctional officer. BOP's investigation of the matter is ongoing.

Therefore, after analyzing these 195 complaints, the OIG identified 12 matters that the OIG believed warranted opening a section 1001 investigation or conducting a closer review to determine if section 1001–related abuse occurred. Of the 12 matters, the OIG retained one for investigation because the complainant made allegations of a potentially criminal nature. The OIG closed one because the allegations already had been addressed in a previous OIG investigation. The OIG referred the remaining ten matters, which appeared to raise largely administrative issues, to Department components for further investigation or review. For six of the ten matters, the OIG requested that the components report their findings to the IG.

None of the complaints the OIG processed during this reporting period alleged misconduct by DOJ employees relating to the use of a provision in the USA PATRIOT Act.[32] In addition, the IG has not substantiated claims of alleged misconduct resulting from the use

[31] Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act (as required by Section 1001(3) of Public Law 107–56) (Mar. 2005), Office of the Inspector General, U.S. Dept. of Justice, available at *http://www.usdoj.gov/oig/special/0503/index.htm.*

[32] Id.

of a provision of the USA PATRIOT Act in any prior report, although one such allegation is still under review.[33]

B. Prohibition on Material Support to Terrorists

1. The Antiterrorism and Effective Death Penalty Act of 1996

The USA PATRIOT Act did not create the prohibition on material support to terrorists and foreign terrorist organizations, but did amend that prohibition. It was the "Antiterrorism and Effective Death Penalty Act of 1996," that created prohibitions to sever material support from international terrorists. The 1996 Act was in response to the Oklahoma City and first World Trade Center terrorist attacks. Subtitle A of Title III of the 1996 Act: (1) established the procedure under which a foreign organization may be designated as a terrorist organization; (2) proscribes providing such an organization with "material support;" and (3) established a system of civil penalties for banks and other financial institutions that fail to freeze and report the assets of such organizations. [34]

Section 302 of the 1996 Act "established the procedure for designating as foreign terrorist organizations those foreign organizations that engage in terrorist activities that threaten the national defense, foreign relations, or economic interests of the United States or the security of U.S. nationals, 8 U.S.C. §1189. The designation by the Secretary of State lasts for up to two years with the possibility of a two-year renewal and may be withdrawn by the Secretary or by law. The designation is subject to judicial review on behalf of the designated organization if it is arbitrary, contrary to law, or in excess of authority. The Government may provide any supporting classified information to the court in secret. The designation may not be contested by a donor subsequently prosecuted for support nor by an alien excluded from the United States for association. Assets of a designated organization held by a financial institution may be frozen by order of the Secretary of the Treasury." [35]

Section 303 of the 1996 Act "outlaws providing support to a foreign terrorist organization, 18 U.S.C. §2339B. In addition to money and the instrumentalities of war, prohibited support extends to food, medical supplies, and any other physical asset except medicine itself and religious articles, 18 U.S.C. §2339A; 142 Cong.Rec. H3334 (daily ed. April 5, 1996). The fact that a particular contribution is made and used for humanitarian purposes is no defense since the gist of the offense is contributing to a tainted organization regardless of the purpose or use of the contribution. Violations are punishable by imprisonment for not more than 10 years and/or a fine of not more than $250,000. Financial institutions that fail to report or comply with a freeze order are subject to civil penalties of up to the greater of twice the amount involved or $50,000. The

[33] An OIG investigation relating to Brandon Mayfield is still ongoing as of the date of this hearing.

[34] Antiterrorism and Effective Death Penalty Act of 1996: A Summary, Charles Doyle, Senior Specialist, American Law Division, Congressional Research Service, June 1996).

[35] Id.

proscriptions apply both in the United States and to Americans and American institutions overseas."[36]

2. The 1998 Challenge to Material Support Prohibition

Led by the Humanitarian Law Project, six organizations and two individuals challenged the constitutionality of the law in 1998, contending that it violated the First Amendment.

They argued, among other things, that the law infringed on their free-association rights, granted too much discretion to the secretary of state and prohibited their First Amendment right to seek and donate funds.

A Federal district court rejected most of the First Amendment claims, but ruled the definition of the term "material support" was vague enough to prevent the government from enforcing the law.

On appeal, a three-judge panel of the 9th U.S. Circuit Court of Appeals agreed in Humanitarian Law Project v. Reno. Just as the lower court had, the appeals court cast aside most of the First Amendment arguments.

The court rejected the free-association claim, finding that the statute does not prohibit membership in a group or support for the political goals of a group. "What [the law] prohibits is the act of giving material support, and there is no constitutional right to facilitate terrorism by giving terrorists the weapons and explosives with which to carry out their grisly missions," the court wrote in its March 3 opinion.

The plaintiffs contended that the law could be interpreted to prohibit the giving of material support to the so-called terrorist groups' nonviolent humanitarian and political activities.

However, the 9th Circuit determined that the First Amendment did not protect the right to give funds to terrorist groups. These "terrorist groups do not maintain open books," the court wrote. "Therefore, when someone makes a donation to them, there is no way to tell how the donation is used."

The appeals court distinguished between giving material support to a group and advocating the beliefs and ideas of a group. "Advocacy is far different from making donations of material support," the court wrote.

The appeals court also dismissed the plaintiffs' argument that the statute had empowered the secretary of state with "unfettered discretion" to determine whether a group is a terrorist organization.

The 9th Circuit pointed out that the secretary of state can only designate a group as a terrorist group if he or she has "reasonable grounds to believe that an organization has engaged in terrorist acts."

However, the appeals court agreed with the plaintiffs and the lower court that some of the law's language was too vague.

[36] Id.

The law defined "material support" as:

Currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation and other physical assets, except medicine or religion.

The court focused on the terms "training" and "personnel," finding that these terms "blur[red] the line between protected expression and unprotected conduct."

"Someone who advocates the cause of * * * [a terrorist organization] * * * could be seen as supplying them with personnel," the court wrote.

The appeals court also had trouble with the word "training." "For example, a plaintiff who wishes to instruct members of a designated group on how to petition the United Nations to give aid to their group could plausibly decide that such protected expression falls within the scope of the term 'training.'" For these reasons, the court ruled that the lower court did not "abuse its discretion" in issuing a preliminary injunction.[37]

3. USA PATRIOT Act Amends the Material Support Provision

Section 805(a)(2)(B) of the USA PATRIOT Act added the phrase "expert advice or assistance" to the types of material support to terrorists that is banned by the criminal law. Title 18 U.S.C. § 2339A prohibited providing material support or resources to terrorists prior to enactment of the USA PATRIOT Act. Prohibition on expert advice or assistance also applies to 18 U.S.C. § 2339B's prohibition of material support to FTOs. The existing definition of "material support or resources" was not broad enough to encompass expert services and assistance—for example, advice provided by a person with expertise in aviation matters to facilitate an aircraft hijacking, or advice provided by an accountant to facilitate the concealment of funds used to support terrorist activities. This section accordingly amended 18 U.S.C. § 2339A to include expert services and assistance, making the offense applicable to experts who provide services or assistance knowing or intending that the services or assistance is to be used in preparing for or carrying out terrorism crimes. This also applies to 18 U.S.C. § 2339B.

4. Challenges to the USA PATRIOT Act Prohibition of Material Support to Terrorists

a. December 3, 2003 9th Circuit Decision

LOS ANGELES—Civil rights lawyers filed a free-speech challenge . . . to a section of the USA Patriot Act that makes it illegal to provide "expert advice and assistance" to groups with alleged links to terrorists.

[37] Federal appeals panel finds anti-terrorism law unconstitutionally vague, David Hudson, First Amendment Center research attorney, (April 8, 2000). [emphasis added].

The ban is unconstitutionally vague and should be struck down, the New York-based Center for Constitutional Right argued in a motion filed in Federal court.

The motion was included in the center's current lawsuit, Humanitarian Law Project v. Ashcroft, which challenges a 1996 law that makes it a crime to provide material support to any group designated a foreign terrorist organization. Federal courts have already struck down portions of that law that barred providing personnel or training to terrorist groups, saying the provisions were unconstitutionally vague.

The Patriot Act, passed after the Sept. 11, 2001, terrorist attacks, amended the definition of material support to include "expert advice and assistance."

The plaintiffs say they want to provide support for lawful, nonviolent activities by two groups designated as foreign terrorist organizations: the Kurdistan Workers' Party in Turkey and the Liberation Tigers of Tamil Eelam in Sri Lanka.

One of the plaintiffs, Dr. Nagalingam Jeyalangim, would like to work as a doctor in his war-torn homeland of Sri Lanka. However, because some hospitals are controlled by rebel forces there, he fears he could be prosecuted for "providing material support" to a terrorist group, according to the filing.

* * * * * * *[38]

b. The 9th U.S. Circuit Court of Appeals Overturns Circuit's Ruling That the 1996 Terror Financing Law Was Unconstitutional

A Federal appeals court reinstated indictments against seven Los Angeles residents accused of raising money for a terror organization with links to ousted Iraqi ruler Saddam Hussein. In a victory for the Bush administration's war on terror, the 9th U.S. Circuit Court of Appeals yesterday reversed a Los Angeles Federal judge who declared the 1996 terror financing law unconstitutional.

The law makes it illegal to funnel money—"material support"—to organizations the State Department says are linked to terrorism, about 30 groups in all.

Before the Sept. 11, 2001, attacks, the government rarely used the terror law. Subsequently the administration has used the law to win dozens of terror convictions nationwide, from Lackawanna, N.Y., to Seattle to Portland, Ore.

* * * * * * *

The case stems from a 2001 indictment against the seven defendants for allegedly providing several hundred thousand dollars to the Mujahedin-e Khalq, which the appeals court said "participated in various terrorist activities against the Iranian regime" and "carried out terrorist activities with the support of Saddam Hussein's regime."

[38] Patriot Act dealt blow by federal judge, The Associated Press, January 26, 2004.

U.S. District Judge Robert Takasugi had invalidated the law, saying it did not provide the groups a proper forum to contest their terror designations.

But a three-judge panel of the San Francisco-based Federal appeals court overruled that decision and went a step further, saying individuals accused of supporting the listed groups cannot challenge whether the groups should be listed.

The government, the court said, must prove the "fact that a particular organization was designated at the time the material support was given, not whether the government made a correct designation."

The 9th Circuit decision mirrors a ruling this year by the 4th U.S. Circuit Court of Appeals in Richmond, Va., upholding the conviction of a man who funneled money to the militant Hezbollah organization while insisting he had a right to challenge that group's listing.

"The Justice Department is pleased that yet another court has upheld the constitutionality of the material-support statute, a key weapon in our arsenal of legal remedies in the war on terror," spokesman John Nowacki said. "Stopping the flow of money and other resources to terrorists is critical to our success, and the department will continue to pursue those who provide material support for terrorist objectives."

The seven Los Angeles defendants said it violated their First Amendment rights to be prohibited from contributing money to groups they say are not terror organizations. They said they should be afforded the right to prove that the group in question should not be on the State Department's list.

Writing for the majority, Judge Andrew J. Kleinfeld said the First Amendment did not protect unlimited speech, and even allowed limits on campaign contributions.

"It would be anomalous indeed if Congress could prohibit the contribution of money for television commercials saying why a candidate would be a good or bad choice for political office, yet could not prohibit contribution of money to a group designated a terrorist organization," Kleinfeld wrote.

* * * * * * *

According to the indictment, the Los Angeles defendants solicited donations at the Los Angeles International Airport and wired money to a Mujahedin-e Khalq bank account in Turkey. The group had tried unsuccessfully to get removed from the terror list.

No court date has been set for the seven.[39]

5. Intelligence Reform and Terrorism Prevention Act of 2004

Section 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004 adds a new crime of material support for terrorism for knowingly receiving military training from a foreign terrorist organization. The section requires that any person charged under

[39] 9th Circuit reinstates terror indictments, the Associated Press, December 21, 2004.

this section must have knowledge that the organization is a terrorist organization. It also defines the term "military-type training." Section 6603 also expands the crime of material support to terrorists to include any act of international or domestic terrorism.

Section 6603(c) specifies that any person charged under this section must have knowledge that the organization is a terrorist organization. It also more clearly defines the term "material support." The Intelligence Reform and Terrorism Prevention Act of 2004 attempted to address the court cases finding the terms "training" and "personnel" under the prohibition unconstitutionally vague,[40] and the term "expert advice or assistance" in material support statute unconstitutionally vague.[41]

The Intelligence Reform and Terrorism Prevention Act provides more detailed definitions of the terms "training," and "expert advice or assistance" under section 6603(b); and "personnel" under section 6603(f) by creating new section 3229B(a)(1)(h) of title 18 that limits the term "personnel."

- To address the Ninth Circuit's concern that the term "training" is vague and may cover protected First Amendment activity, the Act provides that training includes only instruction or teaching designed to impart a specific skill. This definition addresses the Ninth Circuit's concern that the material support statute could cover imparting general knowledge to a terrorist organization (such as knowledge about international law). It also addresses the Ninth Circuit's concern that the term "training" could cover First Amendment protected activity by specifically stating that the statute does not cover such activity.
- To address the Ninth Circuit's concern that the term "personnel" is unconstitutionally vague and could be interpreted to cover those independently advocating on behalf of a foreign terrorist organization, the legislation provides that the term "personnel" only refers to those either: (1) working under a terrorist organization's direction or control; or (2) managing or supervising the terrorist organization. This definition makes it clear that those independently advocating on behalf of a foreign terrorist organization's goals are not covered by the material support statute.
- To address the Ninth Circuit's concern that the term "expert advice or assistance" is vague, the legislation provides that "expert advice or assistance" means advice derived from scientific, technical, or other specialized knowledge. This definition is taken from the definition of expertise found in the Federal Rules of Evidence. It is well-known and well-understood by lawyers and courts. The proposal also addresses the Ninth Circuit's concern that the term "expert advice or assistance" could cover First Amendment protected activity by specifically stating that this language does not cover such activity.

Section 6603(f) contains an exception that "no person may be prosecuted under this section in connection with the term 'personnel,' 'training,' or 'expert advice or assistance' if the provision of that material support or resources to a foreign terrorist organiza-

[40] See *Humanitarian Law Project* v. *United States Department of Justice,* 352 F.3d 382 (9th Cir. 2003).

[41] *Humanitarian Law Project* v. *Ashcroft,* 2004 WL 112760 (C.D. Cal. Jan. 22, 2004).

tion was approved by the Secretary of State with the concurrence of the Attorney General."

Section 6603(g) also provides that section 6603 sunsets on December 31, 2006.

6. 9th Circuit Lifts 2002 Injunction Protecting Donors to Terrorist Organizations

A Federal appeals court yesterday lifted an injunction that had barred the government from prosecuting a Los Angeles group if it aids organizations labeled as supporting terrorism.

The decision by the 9th U.S. Circuit Court of Appeals came days after President Bush signed legislation overhauling U.S. intelligence gathering and terror-enforcement rules. The San Francisco-based court said yesterday's decision in Humanitarian Law Project v. Dept. of Justice was based partly on the Intelligence Reform and Terrorism Prevention Act of 2004, which Bush signed into law on Dec. 17.

The appeals court, however, did not comment on whether the Humanitarian Law Project could ever be prosecuted if it provided advice to the Kurdistan Workers' Party or the Tamil Tigers Eelam in Sri Lanka.

The 11-judge panel of the 9th Circuit sent the case back to the lower courts, where the Humanitarian Law Project is expected to challenge the new provisions.

"The end goal is to get another injunction," said David Cole, a Georgetown University School of Law scholar who won the 2002 injunction on behalf of the Humanitarian Law Project.

Cole said the group would abide by the court's order.

The State Department lists the Sri Lanka and Turkey groups as terror organizations. That makes it illegal for those in the United States to provide financial assistance under a 1996 law created in the aftermath of the attack on the Oklahoma City Federal building.

The Humanitarian Law Project was not seeking to give money. Rather, it wanted to donate personnel and training time to teach the groups about human rights and peacemaking, according to court documents.

The humanitarian group had provided human rights support to the Kurdistan party for years before the party was declared a terror organization by the United States. The humanitarian group challenged the 1996 law in Los Angeles Federal court a year later, Cole said.

The group sought the injunction because it feared its members might be prosecuted and imprisoned for up to 15 years.

Before the Sept. 11, 2001, attacks, the government rarely used the terror law. The administration subsequently has employed it to win dozens of terror convictions nationwide, from Lackawanna, N.Y., to Seattle and Portland, Ore.

In 2003, the 9th Circuit said the Humanitarian Law Project could donate human rights and peacemaking serv-

ices because the law did not specifically outlaw such assistance. . . .

The legislation, which creates a national intelligence center and the position of national intelligence director, makes it illegal to assist the roughly 30 organizations the State Department says are linked to terrorism.

The new law virtually outlaws any form of assistance, financial or not.

* * * * * * *

Yesterday's decision comes a day after a different panel of the 9th Circuit reinstated the indictments against seven Los Angeles residents accused of raising money for a terror organization with links to ousted Iraqi ruler Saddam Hussein.

The group claimed they had a right to challenge whether the terror group they were funding—Mujahedin-e Khalq—should be on the terror list. The appeals court said the government must prove the "fact that a particular organization was designated at the time the material support was given, not whether the government made a correct designation."[42]

9. May 26, 2005, Oversight Hearing on Material Witness Provisions of the Criminal Code and the Sections 505 and 804 of the USA PATRIOT Act

On Thursday, May 26, 2005, the Subcommittee on Crime, Terrorism, and Homeland Security for the Committee on the Judiciary held a hearing on material witness provisions of the criminal code and sections 505 (related to National Security Letters) and 804 (related to jurisdiction over crimes committed at U.S. facilities abroad) of the USA PATRIOT Act. The Subcommittee heard testimony from four witnesses—Chuck Rosenberg, Chief of Staff to the Deputy Attorney General of the Department of Justice; Matthew Berry, Counselor to the Assistant Attorney General of the Department of Justice; and two witnesses for the minority: Gregory Nojeim, Acting Director of the Washington Legislative Office of the American Civil Liberties Union; and Shayana Kadidal, Staff Attorney, Center for Constitutional Rights.

A. National Security Letters

1. What Is a National Security Letter?

A National Security Letter (NSL) is an administrative subpoena that can be used in international counterterrorism or foreign counterintelligence investigations. An administrative subpoena is an investigative tool that allows the FBI to request (compliance varies, see examples) document production or testimony without prior approval from a grand jury, court, or other judicial entity. Congress grants the administrative subpoena power of executive branch entities as well as the scope and exercise of these authorities.

[42] 9th Circuit lifts injunction protecting donors, the Associated Press, December 22, 2004.

2. Types of National Security Letters

A NSL can be used under the following circumstances and authorities:

- 18 U.S.C. § 2709, the Electronic Communications Privacy Act (ECPA), authorizes the FBI to issue NSLs for: (1) telephone subscriber information (limited to name, address, and length of service); (2) telephone local and long distance toll billing records; and (3) electronic communication transactional records.
- 12 U.S.C. § 3414(a)(5), the Right to Financial Privacy Act (RFPA), authorizes the FBI to issue NSLs to obtain financial records from banks and other financial institutions.
- 15 U.S.C. § 1681u, the Fair Credit Reporting Act (FCRA), authorizes the FBI to issue NSLs to obtain consumer identifying information and the identity of financial institutions from credit bureaus.
- 15 U.S.C. § 1681v, Disclosures to governmental agencies for counterterrorism purposes, authorizes the FBI and other agencies to obtain credit reports.
- 50 U.S.C. § 436, Requests by authorized investigate agencies, authorizes the FBI and other agencies to obtain financial records.

3. When Can NSLs Be Issued?

In addition to the statutory authority set forth above, when an NSL can be issued or used is governed by the applicable Attorney General Guidelines for FBI National Security Investigations and Foreign Intelligence Collection. NSLs are used in international counterterrorism or foreign counterintelligence investigations. However, this authority is limited further: NSLs issued under 15 U.S.C. § 1681v (credit reports) can only be issued in counterterrorism cases; credit reports cannot be obtained for a foreign counterintelligence investigation under this section.

NSLs cannot be used in criminal investigations unrelated to international terrorism or clandestine intelligence activities. Furthermore, both Executive Order 12333 and the FBI require that the FBI accomplish these investigations by the "least intrusive" means.

4. Recent Legislative Changes to NSL Authority

P.L. 107–56, the "USA PATRIOT Act," simplified the NSL process. Prior to the Act, an FBI official authorizing the issuance of an NSL had to certify that there were specific and articulable facts that provide a reason to believe that the information sought pertains to a foreign power, or an agent of a foreign power. The USA PATRIOT Act changed this to allow for certification that the NSL is sought for a foreign counterintelligence purpose to protect against international terrorism and clandestine intelligence activities.

This is consistent with the Supreme Court's rulings on the issuance and purpose of administrative subpoenas. Previously the signature of a high-ranking official at FBI headquarters was required to issue an NSL and the process often took months. In many cases, counterintelligence and counterterrorism investigations suffered substantial delays while waiting for NSLs to be prepared, re-

turned from headquarters, and served. The Act streamlines the process for obtaining NSL authority by allowing the Director to designate an individual at Headquarters, not lower than Deputy Assistant Director, or to designate a Special Agent in Charge in a Bureau field office, to authorize an NSL.

The Supreme Court has construed administrative authorities, broadly holding that the "government need only show that the subpoena was issued for a lawfully authorized purpose and sought information relevant to the agency's inquiry," *United States* v. *LaSalle Nat'l Bank*, 437 U.S. 298, 313 (1978); *United States* v. *Powell*, 379 U.S. 48, 56 (1964); *Oklahoma Press Publishing Co*. v. *Walling*, 327 U.S. 186, 209 (1946).[43]

"The Supreme Court has stated in *United States* v. *Morton Salt*[, 338 U.S. 632, 652 (1950)] that, in evaluating the appropriateness of an administrative subpoena request, a court must simply determine that 'the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.'"[44]

• *P.L. 108–177, the "Intelligence Authorization Act for FY 2004,"* amended the Right to Financial Privacy Act (RFPA) (12 U.S.C. § 3401). The Intelligence Authorization Act changed the definition of "financial institution" for NSLs to be consistent with the definition of "financial institution" used for money laundering under 31 U.S.C. § 5312(a)(2). The old definition used for NSLs defined "financial institution" to cover any office of a (1) bank; (2) savings bank; (3) card issuer as defined in section 1602(n) of title 15; (4) industrial loan company; (5) trust company; (6) savings association; (7) building and loan, or homestead association (including cooperative banks); (8) credit union, or consumer finance institution.

The money laundering definition under 31 U.S.C. § 5312(a)(2), now applied to NSLs, covers: (1) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(h))); (2) a commercial bank or trust company; (3) a private banker; (4) an agency or branch of a foreign bank in the U.S.; (5) a credit union; (6) a thrift institution; (7) a broker or dealer registered with the Security and Exchange Commission under the Security Exchange Act of 1934 (15 U.S.C. § 78 et seq.); (8) a broker or dealer in securities or commodities; (9) an investment banker or investment company; (10) a currency exchange; (11) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments; (12) an operator of a credit card system; (13) an insurance company; (14) a dealer in precious metals, stones, or jewels; (15) a pawnbroker; (16) a loan or finance company; (17) a travel agency; (18) a licensed sender of money or any other person engaged in the transmission of funds; (19) a telegraph company; (20) a business engaged in vehicle sales, including automobile, airplane, and boat sales; (21) persons involved in real estate closings and settlements; (22) the U.S. Postal Service; (23) an agency of the United States Government or state or

[43] Report to Congress on the Use of Administrative Subpoena Authority by Executive Branch Agencies and Entities, Pursuant to Pub. L. No. 106–544, Section 7, n. 8, p. 7.

[44] Report to Congress on the Use of Administrative Subpoena Authority by Executive Branch Agencies and Entities, Pursuant to Pub. L. No. 106–544, Section 7, p. 8.

local government carrying out a duty or power of a business described in this paragraph; (24) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than 1 million; (25) any business or agency that engages in any activity that the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for, any activity in which any business described in this paragraph is authorized to engage; or (26) any other business designed by the Secretary whose case transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

• It should be noted that under the money laundering provision, the Treasury Department also can use an administrative subpoena to get certain information. See 31 U.S.C. § 5318(a)(4). Moreover, the FBI would usually use a grand jury subpoena (no court needed) to obtain certain information. Finally, the provisions in the Intelligence Authorization Act of 2004, Pub. L. No. 108–177, do not change the USA PATRIOT Act.

5. Previously Proposed Changes to NSLs

• *H.R. 3179, the "Anti-Terrorism Intelligence Tools Improvement Act of 2003," (9/25/04) introduced by Representatives Sensenbrenner and Goss in the 108th Congress:* The bill would have established a penalty for an individual to disclose that he or she has received a request for information under an NSL and would have authorized the Attorney General to seek judicial enforcement against those refusing to comply with an NSL.

• Under current law, a person is generally prohibited from disclosing that he has received a request for information under an NSL. H.R. 3179 would have added a penalty for such a disclosure, making it a misdemeanor, unless the disclosure was intended to obstruct a terrorism or espionage investigation, then such a disclosure would be subject to imprisonment for not more than five years.

• Currently, no judicial enforcement procedures exist when a recipient of an NSL refuses to comply. H.R. 3179 would have authorized the Attorney General to seek judicial enforcement in NSL cases.

• Statutes granting administrative subpoena authorities usually fall into three enforcement type-categories: (1) the statute authorizes an agency to apply directly to an appropriate U.S. District Court for enforcement assistance; (2) the statute requires the agency official to request the Attorney General's aid in applying to a U.S. District Court for enforcement assistance; or (3) the statute contains no identified enforcement mechanism. Some of the statutes granting authority for issuing NSLs contain no enforcement mechanisms.

6. *Doe v. Ashcroft, 334 F. Supp. 2d 471 (S.D.N.Y. 2004)*

In September 2004, the United States District Court for the Southern District of New York struck down 18 U.S.C. § 2709, the statute authorizing "national security letters," or NSLs, for customer records from Internet, telephone, and other electronic service providers.

In Doe v. Ashcroft, the court found that the language of 18 U.S.C. 2709 and the practices surrounding its use offended (1) the Fourth Amendment because "in all but the exceptional case it has the effect of authorizing coercive searches effectively immune from any judicial process," 334 F.Supp.2d at 506, and (2) the First Amendment because its sweeping, permanent gag order provision applies "in every case, to every person, in perpetuity, with no vehicle for the ban to ever be lifted from the recipient or other persons affected under any circumstances, either by the FBI itself, or pursuant to judicial process," id. at 476. The court concluded that the national security letters before it differed from administrative subpoenas by want of judicial review either before or after "the seizure":

> While the Fourth Amendment reasonableness standard is permissive in the context of the administrative subpoenas, the constitutionality of the administrative subpoena is predicated on the availability of a neutral tribunal to determine, after a subpoena issued, whether the subpoena actually complies with the Fourth Amendment's demands. In contrast to an actual physical search, which must be justified by the warrant and probable cause requirements occurring before the search, an administrative subpoena "is regulated by and its justification derives from, [judicial] process" available after the subpoena is issued.
>
> Accordingly, the Supreme Court has held that an administrative subpoena "may not be made and enforced" by the administrative agency; rather, the subpoenaed party must be able to "obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." In sum, longstanding Supreme Court doctrine makes clear that an administrative subpoena statute is consistent with the Fourth Amendment when it is subject to "judicial supervision" and "surrounded by every safeguard of judicial restraint." 334 F.Supp.2d at 495, quoting inter alia, *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. at 217; *See* v. *City of Seattle*, 387 U.S. 541, 544–45 (1967).
>
> By way of emphasizing the troubling sweep of the nondisclosure ban found in 18 U.S.C. 2709(c), the court pointed to legislative proposals in the 108th Congress that might serve as one of several possible models for a more narrowly tailored means of protecting the legitimate governmental interests upon which section 2709 rests.[45]

7. Doe v. Ashcroft and H.R. 3179, "The Anti-Terrorism Intelligence Tools Improvement Act of 2003"

In the 108th Congress, Chairman Sensenbrenner introduced H.R. 3179, in part to address the fact that some NSL had explicit enforcement mechanisms and others did not. The Court in Doe v. Ashcroft concluded that there were three problems with NSLs: 1)

[45] Doyle, Charles, Congressional Research Service RL32880, Administrative Subpoenas and National Security Letters in Criminal and Foreign Intelligence Investigations: Background and Proposed Adjustments Administrative Subpoenas and National Security Letters in Criminal and Foreign Intelligence Investigations: Background and Proposed Adjustments. P. 24–25 (April 15, 2005).

the statute did not clarify whether consulting an attorney would violate the prohibition on disclosure under the law, 2) the statute contained no explicit provision for the Government to seek judicial enforcement, and 3) there was no provision imposing penalties against a person who fails to comply with an NSL. The Court found that "H.R. 3179 would have addressed two of the issues listed above by explicitly providing for judicial enforcement of NSLs and by imposing penalties of up to five years' imprisonment for persons who unlawfully disclose that they have received an NSL."[46]

B. Extraterritorial Jurisdiction

1. What Is Extraterritorial Jurisdiction

Extraterritorial jurisdiction occurs when Federal law applies overseas to U.S. citizens and U.S. foreign nationals when there is some nexus to the United States, according to the Congressional Research Service.

> The Constitution does not forbid either Congressional or state enactment of laws which apply outside the United States. Nor does it prohibit either the Federal government or the states from enforcing American law abroad. In fact, several passages suggest that the Constitution contemplates the application of American law beyond the geographical confines of the United States.[47] It speaks of "felonies on the high seas," "offences against the law of nations," "commerce with foreign nations," and of the impact of treaties.
>
> The Constitution provides the power to enact criminal laws with extraterritorial application. It vests Congress with, among other things, the power "to regulate commerce with foreign nations * * * to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations * * *" and gives Congress legislative jurisdiction over places acquired "for the erection of forts, magazines, arsenals, dock- years, and other needful buildings."
>
> The Constitution also limits the manner in which this authority may be exercised. The due process clause of the Fifth Amendment, for instance, bars the extraterritorial application of Federal criminal laws in the absence of a connection between the crime, the defendant, and the United States. Prosecution requires personal jurisdiction over the defendant and subject matter jurisdiction over the crime. * * *.[48]

2. The Military Extraterritorial Jurisdiction Act of 2000

The Military Extraterritorial Jurisdiction Act covers felonies, committed anywhere overseas, by members of the armed forces or those accompanying or employed by the Department of Defense, as if they were committed within the territorial jurisdiction of the

[46] *Doe* v. *Ashcroft*, 334 F. Supp. 2d 471, 493 (S.D.N.Y. 2004).
[47] Doyle, Charles, Congressional Research Service RS21306, Terrorism and Extraterritorial Jurisdiction in Criminal Cases: Recent Developments in Brief. P. 1 (Sept 6, 2002).
[48] Doyle, Charles, Congressional Research Service RS21306, Terrorism and Extraterritorial Jurisdiction in Criminal Cases: Recent Developments in Brief. P. 1 (Sept 6, 2002).

United States, 18 U.S.C. § 3261.[49] While the Military Extraterritorial Jurisdiction Act extended Federal criminal jurisdiction to Defense Department employees and contractors outside the U.S., it does not cover contractors working for other agencies. Section 804 of the USA PATRIOT Act closed this loophole.

3. Section 804 of the USA PATRIOT Act

According to the Congressional Research Service:

> [The USA] PATRIOT Act addressed a split in the circuit courts of appeals over whether the Federal laws that outlaw such crimes as murder, rape, and robbery when committed within Federal enclaves in this country also apply on American governmental installations abroad. With the enactment of section 804, they do; at least when either the victim or the offender is a U.S. national. Prior to the PATRIOT Act, the dispute centered on the construction of 18 U.S.C. 7(3) which defines the special territorial jurisdiction of the United States. The Fourth and Ninth Circuits held that the definition in subsection 7(3) includes areas in other countries over which the host nation has afforded the United States privileges akin to sovereignty. The Second Circuit held that the subsection is intended to encompass only those areas over which Congress may exercise legislative jurisdiction of the kind ordinarily vested in the Several States.
>
> Congress resolved the dispute, or at least greatly mitigated its consequences, when it enacted section 804 of the USA PATRIOT Act and the Military Extraterritorial Jurisdiction Act of 2000. The Military Extraterritorial Jurisdiction Act treats felonies, committed anywhere overseas by members of the armed forces or those accompanying or employed by them, as if they were committed within the territorial jurisdiction of the United States, 18 U.S.C. 3261. Section 804 of the USA PATRIOT Act creates a new territorial subsection in 18 U.S.C. 7: the special territorial jurisdiction of the United States includes the overseas business premises of Federal governmental entities and the residences of the members of their staffs, but only for crimes committed by or against Americans (other than those who come within the military extension of 18 U.S.C. 3261). The split in the circuits remains of consequence for crimes committed in Federal overseas facilities by foreign nationals who are not associated with the U.S. armed forces. In the Fourth and Ninth Circuits, such crimes may come within the territorial jurisdiction of the United States. In the Second Circuit, they do not.[50]

C. Material Witness Law

Title 18 U.S.C. § 3144 provides that if "it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a ju-

[49] Id. At 3.
[50] Id.

dicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 2142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure." The material witness statute is available to both the Government and the defense to assure testimony in criminal trials in the interest of justice.

The statute specifically limits this authority: no material witness may be detained if: (1) the witness' testimony can be adequately secured by deposition; and (2) further detention is not necessary to prevent a failure of justice. However, release may be delayed for a reasonable amount of time until the material witness' deposition can be taken.

C. Oversight in the 107th and 108th Congress of the USA PATRIOT Act

Due to the concerns that these new authorities could lead to civil liberties violations, Congress included reporting requirements and a sunset provision. Authorities under sections 201, 202, 203(b) and (d), 204, 206, 207, 209, 212, 214, 215, 217, 218, 220, 223 and 225 of the USA PATRIOT Act (Pub. L. No. 107–296) expire this year on December 31, 2005.

1. IG Report Under Section 1001 of the USA PATRIOT Act

The USA PATRIOT Act contains reporting requirements to facilitate ongoing Congressional oversight of the Department of Justice and the implementation of the Act. Section 1001 of the USA PATRIOT Act requires the Inspector General of the Department of Justice to report to the House and Senate Committees on the Judiciary on a semi-annual basis on any complaints of civil liberties abuses by the Department of Justice. In accordance with Section 1001, the Department of Justice has sent six reports entitled, "Report to Congress on the implementation of Section 1001 of the USA PATRIOT Act."

2. No Evidence of Civil Liberty Violations Has Been Presented to Congress

Democrat Senator Dianne Feinstein acknowledged the many misconceptions surrounding the USA PATRIOT Act at the Senate Judiciary Committee's hearing on October 21, 2003, regarding Terrorism Prevention Laws.[51] Senator Feinstein noted that despite the fact that 34 states have passed resolutions or ordinances against the USA PATRIOT Act mostly due to perceived civil rights concerns-she has never had a single abuse of the USA PATRIOT Act reported to her. She stated, "There is a lot of public uncertainty about this bill." She went on to note: "I find it interesting that, of the 21,000 comments I've received * * * to have half really against a bill that has never come to the Hill is interesting. And to have

[51] U.S. Senate Judiciary Committee Hearing "Terrorism Prevention Laws" October 21, 2003, p 15.

a substantial number relate to the National Entry-Exit Registration System, which is not part of the bill, is also interesting. Now what I had deduced from this is that there are substantial uncertainty—perhaps some ignorance—about what this bill actually does do"[52] This is interesting but understandable, given that every legislative attempt to improve national security is labeled "PATRIOT II" by groups opposed to the USA PATRIOT Act.

Senator Feinstein, moreover, has continued to request information from the Department of Justice on whether violations have occurred. An April 26, 2005 letter responds:

> In a letter dated April 4, 2005, the American Civil Liberties Union ("ACLU") responded to your March 25 request for information regarding alleged "abuses" of the USA PATRIOT Act. At your request, the Department of Justice has reviewed the ACLU's allegations. It appears that each matter cited by the ACLU either did not, in fact, involve the USA PATRIOT Act or was an entirely appropriate use of the Act. Thus, the ACLU is mistaken in its assertion in the letter that "the government has abused and misused the Patriot Act repeatedly" and its press release, entitled "Patriot Act Abuses and Misuses Abound," that accompanied the letter. * * *"[53]

3. Continued Oversight Through Letters to the Department of Justice

Furthermore, both the House and the Senate Judiciary Committees have conducted continuous oversight. The House Judiciary Committee sent the Attorney General a letter on June 13, 2002, with 50 detailed questions on the implementation of the USA PATRIOT Act.[54] The questions were a result of extensive consultation between the Majority and Minority Committee counsel. Assistant Attorney General, Daniel Bryant, responded to Chairman Sensenbrenner and Ranking Member Mr. Conyers on July 26, 2002, providing lengthy responses to 28 out of the 50 questions submitted.[55] On August 26, 2002, Mr. Bryant sent the responses to the remaining questions,[56] after sending responses to six of the questions to the House Permanent Select Committee on Intelligence.

Then, on September 20, 2002, Mr. Bryant sent the Minority additional information regarding the Department of Justice's responses to these questions.[57] On April 1, 2003,

Then, on September 20, 2002, Mr. Bryant sent the Minority additional information regarding the Department of Justice's responses

[52] Id.

[53] April 26, 2005, Letter to the Honorable Diane Feinstein from William E. Moschella.

[54] June 13, 2002, Letter to the Attorney General from F. James Sensenbrenner, Jr., and John Conyers, Jr., requesting responses to 50 questions regarding the implementation of the PATRIOT Act.

[55] July 26, 2002, Responses from Daniel J. Bryant to F. James Sensenbrenner, Jr., and John Conyers, Jr., to 28 of the 50 questions submitted to the Department of Justice on June 13, 2002.

[56] August 26, 2002, Responses from Daniel J. Bryant to F. James Sensenbrenner, Jr., and John Conyers, Jr., to the remaining questions (six of the responses being sent to the House Permanent Select Committee on Intelligence) submitted to the Department of Justice on June 13, 2002.

[57] September 20, 2002, Additional information from Daniel J. Bryant to F. James Sensenbrenner, Jr., and John Conyers, Jr., regarding the Department's responses to questions submitted to the Department of Justice on June 13, 2002.

to these questions.[57] On April 1, 2003, Chairman Sensenbrenner and Ranking Member Conyers sent a second letter to the Department of Justice with additional questions regarding the use of preexisting authorities and the new authorities conferred by the USA PATRIOT Act.[58] Once again, the questions were the product of bipartisan coordination by Committee counsel. Acting Assistant Attorney General, Jamie E. Brown, responded with a May 13, 2003 letter that answered the questions she deemed relevant to the Department of Justice and forwarded the remaining questions to the appropriate officials at the Department of Homeland Security.[59] On June 13, 2003, the Assistant Secretary for Legislative Affairs at the Department of Homeland Security, Pamela J. Turner, sent responses to the forwarded questions.[60] These items are posted on the Committee's website and were the subject of extensive press coverage.[61]

On November 20, 2003, Chairman Sensenbrenner and Congressman Hostettler, Chairman of the Subcommittee on Immigration, Border Security, and Claims, sent a letter to the Comptroller General of the Government Accountability Office (GAO) requesting a GAO study of the implementation of the USA PATRIOT Act anti-money laundering provisions. This report was released on June 6, 2005.

On May 19, 2005, Chairman Sensenbrenner sent a letter to Attorney General Gonzales with questions for the record from Members of the Committee.[62] Assistant Attorney General Moschella provided responses to 39 of the questions on July 12, 2005.[63]

On May 19, 2005, Chairman Sensenbrenner also sent a letter to Attorney General Gonzales with ten questions on specific provi-

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[57] September 20, 2002, Additional information from Daniel Bryant to F. James Sensenbrenner, Jr., and John Conyers, Jr., regarding the Department's responses to questions submitted to the Department of Justice on June 13, 2002.

[58] April 1, 2003, Letter to the Attorney General from F. James Sensenbrenner, Jr., and John Conyers, Jr., regarding the use of preexisting authorities and the new authorities conferred by the PATRIOT Act.

[59] May 13, 2003, Response from Jamie E. Brown to F. James Sensenbrenner, Jr., and John Conyers, Jr., to letter sent to the Department of Justice on April 1, 2003.

[60] June 13, 2003, Responses from Pamela J. Turner at the Department of Homeland Security to F. James Sensenbrenner, Jr., and John Conyers, Jr., to questions forwarded from the Department of Justice on June 13, 2003.

[61] May 20, 2003, Press Release: "Sensenbrenner/Conyers Release Justice Department Oversight Answers Regarding USA PATRIOT Act and War on Terrorism"; May 20, 2003, Curt Anderson, "Fewer than 50 Held Without Charges," Associated Press Online; May 20, 2003, Curt Anderson, "Government Has Held Fewer Than 50 People as Material Witnesses in War on Terror," Associated Press Worldstream; May 20, 2003, "Sensenbrenner, Conyers Release Justice Department Oversight Answers Regarding USA PATRIOT Act, War on Terrorism," U.S. Newswire; May 21, 2003, Kevin Johnson and Toni Locy, "Justice Department Reveals Tactics Used in Fight Against Terror," USA Today; July 22, 2003, Press Release: "Statement Regarding Inspector General's Report on Civil Rights/Liberties Complaints"; July 22, 2003, Audrey Hudson, "US Probes PATRIOT Act Complaints, Substantiates Few," The Washington Times; September 18, 2003, Press Release: "Sensenbrenner Statement on Justice Department's Disclosure of Number of Times Library and Business Records have been Sought Under Section 215 of the USA PATRIOT Act"; September 19, 2003, Audrey Hudson, "Librarians Dispute Justice's Claim on Use of PATRIOT Act," The Washington Times; September 24, 2002, "Waiting for All the Answers," The Milwaukee Journal Sentinel Copley News Service.

[62] May 19, 2005, Letter to the Attorney General from F. James Sensenbrenner, Jr., requesting responses to 44 follow-up questions posed during hearings on implementation of the USA PATRIOT Act.

[63] July 12, 2005, Letter to F. James Sensenbrenner, Jr., from William E. Moschella responding to 39 follow-up question on implementation of the USA PATRIOT Act.

sions of the USA PATRIOT Act.[64] On June 10, 2005 the Department responded in a classified letter.[65]

On July 1, 2005, Chairman Sensenbrenner sent a letter to Attorney General Gonzales requesting additional information on behalf of Minority Members of the Committee on the use of the USA PATRIOT Act.[66] On July 12, 2005 Assistant Attorney General Moschella responded.[67]

4. Continued Oversight Through Hearings

The House Judiciary Committee also has held hearings as part of its ongoing oversight efforts. On May 20, 2003, the Committee's Subcommittee on the Constitution held an oversight hearing entitled, "Anti-Terrorism Investigations and the Fourth Amendment After September 11th: Where and When Can Government Go to Prevent Terrorist Attacks." Then, on June 5, 2003, the Attorney General testified before the full Committee on the Judiciary at an oversight hearing on the United States Department of Justice. Both the hearing on May 20 and the hearing on June 5 discussed oversight aspects of the USA PATRIOT Act.

The Senate Judiciary Committee has been active in its oversight responsibilities regarding the implementation of the USA PATRIOT Act as well. The Senate Judiciary Committee held hearings on December 6, 2001; April 17, 2002; June 6, 2002; July 25, 2002; September 10, 2002; and July 23, 2003; September 22, 2004; April 5, 2005; and May 10, 2005—all in regard to the USA PATRIOT Act or oversight efforts at the Department of Justice. Counsel to the Subcommittee on Crime, Terrorism, and Homeland Security have monitored these activities and are in regular contact with their counterparts in the other body.

5. Continued Oversight Through Briefings

Further, the Subcommittee on Crime, Terrorism, and Homeland Security of this Committee requested that officials from the Department of Justice appear and answer questions regarding the implementation of the USA PATRIOT Act. In response to our requests, the Department of Justice gave briefings to Members, counsel, and staff. During a briefing held on August 7, 2003, Department officials covered the long-standing authority for law enforcement to conduct delayed searches and collect business records, as well as the effect of the USA PATRIOT Act on those authorities. During a second briefing, held on February 3, 2004, the Department of Justice discussed its views of S. 1709, the "Security and Freedom Ensured (SAFE) Act of 2003," and H.R. 3352, the House companion bill, as both bills proposed changes to the USA PATRIOT Act.

The Department of Justice has also provided two classified briefings on the use of the Foreign Intelligence Surveillance Act (FISA) under the USA PATRIOT Act for Members of the Judiciary Com-

[64] May 19, 2005, Letter to the Attorney General from F. James Sensenbrenner, Jr., requesting responses to 10 questions on provisions of the USA PATRIOT Act.

[65] June 10, 2005, Letter to F. James Sensenbrenner, Jr., from William E. Moschella responding to 10 questions on provisions of the USA PATRIOT Act.

[66] July 1, 2005, Letter to the Attorney General from F. James Sensenbrenner, Jr., requesting responses to 18 follow-up questions posed during hearings on implementation of the USA PATRIOT Act.

[67] July 12, 2005, Letter to F. James Sensenbrenner, Jr., from William E. Moschella responding to 18 follow-up questions posed during hearings on implementation of the USA PATRIOT Act.

mittee. On June 10, 2003, and October 29, 2003, the Justice Department provided these briefings. The Department also provided a law enforcement sensitive briefing on FISA to the House Judiciary Committee Members and staff on March 22, 2005 and a classified briefing on June 7, 2005.

HEARINGS

The full Committee on the Judiciary held 3 days of hearings on the reauthorization of the USA PATRIOT Act on April 6, June 8, and June 10 of 2005; and the Committee's Subcommittee on Crime, Terrorism, and Homeland Security held a total of 9 hearings on April 19, April 21, April 26, April 28, May 3, May 5, May 10, and May 26 of 2005. On April 28 the Subcommittee on Crime, Terrorism, and Homeland Security held two hearings.

COMMITTEE CONSIDERATION

On July 13, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 3199 with amendment by a recorded vote of 23 yeas to 14 nays and 2 passes, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following roll call votes occurred during the Committee's consideration of H.R. 3199.

1. An amendment was offered by Mr. Lungren to section 2702 of title 18. Section 2702 of title 18 was amended by section 212 of the USA PATRIOT Act in 2001 to allow Internet service providers to voluntarily disclose the contents of electronic communications and subscriber information in emergencies involving immediate danger of death or serious physical injury. The amendment would require the Attorney General to report annually to the Judiciary Committees of the House and Senate and set forth the number of accounts subject to a voluntary disclosure under section 212. The report would also have to summarize the basis for disclosure in certain circumstances. The amendment passed by voice vote.

2. An amendment was offered by Mr. Nadler to amend section 501 of the Foreign Intelligence Surveillance Act of 1978 to change the current standard necessary for obtaining a section 215 order to request business records held by third parties to require a showing of "specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power." The amendment also would allow the recipient to challenge the order and to petition the court to set aside the non-disclosure requirement. The amendment failed by a vote of 12 yeas and 23 nays.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins			
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff		X	
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	12	23	

3. An amendment was offered by Mr. Flake to amend section 8(c) of H.R. 3199 to clarify further that a person can disclose to an attorney the receipt of a 215 order not only to respond, but to challenge, the order. The amendment passed by voice vote.

4. An amendment was offered by Ms. Waters to amend section 505 of the USA PATRIOT Act to prohibit the issuance of national security letters for records from health insurance companies. The amendment failed by a recorded vote of 14 yeas and 23 nays.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz		X	
Mr. Sensenbrenner, Chairman		X	
Total	14	23	

5. An amendment was offered by Mr. Issa to amend section 105(c) of the Foreign Intelligence Surveillance Act of 1978. This section was modified by section 206 of the USA PATRIOT Act to authorize roving wiretaps in FISA investigations. The amendment will (1) require applications for roving wiretap surveillance authority to include specific facts upon which the court can make its determination and (2) if the authority is granted, require the applicant to notify the court within 10 days of the initiation of surveillance on a new facility or place and to notify the court of the facts and circumstances relied upon by the applicant to justify the belief that the target would be using each new facility. The amendment passed by a recorded vote of 34 yeas and 0 nays.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith (Texas)			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus			
Mr. Inglis	X		
Mr. Hostettler	X		

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman	X		
Total	34	0	

6. An amendment was offered by Mr. Scott to second the amendment offered by Mr. Lungren for a 10-year sunset for sections 206 and 215 of the USA PATRIOT Act. The amendment would have reduced the 10-year to a 4-year sunset. The amendment failed by a recorded vote of 15 yeas and 21 nays.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	15	21	

7. An amendment was offered by Mr. Nadler to second the amendment offered by Mr. Lungren for a 10-year sunset for sections 206 and 215 of the USA PATRIOT Act. The amendment would have reduced the 10-year to a 6-year sunset. The amendment failed by a recorded vote of 9 yeas and 18 nays.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller			
Mr. Issa		X	
Mr. Flake			
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks			
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Delahunt	X		
Mr. Wexler			
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen			
Ms. Wasserman Schultz			
Mr. Sensenbrenner, Chairman		X	
Total	9	18	

8. An amendment was offered by Mr. Lungren that would provide a sunset for sections 206 and 215 of the USA PATRIOT Act. Under the amendment these provisions would expire in 10 years. This amendment passed by a recorded vote of 26 yeas and 2 nays.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Coble	X		
Mr. Smith (Texas)		X	
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus			
Mr. Inglis	X		
Mr. Hostettler			
Mr. Green	X		
Mr. Keller			
Mr. Issa	X		
Mr. Flake	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Conyers		X	
Mr. Berman			
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz			
Mr. Sensenbrenner, Chairman	X		
Total	26	2	

9. An amendment was offered by Mr. Nadler (for himself and Ms. Lofgren) to strike section 3 of H.R. 3199. Section 3 repeals section 224 of the USA PATRIOT Act that states authorities under sections 201, 202, 203(b) and (d), 204, 206, 207, 209, 212, 214, 215, 217, 218, 220, 223, and 225 of the USA PATRIOT Act (P.L. 107–296) expire on December 31, 2005. Mr. Lungren's amendment that passed would place a 10-year sunset on two of those sixteen provisions. Mr. Nadler's amendment would place a 10-year sunset on the remaining fourteen sections. The amendment failed by a recorded vote of 12 yeas to 21 nays.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz			
Mr. Sensenbrenner, Chairman		X	
Total	12	21	

10. An amendment was offered by Mr. Van Hollen (for himself and Mr. Conyers) to amend section 2339A(a) of title 18 to specify that the transfer of a firearm to an individual whose name appears in the Violent Gang and Terrorist Organization File maintained by the Attorney General was under covered. The amendment failed by a recorded vote of 15 yeas to 22 nays.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon			
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher		X	
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	15	22	

11. An amendment was offered by Mr. Schiff to prohibit surveillance for planning of terrorist attacks on mass transportation. The amendment passed by voice vote.

12. An amendment was offered by Ms. Lofgren to amend section 2339A of title 18 to specify that the transfer of 50-caliber sniper weapons to a member of al Qaeda. The amendment failed by a recorded vote of 13 yeas to 22 nays.

ROLLCALL NO. 9

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	

ROLLCALL NO. 9—Continued

	Ayes	Nays	Present
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	13	22	

13. An amendment was offered by Ms. Lofgren to amend section 1001 of USA PATRIOT Act to require the Inspector General for the Department of Justice to conduct a review of material witness detentions under section 3144 of title 18. The amendment passed by a recorded vote of 34 yeas to 0 nays.

ROLLCALL NO. 10

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus			
Mr. Inglis	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake	X		
Mr. Pence	X		
Mr. Forbes	X		

ROLLCALL NO. 10—Continued

	Ayes	Nays	Present
Mr. King	X		
Mr. Feeney	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman	X		
Total	34	0	

14. An amendment was offered by Mr. Schiff to amend section 105(c) of the Foreign Intelligence Surveillance Act to require that where the identity of the target of surveillance is not known, a specific description is provided of the target. The amendment failed by a recorded vote of 15 yeas to 22 nays.

ROLLCALL NO. 11

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		

ROLLCALL NO. 11—Continued

	Ayes	Nays	Present
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	15	22	

15. An amendment was offered by Mr. Watt to require that when a warrant is executed in a district other than the district in which it was issued, a recipient may seek to quash that warrant in the district in which it is served, or, if the "person is a corporation," in any district in the State wherein the corporation was incorporated. The amendment failed by a recorded vote of 14 yeas to 24 nays.

ROLLCALL NO. 12

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff		X	

ROLLCALL NO. 12—Continued

	Ayes	Nays	Present
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz		X	
Mr. Sensenbrenner, Chairman		X	
Total	14	24	

16. An amendment was offered en bloc by Mr. Schiff to, among other things, extend civil forfeiture in certain circumstances to "trafficking in nuclear, chemical, biological, or radiological weapons technology or material;" amend the current definition of "federal crime of terrorism," to include new predicate terrorism offenses; and add new "wiretap predicates" under section 2516 of title 18 of the Federal criminal code that relate to crimes of terrorism. The amendment passed by voice vote.

17. An amendment was offered by Mr. Schiff to eliminate the nondisclosure requirement of a Foreign Intelligence Surveillance Court order for business records from a library or bookstore, or for medical records, when an individual is a citizen of the United States, at the conclusion of investigation. The amendment failed by a recorded vote of 13 yeas and 20 nays.

ROLLCALL NO. 13

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte	X		
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler			
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		

ROLLCALL NO. 13—Continued

	Ayes	Nays	Present
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	13	20	

18. An amendment was offered by Mr. Wexler to amend section 2339A(a) of title 18, the material support to terrorists provisions of the Federal criminal code, by inserting "reveals any information pertaining to the identity of undercover intelligence officers, agents, informants, and sources that the person has or should have reason to believe would be sufficient to be used to identify a United States intelligence operative." The amendment failed by voice vote.

19. An amendment was offered by Ms. Lofgren that no Act of Congress shall be construed to suspend habeas corpus. The amendment failed by a recorded vote of 14 yeas to 23 nays.

ROLLCALL NO. 14

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		

ROLLCALL NO. 14—Continued

	Ayes	Nays	Present
Mr. Sensenbrenner, Chairman		X	
Total	14	23	

20. An amendment was offered by Mr. Watt (for himself and Ms. Waters) to strike section 8(c) of H.R. 3199 to eliminate the non-disclosure requirement of a Foreign Intelligence Surveillance Court order for business records in a national security case unless law enforcement in an "application for such an order provides specific and articulable facts giving the applicant reason to believe that disclosure would result" in adverse affects specified in the amendment. The amendment failed by a recorded vote of 13 yeas to 23 nays.

ROLLCALL NO. 15

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot			
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff		X	
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	13	23	

21. An amendment was offered by Mr. Scott to entitle a person who prevails on a challenge of the legality of a section 215 order

to reasonable attorneys fees, if any, incurred by the person in pursuing the challenge. The amendment failed by a recorded vote of 14 yeas to 22 nays.

ROLLCALL NO. 16

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot			
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	14	22	

22. An amendment was offered by Mr. Schiff to extend for 3 years the sunset provision relating to individual terrorists as agents of foreign powers. The amendment failed by a recorded vote of 14 yeas to 22 nays.

ROLLCALL NO. 17

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot			
Mr. Lungren		X	

ROLLCALL NO. 17—Continued

	Ayes	Nays	Present
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	14	22	

23. An amendment was offered by Ms. Jackson Lee to provide notice of a physical search or surveillance if the subject of such search or surveillance is a United States person who is not an agent of a foreign power. The amendment failed by a recorded vote of 10 yeas to 23 nays.

ROLLCALL NO. 18

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	

ROLLCALL NO. 18—Continued

	Ayes	Nays	Present
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff			
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	10	23	

24. An amendment was offered by Mr. Flake (for himself and Mr. Nadler) to section 3103a(b)(3) of title 18 to clarify a reasonable period of time for notice of a search warrant to with a period of time of up to 180 days, with extensions of up to 90 day increments. The amendment passed by voice vote.

25. An amendment was offered by Mr. Conyers to create a statutory suppression rule for electronic surveillance and to require increased reporting. The amendment failed by a recorded vote of 14 yeas to 23 nays.

ROLLCALL NO. 19

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	

ROLLCALL NO. 19—Continued

	Ayes	Nays	Present
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	14	23	

26. An amendment was offered by Mr. Nadler that would amend the laws governing national security letters to require the government to demonstrate why the request should not be disclosed. The amendment failed by a recorded vote of 14 yeas to 23 nays.

ROLLCALL NO. 20

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler			

ROLLCALL NO. 20—Continued

	Ayes	Nays	Present
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	14	23	

27. An amendment was offered by Mr. Scott to amend section 105(c) of the Foreign Intelligence Surveillance Act to require surveillance may be directed at a place or facility only for such time as the applicant believes that such facility or place is being used, or about to be used by the target of the surveillance. The amendment failed by a recorded vote of 13 yeas to 23 nays.

ROLLCALL NO. 21

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff			
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	13	23	

28. An amendment was offered by Mr. Schiff that would require public disclosure of the use of national security letters. The amendment failed by a recorded vote of 15 yeas and 21 nays.

ROLLCALL NO. 22

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	15	21	

29. An amendment was offered by Ms. Jackson Lee that would amend section 501(a)(1) of the Foreign Intelligence Surveillance Act to exclude medical records from the types of business records a Foreign Intelligence Surveillance Court order may seek. The amendment failed by a recorded vote of 12 yeas to 24 nays.

ROLLCALL NO. 23

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	

ROLLCALL NO. 23—Continued

	Ayes	Nays	Present
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff		X	
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz		X	
Mr. Sensenbrenner, Chairman		X	
Total	12	24	

30. An amendment was offered by Mr. Van Hollen to require the Inspector General of the Department of Justice to review the progress of the development of procedures established by the Terrorist Screening Center for the removal of misidentified individuals from the Terrorist Screening Database. The amendment failed by a recorded vote of 15 yeas to 23 nays.

ROLLCALL NO. 24

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	

ROLLCALL NO. 24—Continued

	Ayes	Nays	Present
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	15	23	

31. An amendment was offered by Mr. Nadler to authorize disclosure of the receipt of a national security letter to qualified persons, as defined by the amendment. The amendment failed by a recorded vote of 16 yeas to 23 nays.

ROLLCALL NO. 25

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		

ROLLCALL NO. 25—Continued

	Ayes	Nays	Present
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	16	23	

32. An amendment was offered by Mr. Scott to broaden the exemption in the prohibition of providing material support to terrorists to also cover "medical services, drinking water, food, children's clothing, educational supplies or services, and other humanitarian materials and services that could not be diverted to military ends" to terrorists. The amendment failed by a recorded vote of 7 yeas to 31 nays.

ROLLCALL NO. 26

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler		X	
Mr. Weiner		X	

ROLLCALL NO. 26—Continued

	Ayes	Nays	Present
Mr. Schiff		X	
Ms. Sánchez		X	
Mr. Van Hollen		X	
Ms. Wasserman Schultz		X	
Mr. Sensenbrenner, Chairman		X	
Total	7	31	

33. An amendment was offered by Ms. Jackson Lee to require the Inspector General of the Department of Justice to review the use of any investigative authority under the Attorney General Guidelines on General Crimes, Racketeering Enterprises and Domestic Security/Terrorism Investigations beyond those approved by Attorney General Dick Thornburg in March 21, 1989. The amendment failed by a recorded vote of 13 yeas to 25 nays.

ROLLCALL NO. 27

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt		X	
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff			
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	13	25	

34. An amendment was offered by Nadler (for himself and Mr. Scott) to amend the statutes authorizing national security letters regarding judicial review. The amendment failed by voice vote.

35. Motion to report H.R. 3199, as amended was agreed to by a roll call vote of 23 yeas to 14 nays and 2 pass.

ROLLCALL NO. 28

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus	X		
Mr. Inglis	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Conyers		X	
Mr. Berman			Pass
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Weiner		X	
Mr. Schiff			Pass
Ms. Sánchez		X	
Mr. Van Hollen		X	
Ms. Wasserman Schultz		X	
Mr. Sensenbrenner, Chairman	X		
Total	23	14	2 Pass

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3199, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

JULY 18, 2005.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3199, the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 3199—USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005

CBO estimates that implementing H.R. 3199 would have no significant cost to the federal government. Enacting the bill could affect direct spending and revenues, but CBO estimates that any such effects would not be significant.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107–56), as well as the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), expanded the powers of federal law enforcement and intelligence agencies to investigate and prosecute terrorist acts. H.R. 3199 would permanently authorize certain provisions of these acts, many of which will otherwise expire on December 31, 2005. In addition, the bill would make several other changes to the laws relating to investigations of potential terrorist activity.

Because those prosecuted and convicted under H.R. 3199 could be subject to civil and criminal fines, the federal government might collect additional fines if the legislation is enacted. Collections of civil fines are recorded in the budget as revenues. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the relatively small number of cases affected.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provisions that are necessary for national security. CBO has determined that the provisions of this bill are either excluded from UMRA because

they are necessary for the national security or they contain no intergovernmental or private-sector mandates.

On July 18, 2005, CBO transmitted a cost estimate for H.R. 3199 as ordered reported by the House Permanent Select Committee on Intelligence on July 13, 2005. The two versions of the bill are similar and the cost estimates are identical.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3199, will continue to provide enhanced law enforcement and intelligence investigative tools and improved information sharing while protecting civil liberties. By clarifying the authority provided under the USA PATRIOT Act and by eliminating much of the sunset provision in that Act and the Intelligence Reform and Terrorism Prevent Act, this bill provides certainty in the Federal criminal law, ensures that the metaphorical "Wall" is not rebuilt and thus information sharing can continue to improve between law enforcement and the Intelligence Community, and maintains the advancements in law enforcement technology to investigate and thwart terrorist and criminal activities.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The section-by-section represents the bill as reported by the Committee on the Judiciary.

Section 1. Short Title

This Act would be cited as the "USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005." Because the Act would repeal sunsets under the USA PATRIOT Act and the Intelligence Reform and Terrorism Prevention Act of 2004, the title refers to both Acts.

Section 2. References to PATRIOT Act

This section states that for this Reauthorization Act, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism shall be referred to as the USA PATRIOT Act.

Section 3. Repeal of USA PATRIOT Act sunset provision

This section repeals section 224 of the USA PATRIOT Act that stated authorities under sections 201, 202, 203(b) and (d), 204, 207, 209, 212, 214, 217, 218, 220, 223 and 225 of the USA PATRIOT Act (Pub. L. No. 107–296) would expire this year on December 31, 2005. The provision sunsetting sections 206 and 215 is extended until December 31, 2015.

The twelve hearings provided evidence that parts of the USA PATRIOT Act needed to be clarified, as Attorney General Gonzales and other Department of Justice officials have testified. However, witnesses did not provide any evidence that the Government or law enforcement was abusing the authorities of the USA PATRIOT Act to the Congress or to the Department of Justice Inspector General. The IG, as required by section 1001 of the USA PATRIOT Act, has issued 6 semiannual reports and has not found abuse by Department of Justice employees of these new authorities.

Section 4. Repeal of sunset of Individual Terrorists as Agents of Foreign Powers

Section 4 of this bill repeals section 6001(b) of the Intelligence Reform and Terrorism Prevention Act (IRTPA). Section 6001(b) sunsets section 6001 of IRTPA, which provided a additional definition for "Agent of a Foreign Power," to cover the "lone wolf" under 50 U.S.C. 1801(b)(1). Section 1801(b)(1) defined "Agent of a foreign power" for any person other than a United States person, who—

> (A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;
>
> (B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities;

Section 6001 of the IRTPA added new subparagraph C to the definition, which states "Agent of a foreign power" for any person other than a United States person, includes a person who "engages in international terrorism or activities in preparation thereof;".

Section 6001(b) addressed oversight concerns about the provision, by applying the USA PATRIOT Act sunset to the provision so that definition sunsets on December 31, 2005.

Section 5. Repeal of sunset provision relating to section 2332B and the Material Support sections of Title 18, United States Code

This section repeals section 6603(g) of the IRTPA, which would sunset section 6603, the "Additions to Offense of Providing Material Support to Terrorism". This sunset is problematic in many respects. First, it sunsets a criminal offense and not a law enforcement tool and, second, the sunset would effectively make the underlying provision unconstitutional. Section 805(a)(2)(B) of the USA PATRIOT Act was amended by section 6603 of the IRTPA of 2004, which covers the prohibition against providing material support to terrorists. The changes made in the IRTPA actually addressed court concerns on the constitutionality of the Federal crime of providing material support to terrorists.

On May 10, 2005, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on the material support provision as enhanced by the USA PATRIOT Act in 2001 and the IRTPA of 2004. The ban on providing material support to terrorists predates the USA PATRIOT Act, as it was created in 1996 in the

Antiterrorism and Effective Death Penalty Act. The 1996 Act, in part, was in response to the Oklahoma City and first World Trade Center terrorist attacks and made it illegal to knowingly provide material support to a group designated as a Foreign Terrorist Organization, better known as an FTO.

In 1998 a group, led by the Humanitarian Law Project, challenged the constitutionality of the ban, arguing it the violated the First Amendment. Both the 9th Circuit District Court and the Appeals Court rejected most of the First Amendment claims. The Appeals Court, for instance, rejected the free-association claim, finding that the statute does not prohibit membership in a group or support for the political goals of a group. The Appeals Court pointed out that "What [the law] prohibits is the act of giving material support, and there is no constitutional right to facilitate terrorism by giving terrorists the weapons and explosives with which to carry out their grisly missions."

The 9th Circuit also rejected the plaintiffs' contention that the law could be interpreted to prohibit the giving of material support to the so-called terrorist groups' nonviolent humanitarian and political activities, concluding that the First Amendment did not create a right to give funds to terrorist groups. Money is fungible and the Court recognized that "when someone makes a donation to [terrorist groups], there is no way to tell how the donation is used."

The Court did find that the language was too vague in areas, and focused on the terms "training" and "personnel." The 9th Circuit also found in another case that the term "expert advice or assistance" was unconstitutionally vague. "Expert advice or assistance" is language from the USA PATRIOT Act. Congress corrected these vagueness problems with section 6603 of the IRTPA of 2004.

On December 21, 2004, the 9th Circuit Appeals Court recognized this correction in lifting an injunction that had barred the Government from prosecuting a Los Angeles group, if the group aided organizations classified as supporting terrorism. According to an Associated Press story dated December 22, 2004, the Court "said [its December 21] decision in Humanitarian Law Project v. Dept. of Justice was based partly on the IRTPA of 2004, which [President] Bush signed into law on [December 17, 2004]."

Section 6. Sharing of electronic, wire, and oral interception information

Section 6 responds to concerns that additional judicial oversight was needed for the sharing of criminal wiretap information to the Intelligence Community. Section 6 of the Act amends section 2517(6) of title 18, which was added by section 203(b) of the USA PATRIOT Act by requiring that "an officer or attorney who makes a disclosure under this subsection shall, within a reasonable time after that disclosure, notify the court that issued the wiretap order that such information was shared." The Department of Justice stated at one of the many hearings on the USA PATRIOT Act that they could "take [such a proposal] under consideration and have a discussion about [it]." But "[w]ith respect to 203(d), relating to that sharing of information, [it] would put an unreasonable burden in terms of how we seek to exchange the information in a task force [i.e., JTTF and NTTC] approach."

On April 19, 2005, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on Section 203, which facilitates effective sharing of information collected through the use of criminal wiretaps, grand juries, and other criminal investigations, with Executive Branch officials. To protect privacy, the USA PATRIOT Act: (1) limited such disclosures to foreign intelligence and counterintelligence information, as defined by statute; (2) restricted disclosure to officials with a need to know in performance of official duties; and (3) retained the limitations on public or other unauthorized disclosure. Prior to passage of the USA PATRIOT Act, the law hampered law enforcement from sharing information with or receiving information from other Government agencies outside of law enforcement that might nevertheless relate to terrorist activities or national security.

Section 203(b) deals with information obtained through a criminal wiretap. The section amended section 2517 of title 18 to allow law enforcement officials to share foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in subsection (19) of section 2510 of this title) obtained through a criminal wiretap with law enforcement, intelligence, protective, immigration, national defense, or national security personnel for use only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. The language in the USA PATRIOT Act is similar to section 103 of H.R. 2975, the PATRIOT Act that the House Judiciary Committee reported favorably with unanimous consent.

While some argued that the Committee should require similar notice to a court with regard to section 203(d), which authorizes the sharing of information from a criminal investigation, the Committee concluded that such a change would effectively eliminate the ability of law enforcement and anti-terrorism task forces—such as the Joint Terrorism Task Forces (JTTFs)—to operate. Much of that information used by these task forces is not under a court order requiring notice. To require notice defeats the purpose of section 203(d) and would create a statutory "wall" preventing vital information from being shared.

Section 7. Duration of FISA of Non-United States persons

Prior to enactment of the USA PATRIOT Act, the Government had 90 days to carry out surveillance and 45 days to conduct a physical search under a FISA court order before seeking an extension. Because it often takes longer than these established periods to get on the premises or to conduct electronic surveillance, and the delay in applying for an extension or reapplying for a new order posed a threat to national security. To address this problem, the USA PATRIOT Act added 30 days to the authorized period for surveillance from 90 days to 120 days. It also extended the period for physical searches from 45 days to 90 days.

Attorney General Gonzalez requested at the April 6, 2005, hearing before the Full Committee that section 207 of the USA PATRIOT Act be amended. He stated: "Another important FISA-related Patriot Act provision is Section 207. Prior to this law, the Justice Department invested considerable time returning to court

to renew existing orders. Section 207 substantially reduced this investment of time by increasing the maximum time duration for FISA, electronic surveillance, and physical search orders."

The Department of Justice estimates that the enactment of section 207 has saved nearly 60,000 attorney hours, or 30 lawyers a year's of work. According to the Justice Department, this estimate did not account for time saved by FBI agents, administrative staff, and the judiciary. This section of H.R. 3199 would extend the maximum duration of orders for electronic surveillance and physical search targeted against agents of foreign powers who are not United States persons. Specifically, initial orders authorizing searches and electronic surveillance would be for periods of up to 120 days, and renewal orders would extend for periods of up to one year.

The USA PATRIOT Act did not amend the permissible duration of orders for pen register and trap and trace surveillance under FISA. The current duration of initial and renewal orders for installation and use of a pen register or trap and trace device is for a period not to exceed 90 days. This section would extend the maximum duration of both initial and renewal orders for pen register and trap and trace surveillance, in cases where the Government certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, for a period of one year.

This section would allow the United States and the Foreign Intelligence Surveillance Court to focus more scrutiny on applications for surveillance involving United States persons. This section would also allow intelligence officials to spend more time investigating potential terrorist or espionage activity by non-U.S. persons, rather than wasting valuable time returning to the Foreign Intelligence Surveillance Court to extend surveillance against such persons that had already been authorized. Indeed, the Department of Justice estimates that had these proposals been included in the USA PATRIOT Act, the Department would have saved 25,000 attorney hours. These ideas were specifically endorsed in the recent report of the WMD Commission, which said that the amendments would allow the Department both to "focus their attention where it is most needed" and maintain the current level of oversight paid to cases implicating the civil liberties of Americans.

Section 8. Access to certain business records under section 501 of FISA

Section 7 of the bill would clarify that a recipient of a 215 order may consult with a lawyer and the appropriate people necessary to respond to the order. The section would also clarify that the FISA order may be challenged.

Additionally, the language amends section 215 to clarify that the court has discretion to issue an order. The amending language states that "if a judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of records." The current language is unclear with respect to the discretion it provides to judges because it states that the "judge shall" issue an order and later mentions that this order will only be issued "if the judge finds that the requirements have been met."

The language does not clearly specify what those requirements, so the language in H.R. 3199 does.

As was highlighted by the hearings held by this Committee, for years prior to and since enactment of the USA PATRIOT Act, law enforcement could obtain records from all manner of businesses through grand jury issued subpoenas. Section 215 of the USA PATRIOT Act created similar authority, but with more stringent requirements. Section 215 authorizes the FISA court the discretion to issue an order for business records related to "international terrorism and clandestine intelligence activities." These judicial orders conceivably could be issued to bookstores or libraries, but section 215 does not single them out. Section 215 has a very narrow scope that can only be used (1) "to obtain foreign intelligence information not concerning a United States person"; or (2) "to protect against international terrorism or clandestine intelligence activities." 50 U.S.C. § 1861(b)(2).

FBI agents cannot obtain records under section 215 unless they receive a court order. Grand jury subpoenas, by contrast, do not require judicial approval. Agents cannot use section 215 to unilaterally compel libraries or any other entity to turn over their records. Agents must obtain such documents only by appearing before the FISA court and convincing the court that these business records are needed. See 50 U.S.C. § 1861(b). Additionally, section 215 goes to great lengths to preserve the First Amendment rights of libraries, their patrons, and other affected entities as it expressly provides that the FBI cannot conduct investigations "of a United States person solely on the basis of activities protected by the first amendment to the Constitution of the United States." 50 U.S.C. § 1861(a)(2). Section 215 provides for thorough congressional oversight; every six months, the Attorney General is required to "fully inform" Congress on the number of times agents have sought a court order under section 215, as well as the number of times such requests were granted, modified, or denied. See 50 U.S.C. § 1862.

Section 9. Report relating to emergency disclosures under section 212 of the USA PATRIOT Act

This section would amend section 2702 of title 18, as amended by section 212 of the USA PATRIOT Act. Section 212 allowed Internet service providers to voluntarily disclose the contents of electronic communications as well as subscriber information in emergencies involving immediate danger of death or serious physical injury. To address concerns that this authority, in certain circumstances, is not subject to adequate congressional, judicial or public oversight (particularly in situations where the authority is used but criminal charges do not result) the amendment would require the Attorney General to report annually to the Judiciary Committees of the House and Senate and set forth the number of accounts subject to a section 212 disclosure. The report would also have to summarize the basis for disclosure in certain circumstances. The Committee believes this would strengthen oversight on the use of this authority without undermining important law enforcement prerogatives, and without tipping off perpetrators while simultaneously preserving the vitality of this life saving authority.

Section 10. Specificity and notification for roving surveillance under the Foreign Intelligence Surveillance Act

Section 206 of the PATRIOT Act enabled use of roving wiretaps in FISA investigations. The Amendment would require intelligence investigators to notify to the FISA Court within 10 days each time it initiates surveillance on a new communications facility pursuant to a FISA roving wiretap. By requiring that the FISA Court be regularly informed on an ongoing basis for all multi-point wiretaps, the Amendment would address Members' concerns that the open-ended authorization to surveil new locations could be abused. The Amendment does this by providing an extra layer of judicial review and ensures that intelligence investigators will not abuse the multi-point authority. This approach is superior in the FISA context (where surveillance is often long-running and subject to extensive and sophisticated counter-surveillance measures) than a proximity test or ascertainment requirement that could endanger an investigation or field agents conducting the investigation.

Section 11. Prohibition on planning terrorist attacks on mass transportation

This section amends section 1993a of title 18 of the Federal Criminal code that protects against Terrorist attacks and other acts of violence against mass transportation systems. Section 1993 of title 18 covers attacks on mass transportation systems but did not cover the planning for such attacks. This provision closes that loophole and makes it a crime to "surveil, photograph, videotape, diagram, or to otherwise collect information with the intent to plan or assist in planning any of the acts described" in paragraphs (1)–(5) of section 1993a.

Section 12. Enhanced review of material witness detention

This section would amend section 1001 of the USA PATRIOT Act to require the Inspector General for the Department of Justice to conduct a review of material witness detentions under section 3144 of title 18.

Section 13. Forfeiture

The USA PATRIOT Act amended 18 U.S.C. § 981 to expressly provide that any property used to commit or facilitate the commission of, derived from, or otherwise involved in a Federal crime of terrorism (as defined in 18 U.S.C. § 2331) is subject to civil forfeiture provisions. Prior to the USA PATRIOT Act, only the "proceeds" of a crime of terrorism were subject to civil forfeiture provisions. This amendment would extend forfeiture to "trafficking in nuclear, chemical, biological, or radiological weapons technology or material," after "activities".

Section 14. Predicate offenses

This section amended the current definition of "federal crime of terrorism," to include new predicate offenses. This list of predicate offenses is referenced by other sections of the Act, and certain provisions of the Act are made applicable to offenses appearing on this list. This section adds crimes relating to military-type training from a foreign terrorist organization; and relating to nuclear and weapons of mass destruction threats.

Section 15. Wiretap predicates

"Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–2522 (1994 & Supp. II 1996), requires the government, unless otherwise permitted, to obtain an order of a court before conducting electronic surveillance. The government is permitted to seek such orders only in connection with the investigation of the criminal offenses enumerated in section 2516 of title 18."[68] This section added new "wiretap predicates" under section 2516 of title 18 of the Federal criminal code that relate to crimes of terrorism.

Section 16. Defines reasonable period of delay under the USA PATRIOT Act

Contrary to reports, the USA PATRIOT Act did not create delayed notice search warrants. Delayed notice search warrants have been used for decades prior to enactment of the USA PATRIOT Act. In 1979, the U.S. Supreme Court expressly held in Dalia v. United States that the Fourth Amendment does not require law enforcement to give immediate notice of the execution of a search warrant.[69] The Department of Justice states that three Federal courts of appeals had considered the constitutionality of delayed-notice search warrants since 1979 and upheld their constitutionality.[70]

A delayed notice search warrant simply means that a court has expressly authorized investigations to delay notifying a suspect that a search warrant has been executed (i.e., a court-ordered search has occurred). The search warrant is the same regardless of when the suspect receives notice. Thus, before a search warrant is issued, whether notice is delayed or not, a Federal judge must find that there is probable cause to believe the property to be searched or seized constitutes evidence of a criminal offense.

Congress included section 213 in the USA PATRIOT Act to create a uniform nationwide standard for the issuance of these warrants. Under section 213 there are limited circumstances when a court may delay notice. These circumstances are the same predicate circumstances permitted in an application for delaying notice in a search warrant for stored communications under section 2705(a)(2) of title 18, which predated the USA PATRIOT Act. For a court to permit a delay in the notice of a search of a suspect's property, the investigator or prosecutor must show that there is reasonable cause to believe that if the suspect is notified at the same time as the search one of the following situations may occur:

- notification would endanger the life or physical safety of an individual;
- notification would cause flight from prosecution;
- notification would result in destruction of, or tampering with, evidence;
- notification would result in intimidation of potential witnesses; or

[68] October 17, 2000, Memorandum for the Counsel, Office of Intelligence Policy and Review, U.S. DOJ.

[69] See *Dalia* v. *United States,* 441 U.S. 238 (1979); see also *Katz* v. *United States,* 389 U.S. 347 (1967).

[70] April 4, 2005 U.S. Department of Justice letter to Senator Spector. p. 3 citing See *United States* v. *Freitas,* 800 F.2d 1451 (9th Cir. 1986); *United States* v. *Villegas,* 899 F.2d 1324 (2d Cir. 1990); *United States* v. *Simons,* 206 F.3d 392 (4th Cir. 2000).

• notification would cause serious jeopardy to an investigation or unduly delay a trial.

Section 213 permits delay limited only by a reasonableness requirement. Members are concerned by this seemingly open-ended term. *This Amendment would permit delays for up to 180 days, and would enable orders to be renewable in up to 90 day increments.*

CHANGES IN EXISTING LAW BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no changes are proposed is shown in roman):

USA PATRIOT ACT

* * * * * * *

TITLE II—ENHANCED SURVEILLANCE PROCEDURES

* * * * * * *

[SEC. 224. SUNSET.

[(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title (other than sections 203(a), 203(c), 205, 208, 210, 211, 213, 216, 219, 221, and 222, and the amendments made by those sections) shall cease to have effect on December 31, 2005.

[(b) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in subsection (a) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.]

* * * * * * *

TITLE X—MISCELLANEOUS

SEC. 1001. REVIEW OF THE DEPARTMENT OF JUSTICE.

The Inspector General of the Department of Justice shall designate one official who shall—

(1)*(A)* review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice*, and (B) review detentions of persons under section 3144 of title 18, United States Code, including their length, conditions of access to counsel, frequency of access to counsel, offense at issue, and frequency of appearance before a grand jury*;

* * * * * * *

FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

* * * * * * *

TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

* * * * * * *

DESIGNATION OF JUDGES

SEC. 103. (a) * * *

* * * * * * *

(e)(1) Three judges designated under subsection (a) who reside within 20 miles of the District of Columbia, or if all of such judges are unavailable, other judges of the court established under subsection (a) as may be designated by the Presiding Judge of such court (who is designated by the Chief Justice of the United States from among the judges of the court), shall comprise a petition review panel which shall have jurisdiction to review petitions filed pursuant to section 501(f)(1).

(2) Not later than 60 days after the date of the enactment of the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005, the court established under subsection (a) shall develop and issue procedures for the review of petitions filed pursuant to section 501(f)(1) by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted ex parte and in camera and shall also provide for the designation of an Acting Presiding Judge.

* * * * * * *

ISSUANCE OF AN ORDER

SEC. 105. (a) * * *

* * * * * * *

(c) An order approving an electronic surveillance under this section shall—

(1) * * *

(2) direct—

(A) * * *

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person, or in circumstances [where the Court finds] *where the Court finds, based upon specific facts provided in the application,* that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons, furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; [and]

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid[.]*; and*

(E) that, in the case of electronic surveillance directed at a facility or place that is not known at the time the order is issued, the applicant shall notify a judge having jurisdiction under section 103 within 10 days after electronic surveillance begins to be directed at a new facility or place, and such notice shall contain a statement of the facts and circumstances relied upon by the applicant to justify the belief that the facility or place at which the electronic surveillance is or was directed is being used, or is about to be used, by the target of electronic surveillance.

* * * * * * *

(e)(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that (A) an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 101(a), (1), (2), or (3), for the period specified in the application or for one year, whichever is less, and (B) an order under this Act for a surveillance targeted against an agent of a foreign power[, as defined in section 101(b)(1)(A)] *who is not a United States person* may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this title may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that (A) an extension of an order under this Act for a surveillance targeted against a foreign power, a defined in section 101(a) (5) or (6), or against a foreign power as defined in section 101(a)(4) that is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period, and (B) an extension of an order under this Act for a surveillance targeted against an agent of a foreign power [as defined in section 101(b)(1)(A)] *who is not a United States person* may be for a period not to exceed 1 year.

* * * * * * *

TITLE III—PHYSICAL SEARCHES WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

* * * * * * *

ISSUANCE OF AN ORDER

SEC. 304. (a) * * *

* * * * * * *

(d)(1) An order issued under this section may approve a physical search for the period necessary to achieve its purpose, or for 90 days, whichever is less, except that (A) an order under this section shall approve a physical search targeted against a foreign power, as defined in paragraph (1), (2), or (3) of section 101(a), for the period specified in the application or for one year, whichever is less, and (B) an order under this section for a physical search targeted against an agent of a foreign power [as defined in section 101(b)(1)(A)] *who is not a United States person* may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this title may be granted on the same basis as the original order upon an application for an extension and new findings made in the same manner as required for the original order, except that an extension of an order under this Act for a physical search targeted against a foreign power, as defined in section 101(a) (5) or (6), or against a foreign power, as defined in section 101(a)(4), that is not a United States person, or against an agent of a foreign power [as defined in section 101(b)(1)(A)] *who is not a United States person*, may be for a period not to exceed one year if the judge finds probable cause to believe that no property of any individual United States person will be acquired during the period.

* * * * * * *

TITLE IV—PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES

* * * * * * *

PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

SEC. 402. (a) * * *

* * * * * * *

[(e) An] *(e)(1) Except as provided in paragraph (2), an* order issued under this section shall authorize the installation and use of a pen register or trap and trace device for a period not to exceed 90 days. Extensions of such an order may be granted, but only upon an application for an order under this section and upon the judicial finding required by subsection (d). The period of extension shall be for a period not to exceed 90 days.

(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order, or an extension of an order, under this section may be for a period not to exceed one year.

* * * * * * *

TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 501. ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.

(a) * * *

(b) Each application under this section—

(1) * * *

(2) shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) [to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.] *and that the information likely to be obtained from the tangible things is reasonably expected to be (A) foreign intelligence information not concerning a United States person, or (B) relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities.*

[(c)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.]

(c)(1) Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of records.

* * * * * * *

[(d) No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.]

(d)(1) No person shall disclose to any person (other than a qualified person) that the United States has sought or obtained tangible things under this section.

(2) An order under this section shall notify the person to whom the order is directed of the nondisclosure requirement under paragraph (1).

(3) Any person to whom an order is directed under this section who discloses that the United States has sought to obtain tangible things under this section to a qualified person with respect to the order shall inform such qualified person of the nondisclosure requirement under paragraph (1) and that such qualified person is also subject to such nondisclosure requirement.

(4) A qualified person shall be subject to any nondisclosure requirement applicable to a person to whom an order is directed under this section in the same manner as such person.

(5) In this subsection, the term "qualified person" means—

(A) any person necessary to produce the tangible things pursuant to an order under this section; or

(B) an attorney to obtain legal advice with respect to an order under this section.

* * * * * * *

(f)(1) A person receiving an order to produce any tangible thing under this section may challenge the legality of that order by filing a petition in the panel established by section 103(e)(1). The Presiding Judge shall conduct an initial review of the petition. If the Presiding Judge determines that the petition is frivolous, the Presiding Judge shall immediately deny the petition and promptly provide a written statement of the reasons for the determination for the record. If the Presiding Judge determines that the petition is not frivolous, the Presiding Judge shall immediately assign the petition to one of the judges serving on such panel. The assigned judge shall promptly consider the petition in accordance with procedures developed and issued pursuant to section 103(e)(2). The judge considering the petition may modify or set aside the order only if the judge finds that the order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the order, the judge shall immediately affirm the order and order the recipient to comply therewith. A petition for review of a decision to affirm, modify, or set aside an order by the United States or any person receiving such order shall be to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall immediately provide for the record a written statement of the reasons for its decision and, on petition of the United States or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(2) Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The judge considering a petition filed under this subsection shall provide for the record a written statement of the reasons for the decision. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of National Intelligence.

(3) All petitions under this subsection shall be filed under seal, and the court, upon the government's request, shall review any government submission, which may include classified information, as well as the government's application and related materials, ex parte and in camera.

[Effective December 31, 2015, section 3(b) of H.R. 3199 as reported by the Committee on the Judiciary, provides that the Foreign Intelligence Surveillance Act of 1978 is amended so that sections 501, 502, and 105(c)(2) read as they read on October 25, 2001.]

ISSUANCE OF AN ORDER

SEC. 105. (a) * * *

* * * * * * *

(c) An order approving an electronic surveillance under this section shall—

(1) * * *

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

* * * * * * *

SEC. 501. ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.

(a)(1) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(2) An investigation conducted under this section shall—

(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

(B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(b) Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section 103(a); or

(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

(2) shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.

(c)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified,

approving the release of records if the judge finds that the application meets the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

(d) No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.

(e) A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

SEC. 502. CONGRESSIONAL OVERSIGHT.

(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for the production of tangible things under section 402.

(b) On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

(1) the total number of applications made for orders approving requests for the production of tangible things under section 402; and

(2) the total number of such orders either granted, modified, or denied.

Intelligence Reform and Terrorism Prevention Act of 2004

* * * * * * *

TITLE VI—TERRORISM PREVENTION

Subtitle A—Individual Terrorists as Agents of Foreign Powers

SEC. 6001. INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.

[(a) IN GENERAL.—Section**]** *Section* 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) is amended by adding at the end the following new subparagraph:

"(C) engages in international terrorism or activities in preparation therefore; or".

[(b) SUNSET.—The amendment made by subsection (a) shall be subject to the sunset provision in section 224 of Public Law 107–56 (115 Stat. 295), including the exception provided in subsection (b) of such section 224.**]**

* * * * * * *

Subtitle E—Criminal History Background Checks

* * * * * * *

SEC. 6603. ADDITIONS TO OFFENSE OF PROVIDING MATERIAL SUPPORT TO TERRORISM.

(a) * * *

* * * * * * *

[(g) SUNSET PROVISION.—

[(1) IN GENERAL.—Except as provided in paragraph (2), this section and the amendments made by this section shall cease to be effective on December 31, 2006.

[(2) EXCEPTION.—This section and the amendments made by this section shall continue in effect with respect to any particular offense that—

[(A) is prohibited by this section or amendments made by this section; and

[(B) began or occurred before December 31, 2006.]

* * * * * * *

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

* * * * * * *

CHAPTER 46—FORFEITURE

* * * * * * *

§ 981. Civil forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(A) * * *

(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense—

(i) involves *trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or* the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B);

* * * * * * *

CHAPTER 97—RAILROADS

* * * * * * *

§ 1993. Terrorist attacks and other acts of violence against mass transportation systems

(a) GENERAL PROHIBITIONS.—Whoever willfully—

(1) * * *

* * * * * * *

(7) conveys or causes to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this subsection; [or]

(8) surveils, photographs, videotapes, diagrams, or otherwise collects information with the intent to plan or assist in planning any of the acts described in the paragraphs (1) through (7); or

[(8)] *(9)* attempts, threatens, or conspires to do any of the aforesaid acts,

* * * * * * *

CHAPTER 113B—TERRORISM

* * * * * * *

§ 2332b. Acts of terrorism transcending national boundaries

(a) * * *

* * * * * * *

(g) DEFINITIONS.—As used in this section—

(1) * * *

* * * * * * *

(5) the term "Federal crime of terrorism" means an offense that—

(A) * * *

(B) is a violation of—

(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 or 175b (relating to biological weapons), 175c (relating to variola virus), 229 (relating to chemical weapons), subsection (a), (b), (c), or (d) of section 351 (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials), *832 (relating to nuclear and weapons of mass destruction threats),* 832 (relating to participation in nuclear and weapons of mass destruction threats to the United States) 842(m) or (n) (relating to plastic explosives), 844(f)(2) or (3) (relating to arson and bombing of Government property risking or causing death), 844(i) (relating to arson and bombing of property used in interstate commerce), 930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon), 956(a)(1) (relating to conspiracy to murder, kidnap, or maim persons abroad), 1030(a)(1) (relating to protection of computers), 1030(a)(5)(A)(i) resulting in damage as defined in

1030(a)(5)(B)(ii) through (v) (relating to protection of computers), 1114 (relating to killing or attempted killing of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751(a), (b), (c), or (d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to national defense material, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2332f (relating to bombing of public places and facilities), 2332g (relating to missile systems designed to destroy aircraft), 2332h (relating to radiological dispersal devices), 2339 (relating to harboring terrorists), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), 2339C (relating to financing of terrorism*, 2339D (relating to military-type training from a foreign terrorist organization)*, or 2340A (relating to torture) of this title;

* * * * * * *

CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

* * * * * * *

§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investiga-

tion, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) * * *

* * * * * * *

(c) any offense which is punishable under the following sections of this title: *section 37 (relating to violence at international airports), section 175b (relating to biological agents or toxins)* section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), *section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities),* section 1014 (relating to loans and credit applications generally; renewals and discounts), *section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 1361–1363 (relating to damage to government buildings and communications), section 1366 (relating to destruction of an energy facility),* sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1591 (sex trafficking of children by force, fraud, or coercion), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), *section 1993 (relating to terrorist attacks against mass transportation), sections 2155 and 2156 (relating to national-defense utilities), sections 2280 and 2281 (relating to violence against maritime navigation),* sections 2251 and 2252 (sexual exploitation of children), section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes),sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to traf-

ficking in certain motor vehicles or motor vehicle parts), *section 2340A (relating to torture),* section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 175c (relating to variola virus), section 1992 (relating to wrecking trains), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents);

* * * * * * *

(p) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents*, section 1028A (relating to aggravated identity theft)*) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or

(q) any criminal violation of section 229 (relating to chemical weapons); or sections 2332, 2332a, 2332b, 2332d, 2332f, 2332g, 2332h *2339*, 2339A, 2339B, or 2339C *2339D* of this title (relating to terrorism); or

* * * * * * *

§ 2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications

(1) * * *

* * * * * * *

(6) Any investigative or law enforcement officer, or attorney for the Government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence,

protective, immigration, national defense, or national security official to the extent that such contents include foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in subsection (19) of section 2510 of this title), to assist the official who is to receive that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. *Within a reasonable time after a disclosure of the contents of a communication under this subsection, an attorney for the Government shall file, under seal, a notice with a judge whose order authorized or approved the interception of that communication, stating the fact that such contents were disclosed and the departments, agencies, or entities to which the disclosure was made.*

* * * * * * *

CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

* * * * * * *

§ 2702. Voluntary disclosure of customer communications or records

(a) * * *

* * * * * * *

(d) REPORT.—On an annual basis, the Attorney General shall submit to the Committees on the Judiciary of the House and the Senate a report containing—

(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and

(2) a summary of the basis for disclosure in those instances where—

(A) voluntary disclosure under subsection (b)(8) was made to the Department of Justice; and

(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.

* * * * * * *

PART II—CRIMINAL PROCEDURE

* * * * * * *

CHAPTER 205—SEARCHES AND SEIZURES

* * * * * * *

§ 3103a. Additional grounds for issuing warrant

(a) * * *

(b) DELAY.—With respect to the issuance of any warrant or court order under this section, or any other rule of law, to search for and seize any property or material that constitutes evidence of a crimi-

nal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed if—

(1) * * *

* * * * * * *

(3) the warrant provides for the giving of such notice within a reasonable period [of its] *, which shall not be more than 180 days, after its* execution, which period may thereafter be extended *for additional periods of not more than 90 days each* by the court for good cause shown.

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

JULY 13, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present, and without objection, the Chair is authorized to declare recesses of the Committee during consideration of noticed bills. Hearing none, so ordered.

Pursuant to notice, I now call——

Mr. WATT. Mr. Chairman, we are having trouble hearing you.

Chairman SENSENBRENNER. Excuse me. Pursuant to notice, I now call up the bill H.R. 3199, the "USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005," for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point. Hearing no objection, so ordered.

[The bill, H.R. 3199, follows:]

I

109TH CONGRESS
1ST SESSION

H. R. 3199

To extend and modify authorities needed to combat terrorism, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2005

Mr. SENSENBRENNER introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To extend and modify authorities needed to combat terrorism, and for other purposes.

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 ''USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005''.

SEC. 2. REFERENCES TO USA PATRIOT ACT.

A reference in this Act to the USA PATRIOT ACT shall be deemed a reference to the Uniting and Strengthening America by Providing Appropriate Tools Required

to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

SEC. 3. REPEAL OF USA PATRIOT ACT SUNSET PROVISION.

Section 224 of the USA PATRIOT ACT is repealed.

SEC. 4. REPEAL OF SUNSET PROVISION RELATING TO INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.

Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3742) is amended by—

(1) striking subsection (b); and

(2) striking ''(a)'' and all that follows through ''Section'' and inserting ''Section''.

SEC. 5. REPEAL OF SUNSET PROVISION RELATING TO SECTION 2332B AND THE MATERIAL SUPPORT SECTIONS OF TITLE 18, UNITED STATES CODE.

Section 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3762) is amended by striking subsection (g).

SEC. 6. SHARING OF ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION UNDER SECTION 203(B) OF THE USA PATRIOT ACT.

Section 2517(6) of title 18, United States Code, is amended by adding at the end the following: ''Within a

reasonable time after a disclosure of the contents of a communication under this subsection, an attorney for the Government shall file, under seal, a notice with a judge whose order authorized or approved the interception of that communication, stating the fact that such contents were disclosed and the departments, agencies, or entities to which the disclosure was made.''.

SEC. 7. DURATION OF FISA SURVEILLANCE OF NON-UNITED STATES PERSONS UNDER SECTION 207 OF THE USA PATRIOT ACT.

(a) ELECTRONIC SURVEILLANCE.—Section 105(e) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1805(e)), is amended—

(1) in paragraph (1)(B), by striking '', as defined in section 101(b)(1)(A)'' and inserting ''who is not a United States person''; and

(2) in subsection (2)(B), by striking ''as defined in section 101(b)(1)(A)'' and inserting ''who is not a United States person''.

(b) PHYSICAL SEARCH.—Section 304(d) of such Act (50 U.S.C. 1824(d)) is amended—

(1) in paragraph (1)(B), by striking ''as defined in section 101(b)(1)(A)'' and inserting ''who is not a United States person''; and

(2) in paragraph (2), by striking ''as defined in section 101(b)(1)(A)'' and inserting ''who is not a United States person''.

(c) PEN REGISTERS, TRAP AND TRACE DEVICES.—Section 402(e) of such Act (50 U.S.C. 1842(e)) is amended—

(1) by striking ''(e) An'' and inserting ''(e)(1) Except as provided in paragraph (2), an''; and

(2) by adding at the end the following new paragraph:

''(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order, or an extension of an order, under this section may be for a period not to exceed one year.''.

SEC. 8. ACCESS TO CERTAIN BUSINESS RECORDS UNDER SECTION 501 OF FISA UNDER SECTION 215 OF THE USA PATRIOT ACT.

(a) ESTABLISHMENT OF RELEVANCE STANDARD.—Subsection (b)(2) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861), is amended by striking ''to obtain'' and all that follows and inserting ''and that the information likely to be obtained from the tangible things is reasonably expected to be (A)

foreign intelligence information not concerning a United States person, or (B) relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities.''.

(b) CLARIFICATION OF JUDICIAL DISCRETION.—Subsection (c)(1) of such section is amended to read as follows:

''(c)(1) Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of records.''.

(c) AUTHORITY TO DISCLOSE TO ATTORNEY.—Subsection (d) of such section is amended to read as follows:

''(d)(1) No person shall disclose to any person (other than a qualified person) that the United States has sought or obtained tangible things under this section.

''(2) An order under this section shall notify the person to whom the order is directed of the nondisclosure requirement under paragraph (1).

''(3) Any person to whom an order is directed under this section who discloses that the United States has sought to obtain tangible things under this section to a qualified person in response to the order shall inform such qualified person of the nondisclosure requirement under

paragraph (1) and that such qualified person is also subject to such nondisclosure requirement.

"(4) A qualified person shall be subject to any nondisclosure requirement applicable to a person to whom an order is directed under this section in the same manner as such person.

"(5) In this subsection, the term 'qualified person' means—

"(A) any person necessary to produce the tangible things pursuant to an order under this section; or

"(B) an attorney to obtain legal advice in response to an order under this section.".

(d) JUDICIAL REVIEW.—

(1) PETITION REVIEW PANEL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

"(e)(1) Three judges designated under subsection (a) who reside within 20 miles of the District of Columbia, or if all of such judges are unavailable, other judges of the court established under subsection (a) as may be designated by the Presiding Judge of such court (who is designated by the Chief Justice of the United States from among the judges of the court), shall comprise a petition

review panel which shall have jurisdiction to review petitions filed pursuant to section 501(f)(1).

"(2) Not later than 60 days after the date of the enactment of the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005, the court established under subsection (a) shall develop and issue procedures for the review of petitions filed pursuant to section 501(f)(1) by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted ex parte and in camera and shall also provide for the designation of an Acting Presiding Judge.".

(2) PROCEEDINGS.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is further amended by adding at the end the following new subsection:

"(f)(1) A person receiving an order to produce any tangible thing under this section may challenge the legality of that order by filing a petition in the panel established by section 103(e)(1). The Presiding Judge shall conduct an initial review of the petition. If the Presiding Judge determines that the petition is frivolous, the Presiding Judge shall immediately deny the petition and promptly provide a written statement of the reasons for the determination for the record. If the Presiding Judge determines that the petition is not frivolous, the Presiding

Judge shall immediately assign the petition to one of the judges serving on such panel. The assigned judge shall promptly consider the petition in accordance with procedures developed and issued pursuant to section 103(e)(2). The judge considering the petition may modify or set aside the order only if the judge finds that the order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the order, the judge shall immediately affirm the order and order the recipient to comply therewith. A petition for review of a decision to affirm, modify, or set aside an order by the United States or any person receiving such order shall be to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall immediately provide for the record a written statement of the reasons for its decision and, on petition of the United States or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

"(2) Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The judge considering a petition filed under this subsection shall provide for the record a written statement of the reasons for the decision. The record of proceedings, including petitions

filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of National Intelligence.

"(3) All petitions under this subsection shall be filed under seal, and the court, upon the government's request, shall review any government submission, which may include classified information, as well as the government's application and related materials, ex parte and in camera.".

○

Chairman SENSENBRENNER. The Chair now recognizes himself for 5 minutes to explain the bill.

Today we are marking up H.R. 3199, the "USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005," in the wake of deadly and tragic terrorist attacks. Last week, innocent people in London were murdered in a series of coordinated attacks executed with ruthless precision. And last year, Spain was victimized by similar acts of terrorism directed at mass transit. We pray for the innocent victims and their families of these recent attacks and stand firmly with them in their time of grief.

Though the terrorists' goal is to shake the foundation of our democracies, these heinous acts have only strengthened our resolve to defeat them. I believe that both Congress and the Bush administration deserve credit for reacting quickly to take the terrorist threat head on by providing the hard-working men and women of law enforcement, the intelligence community, and our armed services with the tool they need to prevent another attack here at home. The PATRIOT Act was one important initiative.

While many, including myself, continue to be wary of the Government having any more authority than absolutely necessary, we must view attacks as an important reminder that the specter of terrorism remains a clear and present danger to free nations around the world, and that we are still very much at war against an enemy that will do anything in its power to kill innocent citizens.

I strongly believe that we must not take any steps that might compromise the ability of law enforcement to thwart future acts of terrorism. Accordingly, the legislation that I have introduced and we consider here today will permanently extend the important antiterrorism tools contained in the PATRIOT Act.

This bill is based upon 4 years of extensive oversight consisting of hearing testimony, Inspector General reports, briefings, and oversight letter. The materials on the left side of the clerk's table over there show the Committee's efforts to engage in aggressive oversight. Since April of this year alone, the Committee has heard testimony from 35 witnesses during 11 hearings on the PATRIOT Act. That testimony and oversight has demonstrated that the PATRIOT Act has been an effective tool against terrorists as well as criminals intent on harming innocent people and, therefore, deserves to be extended permanently, subject to several modifications contained in the bill.

While there should continue to be a healthy public debate on how best to ensure the safety of our citizens, the security of the American people should not be subject to arbitrary expiration dates and should not provide an excuse for divisive partisan debates or political fundraising. To address concerns that judicial—judicial oversight is necessary when criminal wiretap information was shared with the intelligence community, the bill would amend current law to require that an officer or attorney who makes a disclosure under this subsection within a reasonable time after that disclosure notify the court that issued the wiretap order that such information was shared.

Based upon concerns expressed by the Commission on Weapons of Mass Destruction, the bill extends the duration of the Foreign Intelligence Surveillance Act order for non-United States persons.

DOJ estimates that the enactment of Section 207 has saved nearly 60,000 attorney hours or 30 lawyers a year's worth of work.

Finally, this bill addresses Section 215, which has been inaccurately characterized by many and, as a result, has unnecessarily caused much public consternation. While I recognize the good intentions of those voting to limit the authority of Section 215, I am concerned that limitations only make Americans more vulnerable to terrorism.

This bill amends Section 215 of the PATRIOT Act to clarify that the information likely to be obtained is reasonably expected to be foreign intelligence information not concerning a U.S. person or information relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities.

The legislation would also clarify that a FISA 215 order may be challenged and that a recipient of a 215 order may consult with the lawyer and the appropriate people necessary to respond to the order.

Finally, the bill expressly clarifies that an order will only be issued if the judge finds that the requirements have been met and sets up a judicial review process that authorizes the judge to set aside or affirm a 215 order has been changed.

As Chairman of this Committee, I have made every effort to strike an appropriate balance between liberty and security. This bill reflects this balance and is the product of comprehensive and bipartisan legislative consideration. I urge that the bill be approved, and I recognize the gentleman from Michigan, Mr. Conyers, for an opening statement.

Mr. CONYERS. Thank you, Mr. Chairman, and I'm happy to see my colleagues back after the strenuous All Star Game in Detroit yesterday evening, which required me to get up a 4 o'clock. But might I ask unanimous consent for the gentlelady from Texas, Ms. Jackson Lee, to speak for 1 minute out of order because she is going to be leaving to return there for some very important activity that's going on.

Chairman SENSENBRENNER. Without objection.

Mr. CONYERS. I thank you.

Ms. JACKSON LEE. This is a very important day. I thank you very much, Mr. Conyers and Mr. Chairman. Because of my 10-year membership on the Space and Aeronautics Subcommittee of the Science Committee, I will be attending the restoration of human Space Shuttle flight in Florida today and will be in and out and not at my desk. I recognize that our Nation is looking at a very important step, and today, of course, that step is looking at the reauthorization of the PATRIOT Act.

I look forward to the debate in the days to come, and I remind my colleagues that I know that this is a Nation of laws, but it is also a Nation of liberty, and the PATRIOT Act must reflect that liberty.

I thank my colleagues, and I ask unanimous consent that any additional statement may be put into the record for this Committee.

I yield back.

[The prepared statement of Ms. Jackson Lee follows:]

CONGRESSWOMAN SHEILA JACKSON LEE
COMMITTEE ON THE JUDICIARY
H.R. 3199, THE USA PATRIOT AND TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005
2005 CONVENTION
"CONSCIENCE OF A NATION"

JULY 13 2005

Mr. Chairman and Mr. Ranking Member, as a general matter, I oppose this legislation because the sunsetting provisions remain highly contentious. Without fixes for these provisions, we stand the chance of repeating the same unyielding and unruly process that occurred with the passage of the underlying law, Public Law 107-56.

Justice Sandra Day O'Connor, in her already-celebrated dissent in the recent Supreme Court decision of *Kelo v. City of New London et. al* (No. 04-108.Argued February 22, 2005--Decided June 23, 2005), stated that

> Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms … [t]he Founders cannot have intended this perverse result. '[T]hat alone is a *just* government,' wrote James Madison, 'which *impartially* secures to every man, whatever is his *own*.'[1]

[1] S.Ct. No. 04-108. Argued February 22, 2005, decided June 23, 2005, dissent by O'Connor, J., citing 14 Papers of James Madison 266 (R. Rutland et al. eds. 1983).

Justice O'Connor's words reference the Fifth Amendment to the U.S. Constitution; however, I cite them because the due process element contained within that section applies to "any *person*."

The underlying statute was passed by Congress with insufficient analysis, revision, and amendment; therefore, it is critical that we receive support in our effort to apply scrutiny to this proposed measure before passage.

I sit as Ranking Democrat on the Subcommittee on Immigration, Border Security, and Claims. Of particular concern to me are a number of immigration-related provisions that cast such a broad net to allow for the detention and deportation of people engaging in innocent associational activity and constitutionally protected speech and that permit the indefinite detention of immigrants and non-citizens who are not terrorists.[2]

Among these troubling provisions are those that:

- Authorize the Attorney General (AG) to arrest and detain non-citizens based on mere suspicion, and require that they remain in detention *"irrespective of any relief they may be eligible for or granted."* (In order to grant someone relief from deportation, an immigration judge must find that the person is not a terrorist, a criminal, or someone who has engaged in fraud or misrepresentation.) When relief from deportation is granted, no person

[2] Carlina Tapia Ruano, Statement for Oversight Hearing on the Reauthorization of the USA PATRIOT Act before the House Committee on the Judiciary, June 10, 2005.

should be subject to continued detention based merely on the Attorney General's unproven suspicions.

- Require the AG to bring charges against a person who has been arrested and detained as a "certified" terrorist suspect within seven days, but the law does not require that those charges be based on terrorism-related offenses. As a result, an alien can be treated as a terrorist suspect despite being charged with only a minor immigration violation, and may never have his or her day in court to prove otherwise.

- Make material support for groups that have not been officially designated as "terrorist organizations" a deportable offense. Under this law, people who make innocent donations to charitable organizations that are secretly tied to terrorist activities would be presumed guilty unless they can prove they are innocent. Restrictions on material support should be limited to those organizations that have officially been designated terrorist organizations.

- Deny legal permanent residents readmission to the U.S. based solely on speech protected by the First Amendment. The laws punish those who "endorse," "espouse," or "persuade others to support terrorist activity or terrorist organizations." Rather than prohibiting speech that incites violence or criminal activity, these new grounds of inadmissibility punish speech that "undermines the United States' efforts to reduce or eliminate terrorist activity." This language is unconstitutionally vague and overbroad, and will undeniably have a chilling effect on constitutionally protected speech.
- Authorize the AG and the Secretary of State to designate domestic groups as terrorist organizations and block any noncitizen who belongs to them from entering the country. Under this provision, the mere payment of membership dues is a deportable offense. This vague and overly broad language constitutes guilt by association. Our laws should punish people who commit crimes, not punish people based on their beliefs or associations.

In addition, the current Administration has taken some deeply troubling steps since September 11. Along with supporting the USA PATRIOT ACT, it has initiated new policies and practices that negate fundamental due process protections

and jeopardize basic civil liberties for non-citizens in the United States. These constitutionally dubious initiatives undermine our historical commitment to the fair treatment of every individual before the law and do not enhance our security. Issued without Congressional consultation or approval, these new measures include regulations that increase secrecy, limit accountability, and erode important due process principles that set our nation apart from other countries.

I co-sponsored the Civil Liberties Restoration Act (CLRA), reintroduced from the 108th Congress by Representatives Howard Berman (D-CA) and William Delahunt (D-MA), that seeks to roll back some of these egregious post-9/11 policies and to strike an appropriate balance between security needs and liberty interests. The CLRA would secure due process protections and civil liberties for non-citizens in the U.S., enhance the effectiveness of our nation's enforcement activities, restore the confidence of immigrant communities in the fairness of our government, and facilitate our efforts at promoting human rights and democracy around the world.

While every step must be taken to protect the American public from further terrorist acts, our government must not trample on the Constitution in the process and on those basic rights and protections that make American democracy so unique.

Responding to the Deficiencies of our Immigration Policy

It has been estimated that we have between 8 and 14 million undocumented immigrants in the United States. Most of them are hard working individuals who have become productive members of our society. It serves no purpose to keep them in the shadows of our society without lawful status. It is not good for them, and it is not in the best interest of the United States.

I offer legalization to the undocumented immigrants who have earned the chance to become lawful members of our society with my Save America Comprehensive Immigration Act of 2005, H.R. 2092. This proposal is a "fix-it" bill to solve the deficiencies in the current U.S. immigration system. Legalization is in the best interests of the United States, not just a benefit to the hard working immigrants who have made this country their home. For instance, American workers are being replaced by undocumented workers who must work for lower wages. The presence of such a large, underground population of unknown immigrants also poses security problems. It is easy for terrorists and other dangerous criminals to hide in our country as part of such a large underground population.

I agree though that we need to prevent this situation from recurring. I do not want to replace one underground population with another. I also believe very

strongly in the need for better security at our border and in the need to be able to rely on identity documents. Consequently, I have addressed both of these needs in the Save America Comprehensive Immigration Act. The Act would establish informant visas and cash rewards for aliens who are willing to assist in the investigation or prosecution of commercial alien smuggling operations or commercial fraudulent document operations. These methods have proven their value in the war against terrorism. I am confident that they would work in this context too. The Act also would establish a task force to collect and distribute information about fraudulent documents that are used to enter the United States unlawfully, and it would increase the number of immigration inspectors at our ports of entry.

Enforcement is not the entire answer. We also need to make it possible for more people to immigrate to the United States lawfully. This would greatly reduce the need for people to come here illegally. My bill would double the number of visas available for family-based immigration, raising the annual limit from 480,000 to 960,000. This would be a great benefit to many thousands of American citizens and lawful permanent residents who have to wait for years to bring their families to the United States.

No immigration bill should be considered "comprehensive" unless it does something about the harsh changes that were made in our immigration laws by the

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). My Save America Comprehensive Immigration Act has so many IIRIRA fixes in it that it could have been called a "Fix '96" bill.

The Save America Comprehensive Immigration Act would specify that an offense must actually be a felony to be considered an "aggravated felony," and it would establish a waiver for aggravated felony convictions in cases where the conviction did not result in incarceration for a year or more. With the availability of such a waiver, the immigration judges could decide whether a criminal offense is serious enough to warrant deportation. Another example is a waiver of excludability based on making a false claim to United States citizenship. This is a serious offense, but it should not permanently bar someone from entering the United States. In other words, IIRIRA took away the discretion immigration judges had to decide when offenses warrant exclusion or deportation. The Save America Comprehensive Immigration Act would give it back to them.

The Employee Protections Section would encourage employers to hire American workers first and would place emphasis on recruiting employees from minority communities. Among other things, it would impose a 10% surcharge on employment-based visa petitions. These funds would be used to establish an employee training program for American workers. It also would establish a Labor

Department task force to study the exploitation of undocumented workers in the United States.

The Save America Comprehensive Immigration Act addresses the need to prevent the federal government from shifting civil immigration enforcement responsibilities to state and local police forces. It would repeal the IRIRA provision which allows the federal government to enter into agreements with State and local governments to have civil immigration functions handled by State and local police forces.

Some of the other topics that are addressed in the Save America Comprehensive Immigration Act are: Protection against processing delays, temporary status pending receipt of permanent residence status, elimination of the affidavit of support requirement, a task force to study the extent to which alien employees are being exploited in the United States, provisions on encouraging employers to recruit American workers first, revisions to the Diversity Visa Program, Haitian parity provisions, an adjustment provision for Liberians who have been in the United States under Temporary Protected Status for more than a decade, changes in refugee provisions, and numerous protections for immigrant victims of violence.

Mr. Chairman and Mr. Ranking Member, I yield back.

Chairman SENSENBRENNER. Without objection, and the Chair will reset the clock for the gentleman from Michigan, who is recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

Members of the Committee, we begin the important reauthorization of the PATRIOT Act, but I don't think this discussion can proceed correctly unless we acknowledge that the PATRIOT Act that the Committee passed 36-0 was suspended and pulled out of the Rules Committee and replaced with a bill that no one on the Committee that I know of had seen before it came from the Rules Committee. So we're working under an extremely serious abuse of process on a measure of this magnitude.

Nevertheless, my comments divide into three categories: first of all, there's the 16 sunset provisions which we are called to re-examine; the second are problems with the PATRIOT Act that were not the object of sunset provisions, some of which we were afforded hearings, at least one, maybe two, to deal with these problems with the PATRIOT Act; and the third category that I would bring to your attention, my colleagues, is the abuses of process that are not within the PATRIOT Act but could easily be confused for being part of the PATRIOT Act, some because of the secrecy of the way some of these things are handled by the administration, the Department of Justice, the FBI. Sometimes you can't tell whether it's PATRIOT Act or not.

So let me just point out a couple of the problems in the sunsetting provisions. Section 206 and 215 leap out at us as we review this matter. The roving wiretaps, Section 206, which allows surveillance orders which specify neither person nor place to be surveilled. It's a roving wiretap, a John Doe roving wiretap, and we essentially do not address this measure to my satisfaction.

The second matter is the Section 215 that allows the FBI to get an order, a secret order, for anything from anyone whenever they ask a secret court. The bill has a convoluted proposal that falls far short of satisfactory protecting the civil liberties of our citizenry.

Now, within the PATRIOT Act itself, I bring your attention to the material support statute which makes criminals out of people who give money to charities or volunteer their services with no intention to ever help terrorists, and if it turns out that there is a mistake made, this helps them get prosecuted. I object to this.

Section 213, the infamous sneak-and-peek provision, which gives unprecedented authority to the Federal Bureau of Investigation to go into a citizen's home or business without telling him or her for indefinite periods of time. The bill does not satisfactorily address this matter.

And then there is the national security letters, which have no judicial review, compel people to turn over sensitive records, and gags them from even discussing their situation with a lawyer.

We also have the problem of administrative subpoenas. Administrative subpoenas circuit—get around the regular process of subpoenas in which a court reviews them, and they're issued by the Department of Justice. And so I think this is a very big problem.

May I point out in closing that the——

Chairman SENSENBRENNER. The gentleman's time has expired and without objection is recognized for an additional minute.

Mr. CONYERS. I thank the Chair.

There are some non-PATRIOT Act abuses that are still—that should be the subject of our concerns, and one is the abuse and torture of detainees at at least three places in the Western hemisphere, and other places, actually, of violence, abuse, harassment, which violates the Geneva Convention and the Convention Against Torture.

Then we have the abuse of the immigration system to deny due process rights and indefinitely detain people within the borders; the use of racial profiling, which has rounded up thousands of Middle Eastern and Muslim men with no known effect of preventing terrorism; weeks, months later, they are released. They're frequently held incommunicado from their family or counsel. And, finally, the abuse of the material witness statute to detain those who the Department may not having anything else to hold them on, and so they hold them as a material witness.

All of these are issues I hope we will be able to consider in the course of this markup, and I thank the Chair for the additional time.

Chairman SENSENBRENNER. The time of the gentleman has once again expired. Without objection, all members may insert opening statements in the record at this point.

Are there amendments?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, for what purpose do you seek recognition?

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, recently I wrote a letter complaining about having a full Committee markup without a hearing on the bill or a Subcommittee mark. As the gentleman from Michigan has pointed out, the last time we considered the PATRIOT Act, we considered a bill, did hard work, but after all the hard work had been done, they switched versions and we considered on the floor something other than what we had considered.

Here we had extensive hearings in general, but none on the bill itself. There's been no opportunity for the public to have input on the bill or to prepare amendments to the bill as introduced.

Now, it was my understanding from the Chairman of the Subcommittee that we would have hearings on the bill, and we wrote a letter—I haven't received a response. Perhaps if I yield to the gentleman from North Carolina, he could explain what his understanding was about a hearing on the bill after it had been introduced. Wasn't it our understanding that there would be a hearing? I yield.

Mr. COBLE. If the gentleman would yield, this is a case of first impression because the distinguished gentleman from Virginia and I have gotten along very harmoniously and will continue to do so. But, Mr. Scott, I don't recall that. I don't recall that I indicated any subsequent hearing on this bill.

You will recall, Mr. Scott and colleagues, that our Subcommittee hosted nine hearings on this matter. The full Committee, as best I recall, Mr. Chairman, hosted two or three, I think three, giving a total of 12 hearings. And, Mr. Scott, if that was your impression,

I think you misunderstood me because I don't recall having said that.

Mr. SCOTT. Well, apparently I did—reclaiming my time, apparently I did misunderstand because it was my understanding that we would, after all those hearings, have a hearing on the bill. Obviously that's not the case, and, Mr. Chairman, I just want to register my complaint that we are not having a hearing or a Subcommittee mark on a bill that is extremely complex and I think could benefit from a hearing on the bill so that the public could have input and a Subcommittee mark so that many of the more controversial areas could be identified. But obviously that's not going to be the case, and we'll do the best we can under this procedure.

Mr. NADLER. Mr. Chairman?

Mr. SCOTT. I yield back.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. Strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you.

Mr. Chairman, I would like to associate—begin by associating myself with the remarks of the gentleman from Virginia, and I believe I joined in sending that letter. But I want to go a little further or a little differently.

It's not just that we haven't had a hearing on the bill. We had extensive hearings, and I want to commend the Chairman and the Committee for holding extensive hearings on the general subject matter. But the Chairman's mark, that is to say, the bill that we have before us that we're going to be dealing with, was only made available to anyone, I think, late Friday. And as I said 4 years ago—and the Chairman and I engaged in a colloquy on the floor 4 years ago on this subject—this is the kind of bill of a complex nature and a sensitive and delicate nature where we are balancing a very, very legitimate and pressing and compelling need for promoting the security of the people of this Nation with equally compelling need for preserving the liberties of the people of this Nation. And we have to do a bill that does both and balances it to the best of our ability.

And when the bill came out 4 years ago, this bill was only in print, as I recall, Wednesday at 10 o'clock, and we started debating at 11 o'clock and voted at 1 o'clock. And I said at that time that this is the kind of bill that, because of the sensitive balancing nature, should be available to the public. We should send it out to the law schools, to the Civil Liberties Union, to the American Conservative Union, to other people, get their comments on the text, get their suggested amendments, not just those that our staff dreams up in 2 days, but get—vet this in public, vet this through the various experts around the country, and then go into a markup.

We were told 4 years ago we didn't have time, that if we waited a week, there would be blood on our hands. The Chairman on the floor said it was true that we were doing this in great haste, but the ideas in this bill have been around a long time. I said on the floor, yeah, the ideas have been around a long time, good ideas, bad

ideas, mediocre ideas, and which ideas have gotten into the bill and to what extent wasn't clear since we haven't had a chance to read it.

Now, there is no commensurate rush. This bill is not expiring tomorrow. Nothing expires until the end of the year. So I would—I had suggested, and I still believe that since nobody saw this mark, this bill until Friday night, we should take a week or two—a week and mark up the bill a week later so that people in the country at large—the Civil Liberties Union, the Conservative Union, the various libertarian groups, the law schools, everybody has a chance to look at this text, look at proposed amendments. There's no reason why we shouldn't make proposed amendments from both sides of the aisle available, and get people's comments. Why should we legislate in a vacuum as if all wisdom resides in this room?

Now, I will concede a considerable amount of wisdom does reside in this room on both sides of the aisle, but not always, though. So I would—it may be a little late at this point, but I would hope that we wouldn't finish work on this this week. We really should put it off for at least a week because we should give the country a chance to express itself—not the entire country but interested parties, law school professors, as I have said before, people, law enforcement people, civil liberties people, an opportunity to look at this bill, not just at the concept, not just at the existing law, but at the bill, and at the suggested amendments and express themselves. We might get some better ideas, and maybe that would reduce the number of amendments that we feel compelled to offer. Maybe it would increase it. Who knows? But we might legislate in a more informed manner.

And since this bill does not expire until the end of the year, there's not a rush. There is plenty of business on the floor to keep the floor busy. And, in fact, because of the—I will say, the efficient manner in which the leadership of this House has conducted business this year, we're way ahead of the Senate. We're going to have to wait for them anyway. We've done all the appropriations bills. They've done one or two of them. So we've got plenty of time. I don't understand the nature of the rush here and why we can't simply consider this a week before we—before we're asked to vote on these amendments and give people outside this Committee room the chance to comment and maybe to give us a little more wisdom.

I thank the Chairman and I yield back.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Are there amendments? The gentleman from California, Mr. Lungren.

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

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Mr. Chairman, I have two amendments.

Chairman SENSENBRENNER. Will the gentleman from California please inform the clerk which amendment he wishes to offer?

Mr. LUNGREN. It's the longer of the two.

Chairman SENSENBRENNER. The clerk will report.

The CLERK. Amendment to H.R. 3199, offered by Mr. Lungren of California. At the appropriate place insert the following: SEC——. Report. Section 2702 of title 18, United States Code, as amended

by section 212 of the US PATRIOT Act, is amended by inserting at the end of the following: (d) Report.—On an annual basis, the Attorney General shall submit to the Committees on the Judiciary of the House and the Senate a report containing—(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8) of this section; and (2) a summary of the basis for disclosure in those instances where—(A) voluntary disclosure under subsection (b)(8) of this section were made to the Department of Justice; and (B) the investigation pertaining to those disclosures was closed without the following of criminal charges.

[The amendment of Mr. Lungren follows:]

AMENDMENT TO H.R. 3199
OFFERED BY MR. DANIEL E. LUNGREN OF CALIFORNIA

At the appropriate place insert the following:

SEC. ___. REPORT.

Section 2702 of title 18, United States Code, as amended by section 212 of the USA PATRIOT Act, is amended by inserting at the end the following:

''(d) REPORT.—On an annual basis, the Attorney General shall submit to the Committees on the Judiciary of the House and the Senate a report containing—

''(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8) of this section; and

''(2) a summary of the basis for disclosure in those instances where—

''(A) voluntary disclosure under subsection (b)(8) of this section were made to the Department of Justice; and

''(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.''.

Chairman SENSENBRENNER. The gentleman from California is recognized for 5 minutes.

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

Mr. Chairman, this deals with Section 212 of the PATRIOT Act. That is the section which permits the disclosure of the content of a communication while in electronic storage to Government entities by a service provider. Specifically, the provider is allowed to divulge the contents of a communication where the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires the disclosure of the information without delay.

Under such exceptional life-threatening circumstances, permitting the disclosure of such information to law enforcement is certainly understandable. I think our hearings showed that. However, at the same time, since it also does involve the contents of a communication by a third party, I felt that some accountability is necessary to ensure that this authority is not being abused.

My amendment provides that the Attorney General shall on an annual basis submit to this Committee and our counterpart in the other body a report which must reveal the number of accounts from which the Department receives disclosures of information under Section 212. My amendment would also specifically require the Department to provide a summary of the basis for disclosure in those cases where the investigation was closed without the filing of criminal charges. This information I believe should be highly beneficial to the Committee, fulfilling our oversight responsibility in the future, and I ask for your support.

I believe, Mr. Chairman, this is the best way for us to have a ready manner of looking at this particular section. In the hearings that we had, I found no basis for claiming that there has been abuse of this section. I don't believe on its face it is an abusive section. But I do believe that it could be subject to abuse in the future and, therefore, this allows us as Members of Congress to have an ability to track this on a regular basis.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. LUNGREN. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman——

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I support the gentleman's amendment, and I would just ask some questions.

I did not hear the gentleman refer to any other language other than just simply increased reporting to Congress. Is that accurate?

Mr. LUNGREN. Yes. It requires—it requires a report. No such report is required at the present time for this specific section.

Mr. DELAHUNT. Can the gentleman inform me whether it provides notice to persons whose communications have been disclosed?

Mr. LUNGREN. It does not provide notice. I considered that. I considered going to a court. I also considered giving notice. But because of the possibility of a continuing ongoing investigation, I thought this was the best way for us to enter into it. We're the other party that looks at it that would hopefully have regular oversight of the Justice Department in this regard.

Mr. DELAHUNT. Does it provide in any way, shape, or form for after-the-fact review by a court?

Mr. LUNGREN. No, it does not. I considered that. I thought upon consideration this made more sense.

Mr. DELAHUNT. I would hope that the gentleman would consider a conversation with myself and other members who support this amendment but feel that there should be additional provisions within this—within this particular amendment that would consider those particular aspects.

Mr. LUNGREN. I will consider that, yes, sir.

Chairman SENSENBRENNER. Does the gentleman yield back?

The question is on agreeing to the amendment offered by the gentleman from California, Mr. Lungren. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments? The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I call up amendment—Nadler amendment 001.XML.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199, offered by Mr. Nadler. Section A. Strike section (b) of section 8 and insert the following——

Mr. NADLER. I think you have the wrong amendment—oh, no, I'm sorry. You're right.

Chairman SENSENBRENNER. The clerk will continue to report.

The CLERK. (b) Applications for orders. Subsection (b) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—(1) in paragraph (1), by striking "and" at the end; (2) in paragraph (2), by striking the period at the end and inserting "; and"; and (3) by adding at the end the following——

Mr. CHABOT. Mr. Chairman, I'd ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection. The gentleman—without objection, so ordered.

[The amendment of Mr. Nadler follows:]

AMENDMENT TO H.R. ___
OFFERED BY MR. Nadler

1. Sec 4. Strike subsection (b) of section 8 and insert the following:

1 (b) APPLICATIONS FOR ORDERS.—Subsection (b) of
2 section 501 of the Foreign Intelligence Surveillance Act
3 of 1978 (50 U.S.C. 1861) is amended—
4 (1) in paragraph (1), by striking "and" at the
5 end;
6 (2) in paragraph (2), by striking the period at
7 the end and inserting "; and"; and
8 (3) by adding at the end the following new
9 paragraph:
10 "(3) shall specify that there are specific and
11 articulable facts giving reason to believe that the
12 person to whom the records pertain is a foreign
13 power or an agent of a foreign power.".
14 (c) ORDERS.—Subsection (c)(1) of that section is
15 amended by striking "finds" and all that follows and in-
16 serting
17 "finds that—
18 "(A) there are specific and articulable facts giv-
19 ing reason to believe that the person to whom the

1 records pertain is a foreign power or an agent of a
2 foreign power; and
3 "(B) the application meets the other require-
4 ments of this section.".

2. Sec. Strike subsection (d) of section 8 and insert the following:

1 (d) JUDICIAL REVIEW.—Section 501 of the Foreign
2 Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is
3 amended by adding at the end the following:
4 "(f) JUDICIAL REVIEW.—
5 "(1) ORDER FOR PRODUCTION.—Not later than
6 20 days after the service upon any person of an
7 order pursuant to subsection (c), or at any time be-
8 fore the return date specified in the order, whichever
9 period is shorter, such person may file, in the court
10 established under section 103(a) or in the district
11 court of the United States for the judicial district
12 within which such person resides, is found, or trans-
13 acts business, a petition for such court to modify or
14 set aside such order. The time allowed for compli-
15 ance with the order in whole or in part as deemed
16 proper and ordered by the court shall not run during
17 the pendency of such petition in the court. Such pe-
18 tition shall specify each ground upon which the peti-
19 tioner relies in seeking relief, and may be based

1 upon any failure of such order to comply with the
2 provisions of this section or upon any constitutional
3 or other legal right or privilege of such person.
4 "(2) NONDISCLOSURE ORDER.—
5 "(A) IN GENERAL.—A person prohibited
6 from disclosing information under subsection
7 (d) may file, in the courts established by section
8 103(a) or in the district court of the United
9 States for the judicial district within which such
10 person resides, is found, or transacts business,
11 a petition for such court to set aside the non-
12 disclosure requirement. Such petition shall
13 specify each ground upon which the petitioner
14 relies in seeking relief, and may be based upon
15 any failure of the nondisclosure requirement to
16 comply with the provisions of this section or
17 upon any constitutional or other legal right or
18 privilege of such person.
19 "(B) STANDARD.—The court shall set
20 aside the nondisclosure requirement unless the
21 court determines that there is reason to believe
22 that disclosure of the order under subsection (c)
23 will result in—
24 "(i) endangering the life or physical
25 safety of any person;

1 "(ii) flight from prosecution;
2 "(iii) destruction of or tampering with
3 evidence;
4 "(iv) intimidation of potential wit-
5 nesses; or
6 "(v) otherwise seriously endangering
7 the national security of the United States
8 by alerting a target, a target's associates,
9 or the foreign power of which the target is
10 an agent, of the Government's interest in
11 the target.
12 "(3) RULEMAKING.—
13 "(A) IN GENERAL.—Not later than 180
14 days after the date of enactment of the USA
15 PATRIOT and Intelligence Reform Reauthor-
16 ization Act of 2005, the courts established pur-
17 suant to section 103(a) shall establish such
18 rules and procedures and take such actions as
19 are reasonably necessary to administer their re-
20 sponsibilities under this subsection.
21 "(B) REPORTING.—Not later than 30 days
22 after promulgating rules and procedures under
23 subparagraph (A), the courts established pursu-
24 ant to section 103(a) shall transmit a copy of
25 the rules and procedures, unclassified to the

1 greatest extent possible (with a classified annex,
2 if necessary), to the Committee on the Judici-
3 ary and the Select Committee on Intelligence of
4 the Senate and the Committee on the Judiciary
5 and the Permanent Select Committee on Intel-
6 ligence of the House of Representatives.
7 "(4) DISCLOSURES TO PETITIONERS.—In mak-
8 ing determinations under this subsection, the court
9 shall disclose to the petitioner, the counsel of the pe-
10 titioner, or both, under the procedures and stand-
11 ards provided in the Classified Information Proce-
12 dures Act (18 U.S.C. App.), portions of the applica-
13 tion, order, or other related materials unless the
14 court finds that such disclosure would not assist in
15 determining any legal or factual issue pertinent to
16 the case.".

Chairman SENSENBRENNER. The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you. Mr. Chairman, this amendment amends Section 215 in three ways: Section 215 authorizes the FBI to get a secret order for any document or anything, as long as the FBI says it is relevant to a terrorist investigation. The FBI would go to a—would obtain an order from a secret FISA court to obtain a broad array of highly personal records, such as those held by hotels, libraries, doctors, and schools, or any other, quote, tangible things. They can do this without probable cause in domestic intelligence investigations to protect against terrorism or spying.

Under Section 215, this power can be used against literally anyone, even if the person is not suspected of any wrongdoing and is completely unconnected to terrorism, espionage, or other criminal activity. Section 215 in effect allows the FBI to conduct fishing expeditions against any American citizen innocent of anything.

This amendment would amend Section 215 in three ways: It would restore a standard of individualized suspicion, saying that you could get an order if you have—if you can show specific and articulable facts leading you to believe that this person is an agent of a foreign power or a terrorist.

Second, it allows the recipient of a Section 215 order to challenge the order in court. This is a common-sense protection that is sorely lacking in the current law.

Now, the recipient, not the target—this isn't good enough, but we can't do the target. Remember, the recipient could be the Internet service provider or the library. And the Internet service provider may be perfectly happy to provide the records of some subscriber. But at least this gives them the ability to go to court when they get the order if they think it proper. It doesn't give the target of the order the ability to go to court. He doesn't know about it. But the recipient, if they wish, can challenge it in court.

And, thirdly, it gives the recipient the ability to petition the court to set aside the non-disclosure requirement. Remember, you're not allowed to disclose that you got this order. And this would enable the recipient not only to petition the court to oppose the order, but to petition the court, if it granted the order, to set aside the non-disclosure requirements if it is—unless it is shown that some adverse result will come from disclosure. In other words, they could go to court and say let us tell the target or the public that you gave us this order and that we complied with it afterwards, unless someone can—unless the FBI can make a showing that disclosure of this would have some adverse effect.

The Chairman's bill does allow for a limited version of judicial review of Section 215, but that review is very narrow. It would require the recipient to file the claim for review in a specialized court which would only meet in Washington. If you were residing or your place of business was anywhere in the country other than Washington, this would be highly disadvantageous and maybe impossible, depending upon the expense. This amendment would say you could go to court and petition the court in any Federal—not just in Washington, D.C.

I think that allowing a standard of individualized suspicion that you say you can only get this information if you say—if you can show to the court specific and articulable facts why you believe

that this fellow is a terrorist or an agent of a foreign power, allowing the recipient to challenge the order in court and allowing the recipient to ask the court in its discretion to waive the non-disclosure requirement afterward are reasonable amendments which balance the liberty interests that we all have with the security interests that we all have, too.

I urge the adoption of the amendment and I yield back.

Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Mr. Chairman, I rise in opposition to the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. LUNGREN. Mr. Chairman, when you look at this amendment, it is obvious that the standard proposed here is much more rigorous than the relevance standard under which Federal grand juries and ordinary criminal investigations can subpoena the same records. This particular amendment would prevent the FISA court from issuing an order under Section 215 unless the Government provides specific and articulable facts giving reasons to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.

As I say, this is a higher standard. The standard would, in my judgment, hinder the Government from using a Section 215 order to develop evidence at the early stages of an investigation when such an order is most useful.

Consider an example where investigators are tracking down a known al Qaeda operative who's having dinner with three people who split the check four ways and each uses a credit card. While law enforcement could demonstrate that this information is relevant to an ongoing investigation, they would not be able to demonstrate sufficient and articulable facts that those individuals are agents of a foreign power.

One of the things that we have tried to understand here is that this is in the area of attempting to deal with activities before they expand into what would be known as a criminal act. This is in the nature of trying to stop terrorists before they act, not in the nature of a regular criminal investigation which oftentimes is begun when you start to examine the crime scene, develop the forensic evidence, and then try and prove your case. This is a far different situation, and it strikes, I believe, precisely at when a 215 order is most useful. Raising this standard above relevance and requiring specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power would significantly, therefore, reduce the utility of Section 215.

Also, with the—I guess it's the—it's either in the middle of the gentleman's amendment or towards the end, where he talks about allowing this to be challenged in either a U.S. district court or in the FISA court, Section 215 orders are issued by the FISA court, and any motion to set aside or amend the order I would argue should be directed to the issuing court. It is the FISA court that is better equipped than district courts to handle sensitive classified information at issue in terrorism cases.

So let us remember why we have this section. This section is specifically to deal with the new reality that we have facing us, and that is terrorism, with respect to transnational organizations as well as a lone wolf, but primarily transnational organizations. And that's why we need the section as it is. I understand the gentleman's desire to try and raise this standard to specific and articulable facts, giving reason, as the words he has. But I believe this much more rigorous standard beyond the relevance standard would be destructive to the purposes of Section 215.

Mr. BERMAN. Would the gentleman yield?

Mr. LUNGREN. I'd be happy to yield.

Mr. BERMAN. I thank the gentleman for yielding. Is the gentleman's objection to the first part of the amendment an objection to the requirement of specific and articulable facts or that it is limited to a suspect—a suspected agent of a foreign power, a suspected terrorist?

Mr. LUNGREN. I would suggest that it's in both—both sections. You know, I think you need the relevance standard. There was an argument about whether or not there should be a relevance standard. I don't think there's any doubt there ought to be a relevance standard. It is in this bill as an articulated standard. One of the questions we had at the hearings at the very beginning was shouldn't there be some relevance requirement. The response we heard from the Justice Department was that's the practice, that's what we require, that's what the courts require.

So what the Chairman of the Committee has done is put that relevance standard in here.

Mr. BERMAN. I appreciate——

Mr. LUNGREN. I believe that's sufficient.

Mr. BERMAN. I appreciate that, but let me just—I mean, the gentleman cited a hypothetical, which I have some sympathy for. I mean, you do want—to the extent you're using these, they're to go early and gather information.

Mr. LUNGREN. Yes.

Mr. BERMAN. But you talked about people who had associated——

Mr. LUNGREN. Right.

Mr. BERMAN.—with someone who was suspected of being an agent of a foreign power.

Mr. LUNGREN. Right.

Mr. BERMAN. I'm just wondering if—is there something a little—something that is more—more specific than just a simple relevance standard but is not so inflexible to keep you from, for instance, subpoenaing—getting—searching and getting a hold of the records, whatever they are, of Mohammed Atta's roommate——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. BERMAN. I'd ask unanimous consent for one additional minute.

Chairman SENSENBRENNER. Without objection.

Mr. BERMAN. I just throw out the possibility that there's something between what you think is appropriate, the relevance standard, based on the hypothetical you cited, and a number of other hypotheticals which could allow this FISA warrant or subpoena to be—to be utilized and not be limited simply to someone for which

there are specific and articulable facts is an agent of a foreign power.

Mr. LUNGREN. If the gentleman would allow me to respond to that, the standard proposed here is really the relevance standard under which Federal grand juries in normal circumstances operate. What the gentleman's amendment suggests is that we go above that to specific and articulable facts. Between the two, it seemed to me the standard that is well recognized has been utilized in the grand jury circumstance would be the appropriate one, that the system understands, that the prosecutors understand, that the courts understand, and that, in fact, has been used. And I thought that was the subject of the inquiry we had during the hearings, which was the concern people had that we didn't have any standard, we didn't have a relevance standard.

And so in speaking with the gentlemen and women on the other side and with the Chairman, it seemed to me, as I talked with the Chairman and the staff, that a relevance standard articulated specifically was sufficient for what we needed.

Mr. BERMAN. Well, I will perhaps pursue this later on.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I——

Chairman SENSENBRENNER. Recognized for 5 minutes.

Mr. CONYERS. I want to find out if this is correct, and I'd like to make sure that the gentleman from New York, Mr. Nadler, is following this. Section 215 broadens significantly who such orders can be used against, and herein lies the problem. Records prior to the PATRIOT Act could only be sought if the Government showed that the person whose records are sought is a foreign power or an agent of a foreign power. Now the Government need only show that the records are sought for a, quote, authorized investigation, unquote. And I ask the gentleman from New York: Is that a part of the problem that we have with the 215 as it presently——

Mr. NADLER. Well, yet, the—yes, 215 has been expanded so that not only are we relaxing the standard, but we're relaxing the—against whom it—against whom it can be issued and for what it can be issued. So it becomes a roving fishing expedition generally, which is why narrowing the standard to articulable facts, which was the standard for all these other things before, is what we're trying to do.

Mr. LUNGREN. Would the gentleman yield on that point, Mr. Conyers?

Mr. CONYERS. I'd be happy to yield.

Mr. LUNGREN. See, here's the concern, and it goes to the—to the scenario that the gentleman from California, Mr. Berman, had brought up.

It's my understanding that if investigators were to learn that someone lived with Mohammed Atta prior to the September 11 attacks but knew nothing else about the individual, investigators, reasonable investigators I think would want to find out more about the individual. They'd want to find out about his credit, his bank, his travel, his phone records. And under the specific and

articulable facts standard, the investigators would not be able to request this information using Section 215.

Mr. NADLER. Would the gentleman yield?

Mr. LUNGREN. Yes.

Mr. NADLER. Would the gentleman yield?

Mr. LUNGREN. Well, it's not my time.

Mr. CONYERS. I yield.

Chairman SENSENBRENNER. The time belongs to the gentleman from Michigan.

Mr. CONYERS. I yield.

Mr. NADLER. Thank you. Well, Mr. Lungren, I think that if someone was a roommate of Mohammed Atta, that would be a specific and articulable fact connecting him to an agent of a foreign power.

Why? Because Mohammed Atta——

Mr. LUNGREN. If the gentleman would yield, it's my understanding, speaking with—speaking with representatives of the Justice Department, in fact, that would not——

Mr. NADLER. I'm sorry, say that——

Mr. LUNGREN. But they would have to show a relevance standard, but that falls short of specific and articulable facts. The specific and articulable facts standard is too high.

Now, I will have to tell you, I am relying on those who have pursued cases such as this, and the information I have is that that is too high a hurdle. And, again, I would just repeat, when we went into this, the whole argument we had when we had the hearing—I can recall it—was don't you believe, Representative of the Justice Department, we need to have a relevance standard? Would you object to a relevance standard? And the response was, no, in fact, that's how we proceed. We——

Mr. CONYERS. All right. I'd like to yield to the gentleman from California.

Mr. BERMAN. I think your point of limiting it to the agent of a foreign power, that has meaning to me, and the problem—the problem with that. I still think there is—you keep citing hypotheticals that involve an association with a suspected agent of a foreign power, and then say in order to do that, let's just have a relevance standard.

This isn't a typical search warrant. This is a FISA search warrant. And I still think—I guess I still think there is a middle ground here that provides the Department with the flexibility to use FISA in these cases, but that is a little tighter than just a simple relevance standard, but not as limiting as the person has to be a suspected agent of a foreign power. And I just—I just want to harp on that because I may want to come back to that.

I mean, I will vote for the gentleman's amendment because I'm unhappy simply with the relevance standard, but I think the right place to land on this is somewhere between the two.

Mr. CONYERS. And so do I. I hope this discussion has supported the Nadler amendment, and I return the time.

Chairman SENSENBRENNER. The time of the gentleman——

Mr. NADLER. Would the gentleman yield for a moment?

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Yeah, I think I'd like to pose a question to Mr. Lungren in terms of the other two aspects of the Nadler amendment relative to opportunity to challenge and disclosure—or elimination of the gag rule after a hearing, because I think what I find particularly interesting is that Mr. Nadler reaches a conclusion that being a roommate of Mohammed Atta is an articulable fact. And your—and I have the same memory. The statement from the representative of the Department of Justice that would not constitute an articulable fact says to me that there is a role here, a more—a significant role for judicial review than currently exists. If either Mr. Nadler or Mr. Lungren would want to comment.

Mr. LUNGREN. I don't—I mean, if the gentleman is talking about going beyond the FISA court? Is that the suggestion of the gentleman?

Mr. DELAHUNT. No.

Mr. LUNGREN. Because that's the review that takes place now.

Mr. BERMAN. Would the gentleman yield?

Mr. DELAHUNT. I'll yield to the gentleman from California.

Mr. BERMAN. Here's the problem. You equate this with a grand jury investigation, but those are not secret warrants. Someone has a right to challenge them. It is the combination of this secret warrant which the bill now will allow the person who is required to deliver the records to learn about. I don't understand exactly what that means, the person who gets the warrant can't disclose it. If the person who gets the warrant isn't the person who can produce the records, somebody's going to have to learn about it anyway. It's—but since the object of this warrant, the target of this warrant is never going to know about it, the notion of requiring something more than the standard you'd have for a grand jury is real.

At the same time, I think people who have—where you can provide specific and articulable facts that someone is the target who was associated with the suspected agent of a foreign power, I think the Justice Department should have FISA warrants available to get those records in this fashion, and that's—I think that's the whole point, is you can't just simply put this off as, oh, this is like a grand jury investigation, because a grand jury investigation, those warrants aren't secret and the target of it can challenge the warrant, and there's a very established procedure to raise with the judiciary in a public way, the question of whether they're—the warrant was overbroad.

Here we're not going to have that for very understandable reasons, so let's give the FISA court some—a little bit more specificity than simply a broad claim of relevance to make its judgment about whether or not to issue the warrant.

Mr. DELAHUNT. Reclaiming my time, I think the point that Mr. Berman is taking is the availability of a motion to quash exists in terms of a criminal investigation, whereas it does not exist in this particular case.

Mr. LUNGREN. Would the gentleman yield on that?

Mr. DELAHUNT. I'll yield.

Mr. LUNGREN. I would cite page 7, starting at line 16 of the bill.

Mr. DELAHUNT. Okay.

Mr. LUNGREN. Which says that a person receiving an order to produce any tangible thing under this section may challenge the legality of that order by filing a petition in the special panel established by the bill. That's a special panel under——

Mr. NADLER. Would the gentleman yield?

Mr. LUNGREN.—the FISA court, and then one would have, if I'm not mistaken, the court of review shall immediately provide for the record a written statement, and the petition of the individual involved can go directly to the Supreme Court under seal. That's a new provision.

Mr. DELAHUNT. I understand that. Reclaiming my time, however, what we're talking about is the—it's the ISP, not the target of the investigation. With that, I yield to the gentleman from New York.

Mr. NADLER. Thank you.

Mr. Lungren, the fact is that as Mr. Berman said, here the target of the investigation never hears about this. In a grand—you can't simply analogize it to a grand jury situation. In the grand jury situation, the target is served—knows about it. He can make the motion to quash. He can make the motion to limit the scope of the production—of the order. In this situation, he doesn't know about it. The ISP, who is the—who has the records, or perhaps the library or whoever else, or the travel agency or the credit card company, they get the subpoena, the target doesn't. The target never gets the opportunity to quash, number one.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. NADLER. I ask unanimous consent for an additional 2 minutes on this.

Chairman SENSENBRENNER. Without objection, the gentleman from Massachusetts will be given an additional 2 minutes.

Mr. DELAHUNT. I yield. I continue to yield to the gentleman from New York.

Mr. NADLER. Thank you. So it is necessary to limit it somewhat.

Now, I believe that in the situation that you've stated before—and maybe—that if you can—if a known terrorist, a known agent of al Qaeda is having lunch and splitting the credit cards with two other guys, that's enough—that's an articulable fact to connect those two guys with him and, therefore, to justify under this standard. But—that's an articulable fact connecting him to a foreign power, because if a foreign power—al Qaeda is considered a foreign power.

But going further than that—but, again, I would be open to—to some intermediate standard in this, say a simple standard of relevance, where you can—where you can get virtually anything and the target knows nothing about it and can't move to quash or to limit is not sufficient. And I would also say in response to what Mr. Lungren said before, the second part of the amendment, it simply allows you to go in and allows the recipient of the order, the ISP or the library or the credit card company, to oppose the order in a Federal court, not just a FISA court. Yes, the FISA court is a good court to do that, but the Federal court can also do things in secret. And a Federal court is just as able as a FISA court to weigh the interests here, but a Federal court has the advantage of not being only in Washington, D.C. If you're a local library or a local car rental company in California, it's very difficult for you to go to Washington to move in court to oppose the order.

Mr. DELAHUNT. Reclaiming my time, I'd pose to Mr. Lungren the question that was just—the observation and put it in the form of a question made by the gentleman from New York, whether he would have an objection to that aspect of this particular amendment, the right to challenge in either the FISA or—obviously in an in-camera proceeding in a Federal district court.

Mr. LUNGREN. Well, before I respond—or in trying to respond to that, I would just say I'm confused by some of the comments that were made——

Chairman SENSENBRENNER. Without objection, the gentleman will be given an additional 2 minutes.

Mr. LUNGREN. Suggesting that a grand jury subpoena is in all or most circumstances disclosed to an individual whose records may be a subject of the subpoena. There are non-disclosure orders given often with respect to those things, and people are not aware of what goes on in the grand jury. So I'm trying to figure out——

Mr. DELAHUNT. Right, but my response, reclaiming my time, would be that that—under those particular circumstances, there is judicial intervention and a non-disclosure order is issued by a court in a traditional Title III criminal investigation. That is not the case here. What we have is this automatic gag order that is evoked in the legislation.

With that, I continue to yield to the gentleman from New York.

Mr. NADLER. I think I've said what I wanted to say. This has three sections. Again, if the specific and articulable facts—and, again, this may show why we should have had a hearing specifically on the—on the draft. If that's too high, maybe we should find some other standard intermediate, because a simple standard of relevance under these subject—under these circumstances is too broad a fishing expedition. And, again, we should allow the recipient of the order to go into any Federal court in camera if the court—well, it would have to be in camera. And don't forget the third part of the amendment, which says that you can challenge the non-disclosure part of it, too.

In the interest of not having 50 amendments, I put all three of them together. I would be willing to separate if someone——

Chairman SENSENBRENNER. The time of the gentleman from Massachusetts has once again expired. The question is on agreeing to the amendment offered by the gentleman from New York, Mr. Nadler. Those in favor will say aye. Opposed, no?

The noes appear to have it.

Mr. NADLER. Mr. Chairman, I ask for the ayes and nays.

Chairman SENSENBRENNER. A rollcall is requested and will be ordered. Those in favor of the Nadler amendment will as your names are called answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
[No response.]
The CLERK. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. I vote aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]

The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members in the chamber who wish to cast or change their votes? The gentleman from Virginia, Mr. Boucher.
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye.
Chairman SENSENBRENNER. Further members in the chamber who wish to cast or change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 12 ayes and 23 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments? For what purpose does the gentleman from Arizona seek recognition?
Mr. FLAKE. I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
Mr. FLAKE. Thank you, Mr. Chairman.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to H.R. 3199, offered by Mr. Flake. In Section 501(d) of the Foreign Intelligence Surveillance Act of 1978, as proposed to be amended by Section 8(c), strike "in response to" each place it appears and insert "with respect to."
[The amendment of Mr. Flake follows:]

AMENDMENT TO H.R. 3199
OFFERED BY MR. FLAKE

In section 501(d) of the Foreign Intelligence Surveillance Act of 1978, as proposed to be amended by section 8(c), strike ''in response to'' each place it appears and insert ''with respect to''.

Chairman SENSENBRENNER. The gentleman from Arizona is recognized for 5 minutes.

Mr. FLAKE. Thank you, Mr. Chairman. My amendment simply strikes the words "in response to" under 215 in the bill and adds the words "with respect to." This amendment would further clarify that a person can disclose to an attorney the receipt of a 215 order to not only respond but to challenge the order. While I don't believe that it's the purpose of this legislation to deny consultation to challenge, I believe that the concerns raised by Section 215 merit more specificity in the bill. Thus, this amendment makes it clear that a person who has received a 215 order may disclose that information to an attorney not just to respond to the order but to challenge the order.

This clarification provides additional protections for librarians, bookstore and small business owners to be able to have a clear, viable, legal recourse when faced with a 215 request. It seems clear that when we're talking about possibly allowing the Government to access important and sensitive records, we need to make sure that people's rights are explicitly protected in the law. I urge my colleagues to accept the amendment.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. FLAKE. I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from Arizona, Mr. Flake. Those in favor will say aye. Opposed, no?

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments? Are there further amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I have an amendment at the desk, number 4.

Chairman SENSENBRENNER. The clerk will report Scott amendment number 4.

The CLERK. Amendment to H.R. 3199, offered by Mr. Scott of Virginia. Add at the end the following: Section. Limitation on authority to delay notice of search warrants. Section 3103(a) of Title 18, United States Code, is amended (1) in subsection (b), (A), in paragraph (1), by striking "may have an adverse result as defined in Section 2705" and inserting "will endanger the life or physical safety of an individual, result in flight from prosecution or the intimidation of a potential witness, result in the destruction or tampering with the evidence sought under the warrant, or seriously jeopardize or delay an investigation of international or domestic terrorism,"; and (b)——

Mr. SCOTT. Mr. Chairman, I ask unanimous consent that the reading be waived.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment of Mr. Scott follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. SCOTT OF VIRGINIA

(#4)

Add at the end the following:

Sec.____. LIMITATION ON AUTHORITY TO DELAY NOTICE OF SEARCH WARRANTS.

Section 3103a of Title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1) , by striking "may have an adverse result (as defined in section 2705)" and inserting "will endanger the life or physical safety of an individual, result in flight from prosecution or the intimidation of a potential witness, result in the destruction or tampering with the evidence sought under the warrant, or seriously jeopardize or delay an investigation of international or domestic terrorism"; and

(B) in paragraph (3), by striking " a reasonable period" and all that follows and inserting "seven calendar days", which period, upon application may thereafter be extended by the court for additional periods of up to 30 calendar days each, for good cause shown to the court".

Chairman SENSENBRENNER. And the gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this amendment eliminates a wide open catch-all for sneak-and-peek which says you can get a sneak-and-peek warrant if the notification would seriously jeopardize the investigation, which is any investigation, or unduly delay a trial, any trial. And it also limits the investigation and delay to terrorism cases.

What we're constantly told is the justification for the sneak-and-peek extraordinary powers is that the Government has to invade our privacy and spread information all over town to protect us from terrorism. Yet we find that the vast majority of the delayed notice cases do not involve terrorism cases at all, but just ordinary street crime.

The amendment also places some reasonable time limit over oversights and how long a notice can be delayed and how that delay can be extended. With such invasive powers, restrictions, and oversight—in restrictions, oversight is crucial. There's no real remedy or serious disincentive for a mistake or other unwarranted access to someone's privacy in these sneak-and-peek warrants. So it's crucial that you have some kind of review and oversight mechanisms.

One of the things it does, for example, is requires the notice after 7 days, or you can extend that in 30-day increments for as long as you want. But you have to show cause for a continued reason to delay. We've been told that some of these delayed notification indefinitely without end, and there's no way ever to get notice. I think you need to continue after so many years. I think at some point notice should be given that your house was searched. That's the normal process, and I hope you'd adopt the amendment.

Ms. LOFGREN. Would the gentleman yield?

Mr. SCOTT. I yield.

Ms. LOFGREN. I commend the gentleman for his amendment, and I'd like to point out that this is a good reason why we have a sunset clause. What's in the bill was written in haste. What the gentleman has written by amendment is tightly drawn and very thoughtful and a good example of why the sunset really is important, and I thank the gentleman for yielding.

Mr. SCOTT. Thank you. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman.

I appreciate the concerns that Mr. Scott has, particularly with regard to a reasonable period, and I am, in fact, drafting an amendment that I hope to offer on the floor that will deal with that aspect. And so I do have the same concerns, but I think 7 calendar days is probably too short. And so I would love to work with the gentleman from Virginia on the floor amendment, if I can.

Mr. SCOTT. Would the gentleman——

Mr. FLAKE. I yield back——

Mr. SCOTT. Would the gentleman yield?

Mr. FLAKE. If I haven't yielded back, I would yield.

Mr. SCOTT. What time period did you have in your amendment that you'll be considering?

Mr. FLAKE. I'm still working with others on that.

Mr. SCOTT. And if you'll continue to yield, I'd point out that the 7-day period is a presumption that you can delay it 7 days, but you can get it extended in 30-day increments forever, so long as you can show good cause.

Mr. FLAKE. I will have a similar provision in my bill, a reasonable——

Mr. SCOTT. Well, with that, Mr. Chairman, I think I'd like to work with the gentleman from Arizona, and I'll withdraw the amendment at this point.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments? The gentlewoman from California, Ms. Waters, for what purpose do you seek recognition?

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

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199, offered by Ms. Waters of California. Add at the end the following: Section—National Security Letters. A national security letter shall not be issued to a health insurance company under any of the provisions of law amended by Section 505 of the Uniting—Uniting and Strengthening America by providing appropriate tools required to intercept and obstruct terrorism, US PATRIOT Act of 2001.

[The amendment of Ms. Waters follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MS. WATERS OF CALIFORNIA

Add at the end the following:

SEC. ___. NATIONAL SECURITY LETTERS.

A national security letter shall not issue to a health insurance company under any of the provisions of law amended by section 505 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

Chairman SENSENBRENNER. The gentlewoman from California is recognized for 5 minutes.

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

My amendment would prohibit Section 205, National Security—National Security Letters, from being applied to help insurance companies. Mr. Chairman, as it stands, the Government can issue secret national security letters to help insurance companies without any judicial review or approval. Therefore, health insurance providers can be compelled to produce highly private and personal medical information without any court review. And the target of the national security letter would never be notified that such confidential information had been produced.

Mr. Chairman, we must be concerned and even ask how do medical records pertain to terrorism investigations. What kind of information will this lend to the investigations? There are no clear answers to these questions. Records that are so highly personal and that on their face do not seem to bear any significance to terrorism investigations should be subject to judicial review so that the Government will be required to prove to a judge why such confidential information would be important to such an investigation.

Mr. Chairman, in a criminal investigation, the Government can only obtain such personal records through the issuance of a search warrant. However, the Government must first prove that there is probable cause that a crime has been or will be committed.

Mr. Chairman, there is no reason why the Government should be allowed to demand the production of such personal private records without any judicial review or notice to the target. And though my—through my very special amendment, checks and balances can be injected into the production of our confidential medical records.

I just think it needs no further explanation. I think that the average individual would just be opposed to allowing their medical records to be accessed without judicial review and without any notice at all at any time to the target of the so-called investigation. And I would simply ask for an aye vote and reserve the balance of my time.

Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. I rise in opposition to the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. LUNGREN. The question was posed, Why would health records ever be relevant in a terrorism investigation and why would you need a national security letter for investigation? Well, let's see. Anthrax, dealing with other biological or chemical agents. Someone might be treated for that to gain immunities to that such that when they are dealing with those particular contaminants they may not be deleteriously affected.

So I think one of the things we have to keep in mind is what is the context of this law. This law is in response to the terrorist attacks that we suffered on 9/11. The 9/11 Commission specifically said the greatest complaint against the legislative and executive branch of the Federal Government was that we failed in a lack of creativity, a lack of imagination, in other words, thinking within the box instead of outside the box. So I am not as—I am not put

at ease by suggesting that I know all of the potential attempts that terrorists might make to attack us.

Recently, I, along with other members of the Homeland Security Committee, had an opportunity to go down and do a day's review at the Center for Disease Control, CDC, which in many ways is responsible for our response to potential attacks such as those I've mentioned. If that is as great a concern as was expressed to us on our review down there, it seems to me for us to create a total exemption here for health records because we can't anticipate where they might be relevant is a step that I don't think we want to take.

Mr. GOHMERT. Would the gentleman yield?

Mr. LUNGREN. I'd be happy to yield to the gentleman from Texas.

Mr. GOHMERT. Yes, if I might add, as a judge, we constantly saw people and these criminals, terrorists that want to hurt other people deal with dangerous elements. They are often injured in trying to prepare things to injure others. And these health records could be in the right situations—and I saw those as a judge—helpful in determining have they been working with these dangerous elements and components that would be used later. They could be very helpful.

I yield back.

Mr. SCHIFF. Will the gentleman yield?

Mr. LUNGREN. Yes.

Mr. SCHIFF. I appreciate the gentleman yielding, and, you know, I think that you make a number of good points. But I want to ask you one question, and that is, the use of the national security letter which has, I think, the least number of safeguards applied to it, because there is no court review, there is no going before a grand jury. And I guess my question is: Under what circumstances is it necessary to use the extraordinary remedy of a national security letter as opposed to going to the FISA court for this information or going to the grand jury for this information where there are greater checks? When would it be necessary to use the national security letter where there is really no oversight?

Mr. LUNGREN. I am sorry. I was——

Mr. SCHIFF. Let me try again.

Mr. LUNGREN. I apologize. I'm not showing disrespect to the gentleman.

Mr. SCHIFF. And my question is not rhetorical. I generally would like an answer. And that is, I think that you make a good point that in an anthrax investigation or some other biological kind of investigation, that you may need these records. My question though is there are several methods of getting them. In a criminal investigation you can go through the grand jury where there's a check. In the FISA Court you need court permission to get it where there's a check. With the national security letter, there is the least checks and balances.

And my question is, why do we need to use the national security letter in this context? What kind of circumstances would require us to use the extraordinary remedy of a national security letter as opposed to the more traditional approach of going to the grand jury or going to a FISA court?

Mr. LUNGREN. Well, it's my understanding that these are preliminary investigations before you have probable cause. These are investigations that have not arisen to the level of a criminal inves-

tigation, so you're not going to be doing a grand jury investigation. They are by their very nature go to the question of national security, and I guess the question the gentleman is asking is why do we have these at all?

I am not the expert in that. I would just say I would not support us creating an exemption for them in the—for health records for the very reasons I gave.

Mr. SCHIFF. Will the gentleman yield again?

Chairman SENSENBRENNER. The gentleman's time has expired. Without objection the gentleman will be given an additional minute.

Mr. SCHIFF. I appreciate what you're saying, but if you're saying that there isn't probable cause so you can't get a grand jury subpoena, and there's no foreign agent or foreign power involved, so you can't go to the FISA court, then what do you have as the basis for getting this very personal private record, something not involving foreign power and something less than probable cause? To get something that personal like a medical record, I think there should be a stronger basis than that. And there may very well be a good argument, but I just haven't heard it yet today, and I'm—if somebody else on the other side of the aisle can answer that question, I would be delighted to know.

Mr. ISSA. If the gentleman would yield?

Mr. LUNGREN. Yes, I'd be happy to yield.

Mr. ISSA. I might remind the gentleman from California that in 2001 when we had an anthrax actual event here, we did not know whether it was foreign power, and if—and I don't know if it was done—if there was an evaluation of people's health records to find out if somebody showed the symptoms where they might have either been a victim or in fact a perpetrator, that that would have been broad, it would have had no probable cause against them, and to the extent that people didn't have an enzyme or some other indication, nothing further would have happened. It would have been the classic example where national security was at stake, thousands of people might have been checked in order to be eliminated or to be included, and no further action was taken.

To me, the anthrax, not scare, but events that we lived through would be a good example.

Mr. SCHIFF. Would the gentleman yield?

Chairman SENSENBRENNER. The gentleman's time is again expired.

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

Chairman SENSENBRENNER. The gentleman from California is recognized for 5 minutes.

Mr. SCHIFF. Two points on that. One is—and I'd offer my colleague from California—do you know whether a national security letter was ever issued in the anthrax investigation? My guess is they probably used the traditional remedies of grand jury subpoenas. And No. 2, there's not a grand jury in the country that would turn down a subpoena in an anthrax investigation of that nature.

So, again, there may be very good reasons why we need a national security letter to get health records, but I'd like to know what they are before I have to vote on this, and I still am not quite hearing it. I yield back.

Mr. DELAHUNT. Would my friend yield?

Mr. SCHIFF. I'd be happy to yield to my colleague from Massachusetts.

Mr. DELAHUNT. I understand the concerns about just simply a blanket exemption that would deny the Government the opportunity to examine health records, but I think the point that the gentleman is making by inference is that there are no standards whatsoever as a result of the PATRIOT Act. It's my understanding that prior to the passage of the PATRIOT Act, specific and articulable facts given reason to believe the records pertain to an agent of a foreign power was the standard. That, I dare say, given the experience that we've had, given the hearings that we've conducted, ought to be reinserted as part of the issuance of national security letters. Give us a standard. That's what we're talking about here.

And if any of my colleagues on the other side of the aisle think that that is too high a standard, I would like to hear them offer a rationale, because in the real world that is simply not a very high standard, but it does invoke a oversight, if you will, as opposed simply to allow the FBI, based on an assertion, to issue a NSL that no one is aware of, and, you know, maybe it requires a little more work. But this isn't about conveniencing Government. It certainly, I don't think, would warrant any delay. A delay would be an impediment. This is about privacy rights, about individual liberties. This is not balancing with national security concerns, but it's not a matter of convenience for the Department of Justice. And I think that's what our focus has to remain during the course of our deliberations on the reauthorization of the PATRIOT Act.

Ms. LOFGREN. Mr. Chairman?

Mr. DELAHUNT. I'll yield to the gentlelady from California.

Ms. LOFGREN. I would just note that we have some options here. One is really what the gentleman has said, which is to set out standards that we agree are reasonable for the use of these powers by the Government or to provide—three are certain elements entitled to enhance privacy, and to fall back on ordinary means to obtain such records. I don't know if anyone is going to offer later an amendment relating to library records or bookstore records, but the ability of people to read what they want, to have their health care records respected is something that means a lot.

Now, I'm going to support this amendment because if this amendment passes, there are still plenty of ways for prosecutors to obtain these records if they can make a case that they're necessary. So I would yield to the gentlelady from California further on that point.

Ms. WATERS. I appreciate that. And I think the discussion that we've had helps to illuminate why there's such concern about what we do in renewing the PATRIOT Act. This Committee, on PATRIOT Act I, acted in a most responsible way, and we came together to produce the PATRIOT Act, and we took out a lot of the problems that were originally identified with the PATRIOT Act because Americans simply said, we want you public policymakers to protect us from terrorism, but we do not want you to destroy all of our civil liberties. And the's really the national discussion about the PATRIOT Act. Can we produce good public policy that will help protect us from terrorism, at the same time not throw all of our

civil liberties out of the window. And this is a prime example of that.

Americans do not want national security letters that would allow the Government to simply have access too all of our medical and health records without showing probable cause. We have in law the means by which this can be done.

Chairman SENSENBRENNER. The gentleman's time has expired, and without objection will be given an additional minute.

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

This can be done with judicial review. And I'm simply saying that we use what we have in existing law to obtain those records if we can go and show probable cause—and I think any judge would support that. I don't know why we have to throw that out the window and have open access to these private and personal records without that kind of review.

So I would simply ask my colleagues to support this amendment. I think it is reasonable. I think it is the right thing to do, and I think this is what Americans expect of us.

Chairman SENSENBRENNER. The time of the gentleman has expired.

The question is on agreeing to the amendment offered by the gentlewoman from California, Ms. Waters. Those in favor will say aye.

Opposed, no.

The ayes appear to have it.

Mr. GOODLATTE. rollcall.

Chairman SENSENBRENNER. rollcall is requested by the gentleman from North Carolina. Those in favor of the Waters amendment will, as your names are called, answer aye; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. No.
The CLERK. Ms. Wasserman Schultz, no. Mr. Chairman?
Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Members who wish to cast or change their vote? Gentleman from Illinois, Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no.

Chairman SENSENBRENNER. Further members who wish to cast or change their vote?

[No response.]

Chairman SENSENBRENNER. If not, the clerk will report.

The CLERK. Mr. Chairman, there are 14 ayes and 23 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are three further amendments?

Mr. ISSA. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.

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

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199 offered by Mr. Issa. At the appropriate place in the bill insert the following new section:

Section - Roving Surveillance Authority Under the Foreign Intelligence Surveillance Act of 1978.

(a) Inclusion of specific facts in application. Section 105(c)(2)(b) of the Foreign Intelligence Surveillance Act of 1978 (50 USC 105(c)(2)(B), as amended by Section 206 of the USA PATRIOT Act is amended by striking——

Chairman SENSENBRENNER. Without objection the amendment is considered as read, and the gentleman from California will be recognized for 5 minutes.

[The amendment of Mr. Issa follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. ISSA

At the appropriate place in the bill insert the following new section:

SECTION ___. ROVING SURVEILLANCE AUTHORITY UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) INCLUSION OF SPECIFIC FACTS IN APPLICATION.—Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)), as amended by section 206 of the USA PATRIOT ACT, is amended by striking ''where the Court finds'' and inserting ''where the Court finds, based upon specific facts provided in the application,''.

(b) NOTIFICATION OF SURVEILLANCE OF NEW FACILITY OR PLACE.—Section 105(c)(2) of such Act is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

"(E) that, in the case of electronic surveillance directed at a facility or place that is not known at the time the order is issued, the applicant shall notify a judge having jurisdiction under section 103 within 10 days after electronic surveillance begins to be directed at a new facility or place, and such notice shall contain a statement of the facts and circumstances relied upon by the applicant to justify the belief that the facility or place at which the electronic surveillance is or was directed is being used, or is about to be used, by the target of electronic surveillance.".

Mr. ISSA. Thank you, Mr. Chairman. On both sides of the aisle I think that we all remember, those of us who were here, how important it was to modernize the definition of a wiretap, that in fact this section was created because the use of cellular phones, and particularly disposing of cellular phones on as often as a daily basis, had made the conventional wiretap unusable. In this procedure we felt in October 2001, that we were entering a new phase, one that would need oversight.

Today as part of our oversight during the sunset reconsideration, I offer this amendment which deals with the one most vexing issue, which is, are we giving people the ability to go on jumping from phone to phone beyond the original intent of a roving wiretap? To that extent this amendment will require that the intelligence investigators notify the FISA Court within 10 days each time it initiates surveillance on a new communication facility pursuant to the FISA—I have a terrible time with that, FISA, yeah, thank you, FISA as in Issa—roving wiretap.

Mr. Chairman, I can see that we all understand that these kinds of wiretaps can go on for months or years, and commonly do, and they may stay with one cellular phone for months on end. However, if somebody is disposing of their wiretap every single day, every 10 days, under my amendment, we would be back in informing the court that there was an expansion. This would prevent what many have said would be the bugging of all of Los Angeles. Just the opposite, this will give the court constant oversight on what might be a very often basis, but I think appropriately so to meet people's concerns, and I would ask on both sides of the aisle, all of us who worked on the original legislation, to vote for this perfecting amendment.

And with that, I yield.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from California, Mr. Issa. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it.

Mr. ISSA. I would ask a recorded vote.

Chairman SENSENBRENNER. Recorded vote is requested. Those in favor of the Issa amendment will, as your names are called, answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Lungren?

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis, aye. Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye. Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye. Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye. Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye. Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye. Mr. Pence?
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye. Mr. Forbes?
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye. Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
Mr. BERMAN. Berman is aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?

Mr. WEINER. Aye.

The CLERK. Mr. Weiner, aye. Mr. Schiff?

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Ms. Sánchez?

Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?

Mr. VAN HOLLEN. Aye.

The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?

Ms. WASSERMAN SCHULTZ. Aye.

The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?

Chairman SENSENBRENNER. Aye.

The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Further members who wish to cast or change their votes?

[No response.]

Chairman SENSENBRENNER. If not, the clerk will report.

Gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. How am I recorded?

The CLERK. Mr. Chairman, Mr. Delahunt is not recorded.

Mr. DELAHUNT. Aye.

The CLERK. Mr. Delahunt, aye.

Chairman SENSENBRENNER. The clerk will try again to report.

The CLERK. Mr. Chairman, there are 34 ayes and no noes.

Chairman SENSENBRENNER. And the amendment is agreed to.

Are there further amendments? The gentleman from California, Mr. Lungren?

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

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199 offered by Mr. Lungren of California.

Add at the end the following:

Sec. 9 Sunset for Certain Provisions.

Sections 206 and 215 of the USA PATRIOT Act and the amendments made by those sections, shall cease to have effect on December 31, 2015.

Chairman SENSENBRENNER. The gentleman from California is recognized for 5 minutes.

[The amendment of Mr. Lungren follows:]

AMENDMENT TO H.R. 3199

OFFEFRED BY MR. DANIEL E. LUNGREN OF

CALIFORNIA

Add at the end the following:

SEC. 9 SUNSET FOR CERTAIN PROVISIONS.

Sections 206 and 215 of the USA PATRIOT Act, and the amendments made by those sections, shall cease to have effect on and after December 31, 2015.

Mr. LUNGREN. Mr. Chairman, this is a fairly simple amendment. It would put a 10-year sunset on Sections 205 and 215 of the PATRIOT Act. I believe that the sunset provisions in the current law have given us an opportunity, a prod, if you will, to look at certain sections of the PATRIOT Act in a way that is probably more intense and deeper than we would otherwise have done. Having attended, I believe, all of the Subcommittee hearings on those provisions, as well as the full Committee hearings, I'm satisfied that there is no evidence of abuse in the substance of the law, nor abuse of civil liberties in the application of the law by the Justice Department during the time that these laws have been in effect.

Nonetheless, it seems to me that the two most controversial provisions which were sunsetted in the original law are Sections 206, the roving wiretap, and Section 215 which deals with business records. For that reason, I thought that it would be appropriate for us to have a sunset.

As a supporter of the bill it's my belief that sunsetting these two provisions which have drawn a disproportionate amount of attention, will in fact serve as an assurance to those inside and outside of this body of our continued diligence.

My amendment is not in anyway, I would repeat, intended to be a criticism of the implementation of the Act by the administration. It is, however, an effort to show the American people that we will remain vigilant in reviewing these particular provisions. Even some members have said to me that they support provisions such as these so long as there is a terrorist threat. None have suggested to me that this terrorist threat is going to go away within the next several years. As a matter of fact, the President has recently suggested that this is a generational fight because it is a generational threat that we face.

For that reason, it is my believe that a sunset in the year 2015 is appropriate under the circumstances. It will contribute to the continuation of vigorous oversight by this Committee, as well as careful and conscientious implementation of this legislation by this administration and the administrations to follow. I do not in any way wish to suggest that this Committee has been derelict in its

duty. As a matter of fact, I would congratulate this Committee for the work that it has done in providing vigorous oversight.

But it is my belief that from time to time Congress has not been as vigilant as it should be in oversight of a number of different matters, and that having this with respect to what I believe are the two most controversial aspects of this law, will be of benefit.

I might say that there are some who have suggested that by even offering such amendment, it will be interpreted as criticism of the underlying law on my part, or criticism of the administration, or criticism of the current Congress. This amendment is not offered for that purpose. Rather it is in some ways a tribute to the work that has been done by the administration and by this Congress, specifically this Committee, in dealing with the very difficult and delicate balance that we must strike, and that is to prevent those who would wish to destroy us and what we stand for by acts of terror in ensuring that we do not tear up the Constitution in the process of defending ourselves and those we represent.

With that, I yield back the balance of my time.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Mr. Chairman, I have an amendment to the—second degree amendment to the amendment.

Chairman SENSENBRENNER. The clerk will report the second degree amendment.

Mr. SCOTT. No. 7, it's No. 7.

The CLERK. An amendment to the Lungren amendment to H.R. 3199 offered by Mr. Scott.

Strike "2015" and insert "2009."

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

[The amendment of Mr. Scott follows:]

An Amendment to the Lungren Amendment to H.R. 3199

Offered by Mr. Scott

Strike "2015" and insert "2009"

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, I support the direction the amendment is going in. This second degree amendment will change the 10-year sunset to a 4-year sunset. The 10-year sunset would allow this to go through without review, clean through the rest of this administration and the next term of the—the term of the President elected in 2008 and almost through the term of the person elected in 2012. There are many questions that we have.

As it's been pointed out, we have rushed through the first passage of the PATRIOT Act, and sometimes these sunsets help you get answers to questions that you may ask. For example, Mr.

Chairman, I've just been handed a letter dated July 11th, 2 days ago, it was sent 2 days ago, received today, from the Attorney General responding to a question that was asked at a hearing on April 6th, and now because of—I imagine because of this hearing, we're finally getting an answer to a question. We'll have questions like many of the amendments will address, but I think it's important that we, because of the significant intrusion in civil liberties, that we keep an eye on this, and have the power of the sunset to require answers to questions. I therefore would ask you to accept a 4-year sunset rather than the 10-year sunset in the underlying——

Mr. CONYERS. Would the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Michigan.

Mr. CONYERS. I want to thank you for doing this, Mr. Scott, because 10 years is way too long. I mean every decade we take a look at this, it will be new Congresses, new Presidents. There could be a huge pile building up in the course of a decade. And I think this amendment is made real by your amendment to the amendment. I support it with great enthusiasm.

Mr. SCOTT. Thank you.

Reclaiming my time, Mr. Chairman, as the Ranking Member has pointed out, you can go through the next President—through this presidential term and another entire presidential term without this thing coming up for renewal, and we would think that the next President elected in 2008 ought to have the responsibility to respond to some questions we may ask. We don't know who that President may be.

I yield back.

Chairman SENSENBRENNER. Does the gentleman from Virginia yield back?

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. Mr. Chairman, I want to commend the gentleman from California for offering the underlying amendment, and I strongly support it. There are a number of reasons for having sunset provisions, and I have, and many others have supported them in a number of areas, and I would like to see them in other areas of our legislation that we pass because it provides for more accountability on a part of any administration, and because it gives us the opportunity to have it automatically come back to us at some point in time to make adjustments. Times change, circumstances change, and when that occurs, it's appropriate for the Congress to have the initiative to act to make those changes and improvements.

I do not agree with the substitute or the secondary amendment offered by the gentleman from Virginia. We've just been through a period where we've had a 4-year sunset, and during that time there have been uncovered no abuses on the part of the Justice Department of the provisions that we passed in the original PATRIOT Act, and I see no reason to have this on such a short leash. This will give us an opportunity to put it over a longer period of time. It will help to establish the precedent that we should impose sunsets like this in other areas where we pass legislation. It will empower the Congress in doing so because it will improve our oversight authority, and it will improve our opportunity to make

changes and enhancement as time goes by, but to do it every 4 years is simply too quickly, and given the fact that we are in a war on terror that is going to go on for a long time, I think this is an appropriate period of time for us to have a sunset provision.

And I urge my colleagues to reject the secondary amendment and to support the amendment offered by the gentleman from California.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

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

I rise in support of Mr. Scott's amendment. I think we all agree that there should be sunset provisions. The gentleman just argued that this is about making sure we have sunset provisions. He won't find an argument, I don't think, with any of us on this side of the aisle about sunset provisions. It's just a matter of how many years are we talking about?

This business of fighting terrorism continues to be an evolving situation, where we're all learning more about the various ways in which we could be attacked, and the various ways in which we could provide more security, and I still think we have a long way to go as we look at some of our transportation systems and our ports, and I still think that there is public policy to be developed that could be very helpful in fighting terrorist as it relates to the way that we bring in goods and products from other countries in particular.

So I think it is important for us to have good oversight. Good oversight does not mean that you have a sunset provision that's so far out that you don't do the reviews and make the adjustments that you need to make. Good oversight means that you're constantly looking, you're constantly reviewing, and I think 4 years is a reasonable amount of time. And so I would reject the original amendment by my colleague from California, and support the alternative amendment by Mr. Scott because I think it makes more sense and it gives us the possibility of giving the kind of oversight to this very special era of terrorism——

Mr. CONYERS. Would the gentlelady yield?

Ms. WATERS. I yield to the gentleman from Michigan.

Mr. CONYERS. Thank you. I heard it mentioned that this might set a bad precedent if we start sunsetting too much.

Well, we have 16 provisions that are sunsetted in the first PATRIOT Act. This is the first new one that I've heard, and this would just—this is very critical. I mean if we're really serious about reviewing this, we can review it. Nobody will be hurt if very few are revealed. And it also should be remembers that many times we can't even figure out where an abuse has occurred because of the general vagueness of the law as it exists right now. So I wouldn't want anybody to take to heart that there have never been any provisions of abuse because we don't know about it. We don't know about any because we don't have the process to find out about any. And so I support the gentlelady from California and the gentleman from Virginia.

Mr. LUNGREN. Mr. Chairman?

Chairman SENSENBRENNER. The time belongs to the gentlewoman from California. Do you yield back?

Ms. WATERS. I yield back.

Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Mr. Chairman, I reluctantly rise to oppose Mr. Scott's amendment to my amendment because I would so much like to see a Scott-Lungren amendment at sometime before I leave this House.

I appreciate that there are differences here, and I understand how we're trying to strike a balance here. I think the point made by Mr. Goodlatte is a good one. We've just gone through a 4-year sunset, and I would have to say we have looked diligently and have found no record of abuses.

It is difficult to figure out what the date is. I'm reminded that I have been gone so long that I'm now back here when we're going to be considering a reauthorization of the Voting Rights Act. People ought to understand the Voting Rights Act sunsets. I was back here in the '80's, it was either '82 or '84 when we last—'82. So we have a sunset that goes 24 or 5 years on that law. And yet there are changed circumstances as the gentlelady from California mentioned. There are new things.

And folks should recall there was a real question when the Ranking Member of the full Committee, when Mr. Hyde, when the Chairman of the full Committee and I were all serving back here in the '80's, there was a question whether the Voting Rights Act was going to be reauthorized because of changed circumstances of those States which feel the application of the Voting Rights Act, and yet we made a decision that it was appropriate. And then when we did that, we gave it this 20-some year life with a sunset.

So the suggestion that a 10-year sunset is irrelevant or somehow meaningless, I would reject based on the experience that I've seen with another major law that we have dealt with.

And by the way, I commend the Chairman for his speech before the NAACP this last week in which he mentioned that we expect to deal with the reauthorization of the Voting Rights Act even a year early. So it shows we don't have to wait until the sunset. We always have the oversight.

I was trying to strike a balance here, and also I'm trying to be practical. I'm trying to have a provision that will pass and remain law when we get to the floor.

I yield back the balance of my time.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. WATT. I thank the Chairman, and I'm rising in support of Mr. Scott's second degree amendment. But I think it would be remiss of me to do that without applauding first the original amendment by Mr. Lungren. Perhaps the most disturbing thing to me about the Chairman's proposed mark from which we are working today was that it had no sunset provisions in it, and one of the things that I had said to my constituents after we passed the original PATRIOT Act, was that one of the real important things that we were able to insert into that bill was a sunset provisions. And

I reminded them that throughout our history when we have had dramatic incidents occur, quite often the legislative body has overreacted or has taken steps that needed to occur for a temporary period of time, but should not be the law henceforth now and forever.

I would like not to accept the underlying proposition that terrorism will be with us forever, that forever we will have to compromise our basic—some basic rights that I believe the PATRIOT Act has compromised. And I honestly think we ought to be reviewing this bill and its provisions on a regular ongoing basis. And I'm sure there's nothing in the fact that there is no sunset that prohibits us from doing that or would be nothing that would prohibit us from going back and amending the PATRIOT Act at any point. But legislative and political realities and time realities as they are, suggest that we simply are not going to do that in the absence of a sunset provision.

If 4 years from now circumstances have changed for the better in some respects, I would be tremendously happy. If 4 years from now circumstances have changed for the worse, technology may have advanced in some ways that would dictate a change in some of the provisions of the PATRIOT Act—technology is advancing so rapidly that we don't know what's on the horizon 4 years from now. And the longer we delay forcing ourselves to review any kind of encroachments, impediments, stepping on the toes of the freedoms that our country has held so dear over the years, I think the more of a disservice we do to our country, and the more we really say to the terrorists that we have given in to you by compromising on some of the things that our Nation stands for and that our world should be aspiring to stand for.

So I know this is a judgment, this is not a knock on what Mr. Lungren has tried to do. I actually applaud what he has done and I'm delighted that we are going to have some kind of sunset in whatever goes out of this Committee—at least it looks that way at this point—but given a choice between a short or a longer one, I would certainly favor the shorter sunset. And I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman's time has expired. The Chair moves to strike the last word and recognizes himself for 5 minutes.

I think all of the members and the public know that the sunset that is currently contained in the PATRIOT Act was something that I insisted upon when the PATRIOT Act was considered immediately after September 11. And I did so because whenever we talk about expanding law enforcement powers and potential encroachment upon civil liberties, there is a very subjective line that is drawn that nobody will know whether it was done correctly or not until there has been some experience under the new law.

I guess what puzzles me a bit is that the people who are arguing for a shorter sunset now were the ones that were arguing for a longer sunset 4 years go.

Be that as it may, we have had almost 4 years of experience under the PATRIOT Act. There has been no section of the 16 sections of the PATRIOT Act where law enforcement powers were expanded that has been declared unconstitutional by a Federal court. There also have been no lawsuits brought under the Frank amendment that provides a civil remedy with statutory damages for

Americans whose civil rights were violated under the PATRIOT Act. And the Justice Department Inspector General has found no civil rights violations under the PATRIOT Act, and he was given that specific authority to investigate and reach those conclusions as a part of those protections that this Committee wrote in the PATRIOT Act in September and October 2001.

Having said that, let me say that what type of oversight is done by any congressional Committee, this one or any of our other Committees, is entirely dependent upon the Committee's attitude toward oversight and specifically the attitude of the Chairman of the Committee and the Chairmen of the Subcommittees toward oversight. I think people who have seen my performance here and prior to that in the Science Committee realize that I am an oversight hawk, and I have been as much of a hawk against an administration of my own party as Chairman of this Committee as I was over NASA during the Clinton administration as Chairman of the Science Committee. Oversight was one of the constitutional responsibilities the Founders gave the Congress, and in my opinion we should be doing more of it rather than less of it.

But chairmen come and chairmen go, and I am term limited as Chairman, and 2 years from now there will be another person that will be sitting in this chair that may have a different view toward oversight.

The oversight that Mr. Conyers and I have done on the PATRIOT Act have been as a result of Mr. Conyers and my insistence that the oversight be vigorous and pointed. And we have had differences with the Justice Department and specifically former Attorney General Ashcroft to the point where I had to threaten to subpoena him in order for us to get information that this Committee needed to have in the discharge of our oversight responsibilities. I can say that in the last couple of years the responses from the Justice Department had been much better, and I comment them for that.

But again, this is my philosophy and that of Mr. Conyers toward oversight, and that may change as time goes on.

I support, reluctantly, the longer sunset provisions, and the reason I do that is because it will force a review. But let me say, I don't think we should have different strokes for different folks, saying that we should have a real short sunset on the PATRIOT Act and a real long one on the Voting Rights Act. The principle is the same. And I will support and introduce legislation for a very long period of extension of the Voting Rights Act because I think that the 25 years that was passed in 1982 worked very well.

Having a sunset as proposed by Mr. Lungren, in my opinion will get the debate on the PATRIOT Act out of the political arena, and believe me, it is in the political arena now. And having debate on the PATRIOT Act being a part of a presidential election campaign and then the new Congress immediately afterwards, this debate has not been the best in terms of dealing with the actual issues of the PATRIOT Act.

So I would ask the members of this Committee to vote against the Scott amendment for the shorter sunset, for the Lungren amendment for the longer sunset, and I would urge whomever succeeds me as Chairman of the Committee in January 2007 to be just

as diligent in discharging oversight responsibilities as I believe Mr. Conyers and I have been.

Mr. WATT. Mr. Chairman, could I ask for unanimous consent for one additional minute and ask the Chairman to yield for a question?

Chairman SENSENBRENNER. Without objection, the Chair is given an additional minute. I yield to the gentleman from North Carolina.

Mr. WATT. The Chairman made a statement about somebody, some period of time ago when we were doing the original bill, opposing a shorter sunset. I wanted to make sure that we didn't leave the wrong impression here. I don't have a recollection of that on my part.

Chairman SENSENBRENNER. If I can reclaim——

Mr. WATT. Maybe you were referring to somebody else.

Chairman SENSENBRENNER. If I can reclaim my time, I can understand why he didn't have a recollection on that because the final sunset provisions were negotiated in the Speaker's office, and it was the then Democratic controlled Senate that wanted a real short sunset, and it was Mr. Conyers and I who were present in that meeting that wanted a longer one.

Mr. WATT. A longer one or a shorter one?

Chairman SENSENBRENNER. That was the difference between 3 years, 4 years and 5 years. We were for 5, they were for 3, and we split the difference.

Mr. WATT. So it wasn't as dramatic as we're talking about here today?

Ms. LOFGREN. Would the Chairman yield?

Chairman SENSENBRENNER. The Chair will ask unanimous consent for an additional minute and yield to the gentlewoman from California.

Ms. LOFGREN. I will not use an entire minute. I would just like to note for the record that during the weekend drafting session on the PATRIOT Act I recommended a 2-year statute of limitations, and I thank the gentleman for yielding.

Chairman SENSENBRENNER. Duly noted.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. My time has expired.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I thank the Chairman. I would note that he makes the observation that within the provisions of the PATRIOT Act there appears to be no abuse that's been discovered by the Department of Justice. Now, one could opine that the sunset provision itself serves in some way as deterrence to abuse because there will be inevitably hearings to review the conduct. So I grant you the fact that, at least as it relates to the provisions of the PATRIOT Act, there does not appear to be any abuse that has been discovered so far.

At the same time I think we have to recognize that the Inspector General of the Department of Justice did find serious problems with the detainees being held in New York, but I don't want to digress.

And I applaud the Chairman for his aggressive oversight. I also applaud the gentleman from California. I think this is a step in the right direction. I want it as a matter of record, that my own opinion is that 2 years is perfect, and I would go so far as to sunset the entire PATRIOT Act, because as the Chairman has indicated, Chairmans come, Chairmans go, minorities come, they change, and majorities come and change. But there is a natural tension between the branches that's healthy in a democracy.

And what I found particularly revealing during the course of the hearings that were conducted by Mr. Coble with your support, obviously, was that we received a level of cooperation and collaboration from the Department of Justice that I have not experienced in my previous 9 years of service on this Committee.

I think as much as it is about the PATRIOT Act, it is also about the role of Congress in terms of the relationship with the Executive and the Judiciary, and it provides us with leverage to encourage cooperation and collaboration, because I know you, myself and other members, and not just this particular Committee, have found at times it extremely difficult to receive the kind of cooperation that ought to be forthcoming from the Executive.

I'm reminded of serving on the Government Reform Committee when there was a inquiry into the conduct of the Federal Bureau of Investigation in Boston, and the Republican Chair of that Committee, Dan Burton, as you did, had to threaten the Attorney General of the United States with a contempt citation to secure cooperation.

So I say to my colleagues on both sides—and by the way, this is not a partisan issue, this is historic and is an institutional issue. I don't think we can sunset often enough, and I think if we chart a different course in terms of the future, the sunset will serve the Congress well despite who the Chairman is. And again, I would compliment the Chair on being aggressive in terms of oversight, and I would go so far as to say before you move on, I would commend to you consideration of establishing within the Committee an additional Subcommittee to deal specifically with the issue of oversight in investigations.

It's been done under Chairman Hyde in the International Relations Committee, and I think it's overdue and it's needed.

With that I'll yield back.

Mr. SCOTT. Would the gentleman yield?

Mr. DELAHUNT. I yield to the gentleman from Virginia.

Mr. SCOTT. Thank you. I thank the gentleman for yielding.

As the gentleman from Massachusetts is pointing out, whatever success there has been with the PATRIOT Act I think is because of the sunset, not in spite of the sunset. We've had problems with the national security letters, reclassification or misclassification of some cases of terrorists, racial profiling, as the Chairman has indicated, we've had to threaten subpoenas, and clearly there's been more cooperation from the administration in those inquiries involving sections with a sunset than those involving sections without a sunset. So I would hope that we would keep a sunset that would at least require the next President of the United States to have some time during his administration where he'll have to respond to questions.

Thank you.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. I just want to say in Arizona we love sunsets. I particularly like sunsets of all Government programs, but in this case I would thank the gentleman from California for offering this compromise, this 10-year sunset, and I think it's appropriate and I plan to support it.

With that I yield back.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, you raised the question of comparing the sunset to the sunset of the Voting Rights Act. I think there's a difference and all sunsets are not equivalent. This sunset is dealing with very sensitive, as I've said before, as we've all said before, very sensitive powers that we're giving Government that pose potential threats to the liberty that we all hold dear.

Now, it's easy to say there have been abuses, and maybe there haven't, although there's still a lot of secrecy, and I wouldn't agree that there have been no abuses. But even if there hadn't been, doesn't mean there won't be next year under the next Chairman of this Committee, under the next President, under the next Attorney General.

Sunsets in this respect make us keep reviewing it, and that's fine. What is the danger of a sunset, that it makes us do a little more work? So what? It keeps it front and center, and this kind of thing ought to be kept front and center. The Voting Rights Act imposes certain requirements on States to make sure that their citizens get the rights they're entitled to. Should it sunset? Well, maybe, because maybe those States now have changed and don't have to have a Federal imposition on them to guarantee those rights. But worse comes to worst, so what again? They're giving the rights that ought to be given.

Here the sunset is to make sure that our citizens have liberty and rights, and we ought to have a fairly frequent sunset. I commend the gentleman from California for offering this amendment. I wish it were for more than just these two sections, and there will be amendments for sunsets for more sections before this markup is over, but 10 years is too long.

Lots of things can happen in 10 years. Why shouldn't the next President have to be concerned about—a 4-year sunset means the next President, not this one. Why shouldn't the next President have to be concerned about justifying retention of these police powers? We don't know how long the war on terror is going to go on, we don't know how it's going to be waged. We don't know if abuses are going to occur.

And a 4-year amendment, and if that amendment—and if that fails, we'll offer an amendment for a 6-year sunset—at least keeps our feet to the fire. That's what this is about, keeping our feet to the fire to keep our eye on the ball to protect the liberty of American citizens against possible abuses, and it's nothing to say we're not saying anything by this amendment or by trying to speed up this amendment by the 4-year secondary amendment, to say that the current Attorney General or the current President or the cur-

rent Chairman of this Committee, or the current anybody, is doing anything right or wrong. It's simply saying that it's a useful tool to make sure that we focus on it more than once every 10 year, and frankly, the liberties of Americans are worth focusing on a lot more often than once every 10 years.

So I support the Scott secondary amendment, and I yield back.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, I oppose the Scott amendment and I expect to also oppose the underlying amendment, and I want to explain why.

It's likely on the underlying amendment that I'm going to find myself in the good company of many of my colleague on the other side of the podium, though not necessarily for the same reason. They feel that the 10-year period is too long. I happen to feel that we don't need sunsets at all for the reasons that have already been stated by many others.

The PATRIOT Act has worked well. There have been no abuses. And regardless of whether there are sunsets or not, I am sure that the oversight will continue, and that can address any possible abuses that might come up.

I'd also like to note, Mr. Chairman, that it seems to me that the arguments made against the 3-year sunset could also be made against the 10-year sunset. As I say, the PATRIOT Act has been working well.

So I just wanted to state for the record that I am going to oppose both the Scott amendment and the underlying amendment as well.

I'll yield back.

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Weiner.

Mr. WEINER. Thanks, Mr. Chairman. I have yet to really get an understanding from the sponsor of the amendment—and frankly, I don't even—from the base amendment, and frankly from you, Mr. Chairman, of what's the harm of going to 2009? I think the Chairman deserves a great deal of credit for (A) inserting the sunset, but also generally the way that we've taken on issues here.

I mean essentially what—I think in our Committee under your leadership for the first time in a very long time we did a reauthorization of the Justice Department, something that had gone on for years without being reauthorized.

Frankly, what I would say that this is, is essentially a forced reauthorization. I think it has been salutary to have the sunset provisions in because it's gotten people on both sides of the issue having a discussion about it. It's forced us to be at this point—I doubt very much if there were not sunset provisions in the original we'd be having hearings right now. And I think on both sides of the aisle concerns have been expressed about how far reaching or whether it was not far reaching enough.

I am puzzled by whether or not making it 2009 in any way weakens our chances on the floor. That's the only argument I've heard from the gentleman from California about why 2015 rather than

2009, it strikes a so-called balance. Frankly, the concerns that have been raised by opponents would be further assuaged by having a shorter sunset, not a longer sunset, that if you believe that you're trying to get votes from people who are like myself, who are kind of some parts of the bill we've got no problem with, some parts of the bill we have serious problems with. There are people on the far right and far left who expressed concerns.

If you truly want to give the tools to the Justice Department for additional time, and you don't want the bill to be defeated all together, a shorter sunset seems to be better way.

And also from the day-to-day practical prosecution of the law, I find it hard to believe that any prosecutor would say or any criminal would say, well, here's a decision I'm going to make because we've got a sunset coming up in a few years. I don't think any terrorist is going to say, all right, I'm going to hold off a little longer because we have a sunset coming up in 2009. So I'm in 2007 contemplating a crime, but I'm going to wait because I think it's going to sunset.

I mean practically speaking, that's not going to happen, and if that makes them push off their plans for terrorism, then we should have sunset every year because maybe they'll just keep putting it off and see if we don't renew it.

I guess my simple question is—and it hasn't been answered here—is what's the matter with a shorter sunset? How does it harm anyone? Why does the Justice Department mind that much? It's not an indictment of them or it's not ad argument that they've done things poorly. What it is, is that the present sunset has been a successful fulcrum, (A) to get this back before this Committee; (B) to get a full discussion of it before the country.

You know you say that there haven't been abuses. We've also found out in a lot of cases there hasn't been a great deal of use of it. That's something worth knowing as well that would have not come out, would not have had the pressure to come out were it not for a shorter sunset.

And with that, I yield the balance of my time to the gentleman from Massachusetts.

Mr. DELAHUNT. I applaud the gentleman for his, I think, insightful comments. I think we should be thinking about when this legislation comes to the floor because there are concerns there, and only has to remember some of the votes that we have witnessed that have occurred on the Floor because people have legitimate concerns.

And I dare say, this sunset, this sunset and the duration of the sunset—and it should be expanded in my opinion—is something that I think the majority of members of the House will find—will welcome.

Just to support my earlier comments about oversight and the relationship between the branches, someone just passed me a press release from Senator Collins and Senator Lieberman dated June 14, who were speaking about the need for the administration to fulfill its obligations under the National Intelligence Reform and Terrorist Prevention Act of 2004, and I'll submit this into the record.

Chairman SENSENBRENNER. Without objection.

[The press release was not available in time to be included in this report.]

Mr. DELAHUNT. They noted a series of reports, strategic plans and preliminary actions whose deadlines have come and gone. Among them, the National Transportation Strategy, the first step towards streamlining the Federal security clearance process, a number of port security strategic plans, aviation security staffing standards, a baggage screening cost-sharing plan, three reports on diplomatic initiatives to root out terrorists.

I dare say that if we do not have, as Mr. Weiner indicated, the leverage, the fulcrum, you know, even if we mandate reports—it would be interesting for me if both majority and minority staff would review the reports mandated by the PATRIOT Act and other antiterrorism statutes to see whether they've been filed.

Chairman SENSENBRENNER. The time of the gentleman from New York has expired. The question is——

Mr. SCHIFF. Mr. Chairman? Mr. Chairman, to your left.

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.

Mr. SCHIFF. I wouldn't need to make it quick if—well, anyway. Thank you, Mr. Chairman. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. I want to join in support of the secondary amendment, and the reason I wanted to be recognized on this—I know many others have spoken already, but I frankly think this is probably the most important amendment we're going to have today, and indeed I think one of the most important provisions that we in the original PATRIOT bill was the sunset provision that the Chairman insisted upon. And at the time I strongly supported a 2-year sunset, even a shorter leash.

My concern with that sunset being 4 years originally was that it might take us 4 years before the Committee, as a Committee, really did the kind of vigilant oversight that we should do. The PATRIOT bill was basically a bargain. It said we will give law enforcement greater power, and in exchange we will do greater oversight.

I think many of the powers of the PATRIOT bill needed to be conveyed to keep pace with changes in technology and changes in the way that terrorists operated. But much as I was concerned, I think that with the 4-year sunset the Committee as a Committee did not do oversight until 3½ years into the sunset. And I appreciate what the Chairman did with the Ranking Member individually, but the Committee as a Committee, in terms of holding hearings, having witnesses, and giving each of the members a chance to participate in the oversight really didn't happen till 3, 3½ years into the life of the PATRIOT bill.

And I'm afraid that if we extend this by 10 years, it will be 9½ years before we go through this exercise again, and that's just too long. It's not just a function of the Chairman not being the Chairman. Most of the members of this Committee will no longer be on the Committee. Heck, most of the members of this Committee will probably no longer be in the Congress who were present when the bill passed and are present today.

To put things in context, my colleague from New York, Mr. Weiner, he'll be finishing his second term as mayor of New York when this comes up again. [Laughter.]

My 3-year-old will be a teenager, and I'm not ready for that. [Laughter.]

I'm not ready for either of those things. [Laughter.]

No, I am ready for Anthony to be mayor.

We reauthorize departments with great frequency. We reauthorize our transportation bill every 6 years. There's little risk, unless there are great abuses, that if we sunsetted this bill in another 4 years, that it wouldn't be re-extended in 4 years. I don't expect there will be abuse of the bill or dramatic abuse of the bill, and I would expect that with a 4-year sunset, the worst that will happen is that we'll be back here in 3½ years, and I would hope sooner, to be looking at some of these provisions again.

So the downside—I can't even find the upside—in that it compels us as a Committee to do the oversight that we should be doing, I think, is substantial. And probably a more realistic sunset date would be the single greatest step that could be taken by the majority to outreach to the minority to have a reauthorization that enjoys very broad bipartisan support.

With that, Mr. Chairman, I yield back.

Chairman SENSENBRENNER. The question is on the Scott second degree amendment to the Lungren amendment. Those in favor will say aye? Opposed, no?

The noes appear to have it.

Mr. CONYERS. A record vote.

Chairman SENSENBRENNER. Record vote is requested and will be ordered. Those in favor of the Scott amendment to the Lungren amendment will, as your names are called, answer aye; those opposed, no. The clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

[No response.]

The CLERK. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Further members who wish to cast or change their vote? The gentleman from South Carolina, Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no.

Chairman SENSENBRENNER. There are no further members who wish to cast or change their vote. The clerk will report.

The CLERK. Mr. Chairman, there are 15 ayes and 21 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to.

The question——

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. Mr. Chairman, I have a secondary amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Mr. Chairman, I have two amendments at the desk.

Mr. NADLER. The 2011.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Second degree amendment to the Lungren amendment to H.R. 3199, offered by Mr. Nadler. Strike "2015" and insert "2011."

[The amendment of Mr. Nadler follows:]

An Amendment to the Lungren Amendment to H.R. 3199

Offered by Mr. Nadler

Strike "2015" and insert "2011"

Chairman SENSENBRENNER. The chair is prepared to declare the Committee in recess until 2 o'clock, at which time, Mr. Nadler will be recognized for 5 minutes to explain his amendment. Members will please be prompt.

The Committee is in recess.

[Whereupon, the Committee was recessed from 12:27 p.m. to 2:07 p.m.]

Chairman SENSENBRENNER. A working quorum is present.

When the Committee recessed for lunch, pending was an amendment offered by the gentleman from California, Mr. Lungren, to which a second degree amendment by the gentleman from New York, Mr. Nadler, had been offered. We will now resume consideration of the Nadler second degree amendment, and the gentleman from New York, Mr. Nadler, is recognized for 5 minutes.

Mr. NADLER. Thank you. Thank you, Mr. Chairman.

Mr. Chairman, this amendment, this secondary amendment doesn't need too much discussion. Most of the discussion I think we

can just read into the record, the discussion on the last secondary amendment for the 4-year extension. This simply says instead of a 10-year extension, as Mr. Lungren would have it—sunset, rather—it should be a 6-year sunset.

Before we broke, we had discussion on Mr. Scott's amendment for a 4-year sunset, and the majority thought that that was too fast, that 10 years was a better idea. I am compromising at 6 years.

Now, one objection—and frankly, again, just to be brief, when you are dealing with liberty and with giving Government more power, then I think 10 years is just too long. Now, it had been expressed that maybe if a 4-year extension was too short and, among other reasons, that would come into effect in 2009, it would put it into the next presidential election—well, this would not. This would be 2011. It would be the third year of the next presidential term. It doesn't get mixed up in party politics in the 2008 election.

And again, if we think these things should be sunsetted—and I certainly agree they should be—a 6-year sunset is reasonable. Over 6 years we can see what happens. And to require Congress to look at things every 6 years, things that potentially threaten people's liberties, albeit maybe we have to do it because of terrorism, is not too often to do. So I think 6 years is a reasonable amount of time, and I offer the secondary amendment to what I regard as a good amendment by Mr. Lungren.

I yield back.

Chairman SENSENBRENNER. The chair recognizes himself for 5 minutes in opposition to the amendment.

I rise in opposition to the amendment. The gentleman from New York had it half right. He was right when he said that all of the arguments that were made in favor of the Scott amendment applied to his amendment. What he omitted is that all of the arguments made against the Scott amendment also apply to this amendment. And since the Scott amendment was rejected, I think we ought to reject this——

Mr. NADLER. Would the gentleman yield for a second?

Chairman SENSENBRENNER. Absolutely.

Mr. NADLER. All the arguments but one, as I pointed out. One of the arguments against the Scott amendment was that it would put it into the 2008 presidential election because it would sunset in 2009. This does not do that. This would sunset in 2011, the third year of a presidential term, and that argument——

Chairman SENSENBRENNER. And reclaiming my time——

Mr. NADLER.—is inapplicable.

Chairman SENSENBRENNER. Reclaiming my time, 2015 is the third year of a presidential term, too. And I yield back the balance of my time.

The question is on agreeing to the Nadler second degree amendment to the Lungren amendment. Those in favor will say aye? Opposed, no?

The noes appear to have it.

rollcall will be ordered. Those in favor of the Nadler amendment to the Lungren amendment will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. Pass.
The CLERK. Mr. Green, pass. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
[No response.]
The CLERK. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?

[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
[No response.]
The CLERK. Ms. Wasserman Schultz?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their vote? The gentleman from Illinois, Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no.
Chairman SENSENBRENNER. The gentleman from California, Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Chairman SENSENBRENNER. The gentleman from Texas, Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Chairman SENSENBRENNER. Further members in the chamber who wish—The gentleman from Virginia, Mr. Boucher.
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye.
Chairman SENSENBRENNER. Further members who wish to cast or change their vote? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 9 ayes and 18 noes.
Chairman SENSENBRENNER. And the second degree amendment is not agreed to.
The question is on——
Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott, for what purpose do you seek recognition?

Mr. SCOTT. Mr. Chairman, I have a unanimous consent request for a Scott-Lungren amendment.

Chairman SENSENBRENNER. The gentleman will state the request.

Mr. SCOTT. The amendment reads that the provisions shall cease to have effect on December 31, 2005—excuse me, 2015. The amendment would be to insert language "and after," so it would read, "would cease to have effect on and after December 31, 2015."

Chairman SENSENBRENNER. Without objection, the modification to the amendment is agreed to. Hearing none, so ordered.

The question now occurs on the Lungren amendment as modified. Those in favor will say aye? Opposed, no?

The ayes appear to have it.

Mr. SCHIFF. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentleman from California wish to ask for a rollcall?

Mr. SCHIFF. No. I just had an amendment at the desk.

Chairman SENSENBRENNER. The other gentleman from California asked for a rollcall. rollcall will be ordered.

Those in favor of the Lungren amendment as modified will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Lungren?

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis, aye. Mr. Hostettler?

[No response.]

The CLERK. Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye. Mr. Keller?

[No response.]

The CLERK. Mr. Issa?

Mr. ISSA. Aye.

The CLERK. Mr. Issa, aye. Mr. Flake?

[No response.]
The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
[No response.]
The CLERK. Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte?
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye.

Chairman SENSENBRENNER. Further members in the chamber who wish to cast or change—Yes, the gentleman from Arizona, Mr. Flake?

Mr. FLAKE. Aye.

The CLERK. Mr. Flake, aye.

Chairman SENSENBRENNER. Further members in the chamber who wish to cast or change their votes? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 26 ayes and 2 noes.

Chairman SENSENBRENNER. And the amendment is agreed to.

Are there further amendments?

The gentleman from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I know my colleague from New York has a burning sunset amendment. I would ask to be recognized after one of my colleagues, after Mr. Nadler.

Chairman SENSENBRENNER. The chair is trying to share the wealth, but if this is not the time for the gentleman from California to partake of the wealth, for what purpose does the gentleman from New York seek recognition?

Mr. NADLER. Thank you, Mr. Chairman. I appreciate the forbearance of the gentleman from California.

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

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Mr. Chairman, I have three Mr. Nadler amendments.

Mr. NADLER. It says "strike section 3." This is the one by Mr. Nadler and Mrs. Lofgren.

The CLERK. Amendment to H.R. 3199, offered by Mr. Nadler and Ms. Lofgren. Strike section 3 and insert the following: Security. 3. Sunset. Section 224 of the USA PATRIOT ACT is amended by—(1) Inserting "206" in section (a) after "205,"; (2) Inserting "215" in section (a) before "216,"; and (3) Striking "2005" and inserting "2015."

The amendment of Mr. Nadler follows:]

Amendment to H.R. ___
Offered by Mr. Nadler and Mrs. Lofgren

Strike section 3 and insert the following:

Sec. 3. SUNSET.

Section 224 of the USA PATRIOT ACT is amended by –

(1) Inserting "206" in section (a) after "205,";
(2) Inserting "215" in section (a) before "216,"; and
(3) Striking "2005" and inserting "2015".

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, this amendment, which is short, is not quite self-explanatory. What it does is extend the 10-year sunset, which we have just adopted for two sections, to the other 14 sections that are currently sunsetted under the law and that under the bill in chief would be permanent. This simply says that all the reasons for the sunsets that we just passed for 10 years for the two existing sections, for these two sections, we should do for the other 14 sections that do sunset now, and instead of permanentizing them, we should sunset them after 10 years.

So I take from Mr. Lungren the 10 years and we should—all the same reasons why the two sections that we just did should be sunsetted in 10 years apply to these sections, too. They are extensions of various powers. We are to review them. This includes Section 201, Authority to Intercept Wire or Electronic Communications Relating to Terrorism; 202, Wiretaps Relating to Computer Fraud and Abuse Offenses; Section 203, Authority to Share Electronic, Wire, and Oral Interception Information with Foreign Intelligence Operations; Duration of FISA Surveillance of Non-USA Persons; Seizure of VoiceMail Messages Pursuant to Warrants; Pen Register and Trap and Trace; Interception of Computer Trespass Communications; and so forth.

All of these are basically new powers granted by the PATRIOT Act. All of them were sunsetted now; all of them, I think, should be sunsetted in 10 years for the same reasons.

And I urge the adoption of this amendment, and I yield back.

Ms. LOFGREN. Would the gentleman yield?

Mr. NADLER. Oh, yes. I do not yield back, I yield to the gentlelady from California.

Ms. LOFGREN. I will be very quick. As the cosponsor of the amendment, I won't repeat what Mr. Nadler said, but I would merely note that some of the provisions that would be covered by the amendment really are provisions that relate to technology. And it is important both for civil liberties, but also from the technological point of view, that we have a schedule for reviewing those issues. Because the technology, I guarantee you, will change, and if we don't have a set time for us to review those changes, we may end up with a consequence that we never intended. And I think that is an additional reason to support the amendment.

I thank the gentleman for yielding, and yield back.

Chairman SENSENBRENNER. Does the gentleman from New York yield back?

Mr. NADLER. Yes, I do.

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa?

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. ISSA. Mr. Chairman, I know this is well-intentioned, but I would like to point out to all of my colleagues that when we did this, the PATRIOT Act, initially, one of the reasons for the sunsets was this was new. And we wanted the 4 years in which to observe

what happened. We have had not only the 4 years but countless hearings. We have looked at this in detail. Mr. Lungren, appropriately, looked and said although there has been no misconduct, he would like to, and we have now passed an amendment to hold open a little bit longer, or a lot longer period on two provisions.

But I think that we fail to do our job as a Committee if we simply punt and say, well, we are going to keep it all open. And I would suggest that, if we are going to do that, then let us simply amend I think it is Section 28, and, you know, we could do everything. We could sunset the entire Homeland Security, for that matter, every 10 years.

I think there is a point of, if we work together diligently—and I promised my office to work together just as I have seen the Chairman's office working—to make sure that we have, if we have concerns, we have areas both here and, potentially, on the floor, that we reach those amendments on a bipartisan basis so that we can make sure that we don't need to simply leave something unanswered and hope for the best for the next 10 years.

I would ask my colleagues, at a minimum after this amendment, to delay any further amendments on sunsetting in favor of let's get to substantive changes that might be appropriate so that we can not have sunsetting, but rather have a law which we are confident will last for the entire decades to come.

Mr. NADLER. Would the gentleman yield?

Mr. ISSA. I would yield.

Mr. NADLER. Thank you. Now, this is, as far as I know, the last amendment on sunsetting. But I would point out that nothing in sunsetting—we don't hold it open for 10 years. That is not correct. The law is the law. This makes us come back and review it in 10 years. And certainly nothing that says review it in 10 years precludes our reviewing it in 10 minutes or 10 months or next year, as we ought to on a continuing basis.

But at the minimum, since these are police powers that have to balance carefully, we ought to at least make sure that our successors—or us, if we are still here——

Mr. ISSA. I appreciate the gentleman from New York. And I would reclaim and yield the balance of my time to the gentleman from Texas.

Mr. SMITH. I thank the gentleman from California for yielding.

Mr. Chairman, I, too, oppose this amendment, which applies to all 16 of the sunsetted provisions of the PATRIOT Act. The PATRIOT Act was a long overdue measure aimed at first closing gaping holes in the Government's ability to collect vital intelligence information on the global terrorist network, and second, protecting Americans from another attack. It was supported overwhelmingly by the American people and passed by a margin of 98-1 in the Senate and 347-66 in the House.

Even the ACLU said, in a recent press release, that "most of the voluminous PATRIOT Act is actually unobjectionable from a civil liberties point of view" and that "the law makes important changes that give law enforcement agents the tools they need to protect against terrorist attacks."

In order to make sure that we did not overreact to the September 11 murder of over 3,000 innocent Americans by enacting legislation that went too far, we placed sunsets on some PATRIOT Act provi-

sions. Nearly 4 years later, successes in terrorist investigations show not only that the PATRIOT Act was the right way to go, but also that the sunsets were not necessary. There has not been even one substantiated abuse of power under the PATRIOT Act, but there have been terrorist prosecutions. The sunsets should not be reinstated across the board.

The information sharing powers created by Section 218, for example, which would be sunsetted again by this amendment, were instrumental in disrupting terrorist cells in New York, Oregon, Florida, and Virginia, and in prosecuting a number of individuals tied to terrorist organizations.

The Section 212 power to authorize electronic communications service providers to disclose records to the Government if there is the threat of death or serious injury, which would be sunsetted again under this amendment, allowed investigators to prevent the bombing of a high school and allowed investigators in Texas to apprehend an individual who threatened to attack a mosque.

This amendment would have a chilling effect on current and future investigations because of the uncertainty a sunset places on the direction of an investigation. If investigators believe that they may no longer have the ability to share information, obtain roving wiretaps, or obtain certain business records, they may hesitate to pursue the investigation.

Mr. Chairman, sunsets may have had a proper place when they were enacted at the beginning of this landmark legislation in the aftermath of September 11th, but since then the effectiveness of the PATRIOT Act has been proved many times over. There should be no sunsetting of all these provisions or any sunsetting of our willingness or ability to keep America safe.

I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman's time has expired.

The question is on——

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I agree that most of the, or at least a lot of the PATRIOT Act is in fact good law. In fact, this Committee reported a version of the PATRIOT Act unanimously. And so we felt that a lot of it could have been passed without a lot of controversy. People have said that it has worked okay. There have been misclassifications of terrorism cases and there have been problems, so when the suggestion is made that there are no problems, I don't want that comment to go without controversy. We have seen, because we have had the sunsets, we have had much better cooperation from the administration because of the sunsets. The Chairman has indicated that we had to threaten a subpoena to get the cooperation, at least on some issues, from the Attorney General.

And I would hope that we would adopt this. I think 10 years is too long, but we have already had that debate. So long as we find on reauthorization, when it comes up for reauthorization, that it is worked, there won't be any problem reauthorizing it. It just en-

sures it will have oversight. So I would hope that we would adopt the amendment, and I yield——

Mr. CONYERS. Would the gentleman from Virginia yield?

Mr. SCOTT. I will yield.

Mr. CONYERS. Well, I want to agree with you, because the original PATRIOT Act that was unanimously voted out had 2-year sunset provisions. Two years, not four, and certainly not 10. And so I would like to remind the Committee that our collective work product was far more carefully tailored than now.

And I couldn't agree with you more. You know, a member making a statement that there are no PATRIOT Act violations does not, unfortunately, turn it into gospel. That is just one person's view. We are putting together a paper here that shows that there were dozens and dozens of violations that have come to our attention, and probably others that we haven't found out about yet.

Mr. SCOTT. Thank you very much. And reclaiming my time, I yield to the gentleman from New York.

Mr. NADLER. Thank you. I thank the gentleman for yielding.

I just want to add that, you know, as was said a moment ago, much of the Patriot—and the ACLU said much of the PATRIOT Act is unobjectionable and is fine and uncontroversial and no one objects to it. But parts of the PATRIOT Act, especially the parts that were sunsetted, get very expanded and perhaps, in some hands and in some times and in some places, dangerous powers to police authorities. They may not have been misused; they may have been misused. Who knows in the future? They may be very necessary in the war on terrorism for now, maybe for the future. But the one thing that sunsetting says is that we should not get too comfortable with expanded police powers in this country. We should be nervous about expanded police powers in this country, because they threaten liberty. They may be necessary in an age of terrorism, but we should be nervous about them, we should be grudging about them, and we should review them. And all the sunset provision says is review those expanded police powers in 10 years. It is worth the extra time for this Committee to protect liberty.

Thank you. I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from New York, Mr. Nadler, and the gentlewoman from California, Ms. Lofgren.

Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

Mr. NADLER. rollcall.

Chairman SENSENBRENNER. The gentleman from New York asks for a rollcall. Those in favor of the Nadler-Lofgren amendment will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
[No response.]
The CLERK. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?

[No response.]

The CLERK. Mr. Meehan?

Mr. MEEHAN. Aye.

The CLERK. Mr. Meehan, aye. Mr. Delahunt?

Mr. DELAHUNT. Aye.

The CLERK. Mr. Delahunt, aye. Mr. Wexler?

[No response.]

The CLERK. Mr. Weiner?

Mr. WEINER. Aye.

The CLERK. Mr. Weiner, aye. Mr. Schiff?

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Ms. Sánchez?

Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?

Mr. VAN HOLLEN. Aye.

The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?

[No response.]

The CLERK. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Further members who wish to cast or change their vote? The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Boucher?

Mr. BOUCHER. Aye.

The CLERK. Mr. Boucher, aye.

Chairman SENSENBRENNER. Further members who wish to cast or change their votes? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 12 ayes and 21 noes.

Chairman SENSENBRENNER. The amendment is not agreed to.

Are there further amendments? The gentleman from Maryland, Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199, offered by Mr. Van Hollen and Mr. Conyers. At the end of the bill, add the following: Section _____. Knowing transfer of firearm to individual named in the Violent Gang and Terrorist Organization File treated as providing material support to terrorists.

Mr. VAN HOLLEN. Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment of Mr. Van Hollen and Mr. Conyers follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. ~~VAN HOLLEN OF MARYLAND~~ CONYERS

VAN Hollen / Conyers

At the end of the bill, add the following:

SEC. _____. KNOWING TRANSFER OF FIREARM TO INDIVIDUAL NAMED IN THE VIOLENT GANG AND TERRORIST ORGANIZATION FILE TREATED AS PROVIDING MATERIAL SUPPORT TO TERRORISTS.

Section 2339A(a) of title 18, United States Code, is amended by inserting "(1) transfers a firearm to an individual whose name appears in the Violent Gang and Terrorist Organization File maintained by the Attorney General, knowing that the name of the individual appears in that file, or (2)" after "Whoever".

Chairman SENSENBRENNER. The gentleman from Maryland is recognized for 5 minutes.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. I am pleased to offer this amendment together with Mr. Conyers.

There is an existing provision in the PATRIOT Act entitled "Providing Material Support to Terrorists," which does something I think we all agree needs to be done, which says simply that if you are somebody who is providing aid and comfort and providing material support to somebody conducting a terrorist act, then you, too, should be held accountable.

What this amendment does, very simply, it says that if you knowingly—and I want to stress this is not if you have reason to know, this is not if you speculate, that you might know—this is if you know that somebody is on the terrorist watch list and you provide that individual with firearms, like a semiautomatic weapon or other controlled weapons, that you can be held responsible for that action. And it seems to me that if we want to address the roots of the problem as we have in the existing bill, where we say that someone who provides material support to a terrorist will also be held accountable and responsible, it makes sense that if we know that somebody is on the terrorist watch list and you go out and sell them, you know, 12 AK47s, that you also should be held responsible under this provision providing material support to terrorists.

So I urge my colleagues on both sides of the aisle to adopt this amendment, and I yield to Mr. Conyers.

Mr. CONYERS. I thank my colleague for joining with me, and me joining with him, in this amendment. Terrorists' access to guns. What could be more relevant in a PATRIOT Act reauthorization? We are not talking about weapons of mass destruction, we are talking about guns, period, in the hands of any terrorist is a danger to Americans, particularly inside the United States.

And so what we are trying to do with Van Hollen-Conyers is to close an alarming loophole that allows suspected and actual members of terrorist organizations to legally purchase guns. I will not repeat that sentence because it speaks for itself.

A GAO report: 56 firearm purchase attempts were made by individuals designated as known or suspected terrorists by the Federal Government. Forty-seven of these cases, transactions of sale were permitted to proceed because officials couldn't find any disqualifying information such as a felony conviction or court-determined mental defectiveness in the individual applicant's background.

So under the law as it stands without this amendment, even in the PATRIOT Act neither suspected or actual membership in a terrorist organization is a sufficient ground in and of itself to prevent such a purchase from taking place. I think this Committee is not about to let a PATRIOT Act reauthorization come out knowing that this is the case and that we must act.

I deliberately did not mention assault weapons because they are going to come up in a special amendment. So, my colleagues, please join us so that we can really wage the best war that we can against terrorists in the United States by keeping domestic guns out of their hands for those who know who they are selling them to. Again, as the gentleman from Maryland indicated, this turns on knowledge and intent, and I think that it is the least that we can do on a bill such as this.

I return the time back to my colleague, if he chooses to use it.

Mr. VAN HOLLEN. Well, I thank my colleague. I think the point has been made here. And I do want to stress that this is where you are knowingly transferring, where an individual knowingly transfers firearms to somebody who is on the terrorist watch list. It seems to fit very well into the provision that already exists with respect to providing material support to terrorists. And I urge my colleagues to adopt the amendment.

Mr. KING. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Iowa, Mr. King.

Mr. KING. Mr. Chairman, I wish to be recognized to speak in opposition.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. And although I agree with the sentiment in this amendment, and all of us want to take all weapons out of the hands of terrorists, I would seek to answer the question that was asked by the Ranking Member from Michigan, Mr. Conyers, although it may have been rhetorical, what could be more relevant than taking guns out of the hands of terrorists; I would submit taking bombs out of the hands of terrorists would be more relevant, given the circumstances that we have seen in the history of terrorism.

But it is not my particular concern. I would like to find a way, too, that we could verify that the terrorists are on the watch list for a reason. But in fact, we can't know if they are on the list or not because it is a classified list. And so I understand the amendment says "knowingly" the name appears on the file. I don't know how an individual that might be providing that gun would know that they were on the list, since it is classified.

And then the second point is that there is a list, though, and that list is the list of those who are disabled of their firearms rights. And it is a list that has been determined to be consistent with the Second Amendment of our Constitution. And those conditions are, people who have been adjudicated in one form or another for having a legitimate reason to have their Second Amendment gun rights denied, these would be people who have committed a felony, people who are a fugitive from justice, addicted to a controlled substance, or adjudicated mentally defective or an illegal alien, or dishonorably discharged from the military, or having renounced their U.S. citizenship or be subject to a restraining order, or being convicted of a crime of domestic violence. We make sure that when people are denied their constitutional rights to keep and own firearms that they have a process by which they go on the list where they are denied, they have an opportunity to appeal that, an opportunity for their case to be heard. And in this case, not only do they not have an opportunity to be on the terrorist watch list, they may not know that they are on the watch list. And if they might hear a rumor that they are, for example, be denied boarding an airplane, which has happened to some of our colleagues, then they only suspect that they are on; it might confirm they are on, but they may not know why.

So I think that even though the intent of this amendment is a good one, to take the weapons out of the hands of terrorists, it reaches beyond a point where we have constitutionally ever

reached before with regard to their restraint on access to guns under the Second Amendment. So the language and the intent is good, but the effect on our Second Amendment of the Constitution, I believe, is——

Mr. CONYERS. Would the gentleman from Iowa yield to me briefly?

Mr. KING. I would be happy to, Mr. Conyers.

Mr. CONYERS. Thank you very much.

What I have heard you say is that terrorists have a constitutional right to weapons, a protected constitutional right——

Mr. KING. Reclaiming my time.

Mr. CONYERS. Right?

Mr. KING. Of course not. And in fact these people are not adjudicated as terrorists. You said yourself that they were known or suspected to be on the terrorist watch list, those 56 people that applied. I don't think that you stated before this Committee that they were all on the terrorist watch list, because that would have been at least acknowledging an understanding of what was on the classified list itself.

So I would conclude by urging a No vote and I would yield back my time.

Mr. VAN HOLLEN. Would the gentleman yield on that point?

Mr. KING. I have yielded back.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much.

Mr. Chairman and members, this amendment appears to be the most reasonable, well thought-out amendment going directly to the heart of protecting us from terrorists or people who would do us harm. And yet, I am absolutely amazed that the gentleman on the opposite side of the aisle who just spoke is concerned about protecting the rights of suspected terrorists.

It seems to me we have sat here and we have listened to some of the same voices talk about how we can obtain private medical records, how we could place people under investigation without judicial review, how we can have access to e-mails, and surveillance of all kinds, invading the rights of folks who you don't even have to show probable cause. And here we have an objection to trying to keep guns out of the hands of suspected terrorists.

I don't understand it. It doesn't make good sense to me. And for those who would paint themselves as being concerned about how we secure this country, how we secure the homeland, how we really deal with this problem of terrorism, given that there is some information that would lead a reasonable person to believe that this person could be a terrorist, and you don't want to keep firearms out of their hands, I don't understand it. And we certainly must have a recorded vote on this. And I yield——

Mr. CONYERS. Would the gentlelady yield?

Ms. WATERS. I yield to the gentleman from New York.

Mr. WEINER. Thank you. What I found interesting in the opposition from one of the members on the other side is that the objective was right and the language was right, but there was some concern about his interpretation of, perhaps, that this would be problematic to the Second Amendment.

I just want to reiterate that the Van Hollen-Conyers amendment says that the person would only be in trouble under this section if they knowingly sold to someone who appeared on the list. So it is not as if he gets to guess or they have to do intelligence. They just have to know. I mean, if the intent was fine of the bill, well, that is at least a step in the right direction. If the language was acknowledged to being right, then the only problem is that the reading of it must be faulty.

Mr. KING. Would the gentleman yield?

Ms. WEINER. I don't control the time, but I certainly hope that the gentlelady will because I am dying to know what is it that you think is not good about it if you like the intent and the language? And I will yield back.

Ms. WATERS. I yield to the gentleman from Michigan.

Mr. KING. I thank the gentle——

Mr. CONYERS. I just want to——

Chairman SENSENBRENNER. She didn't yield to you.

Mr. CONYERS. I just want to point out what is left for us to do in this bill reauthorizing a PATRIOT Act and allowing people to knowingly sell to terrorists or suspected terrorists. Then that makes everything else we do secondary. We just opened the barn door. I can't figure out why we should stay around here for another day or so and mull over dozens of other very worthwhile amendments when we have already agreed that the constitutional rights of terrorists are protected by the Second Amendment to the Constitution—a proposition I have never heard in all of my years on the Judiciary Committee.

Ms. WATERS. Reclaiming my time, I am going to yield because I am so anxious to get to the vote on this. I think it is very important that we have a recorded vote. I yield back the balance of my time.

Mr. LUNGREN. Mr. Chairman?

Chairman SENSENBRENNER. The question——

Mr. LUNGREN. Mr. Chairman? Over here.

Chairman SENSENBRENNER. The gentleman from California did not hear the gentlewoman from California's request to go to a vote quickly?

Mr. LUNGREN. Yes, I did, but there are some remarks on the record that I——

Chairman SENSENBRENNER. Well, then, the gentleman is recognized for 5 minutes.

Mr. LUNGREN. Strike the last word in opposition to the amendment.

I mean, we know this is serious business. When I was attorney general, I set up a violence suppression unit that did nothing but go and take guns off the street from those who were convicted felons, those who were violent offenders. We took literally thousands off the street. We put people away for long periods of time. We had to deal with the gang issue. And one of the constitutional issues that comes up with lists of gangs is who has access to those lists, because on your gang list you often have people who are affiliated with gangs but don't have a criminal history. You can't mix them into criminal history records precisely because they are different categories. Some law enforcement have access to them, others do not.

It is my understanding—and someone can correct if I am wrong—it is my understanding that the Violent Gang and Terrorist Organization File maintained by the Attorney General is classified. Now, if that is the case, what we are doing here is trying to fool people with an amendment that seems to do something. If it is a classified list, how can anybody who doesn't have a classified clearance be able to see it?

And so what we are talking about here is a feel-good amendment that doesn't go to the question of dealing with terrorists or gang members. And I know it makes people feel good to talk about some sort of list that answers the questions, but having gone through this in one of my past lives and knowing that you have different categories of information on different lists, access to which is granted to only certain people under certain standards——

Ms. WATERS. Would the gentleman yield?

Mr. LUNGREN. Yes, I would be happy to yield.

Ms. WATERS. Two questions I see. First, I don't believe it is classified. But if we assume that it is, the amendment itself would apply only if the individual knew that the person was on that list. So——

Mr. LUNGREN. And there be no reason of knowing unless they had a classified——

Ms. WATERS. That is not true. If they knew, if they knew and sold it anyhow, that is the only time this would apply. So the gentleman's objection, even though I don't think it is classified, would not actually cause a problem.

And I thank the gentleman for yielding.

Mr. LUNGREN. Well, the other thing is, if this list is what I think it is, at certain moments in time you have people who are not members of a terrorist group or members of a gang, but have been put on there because of a suspicion that they may be. And that is one of the reasons that you don't allow access to some of these lists. I am just talking about from the standpoint of lists I know with respect to gang——

Mr. WEINER. Would the gentleman yield on that point?

Mr. LUNGREN. You have to be very careful about designating people as gang individuals and putting that out somewhere. And there have been carefully drawn limitations on who gets access to it and who doesn't.

Mr. WEINER. Would the gentleman yield?

Mr. LUNGREN. I mean, this is an interesting discussion, but——

Mr. WEINER. Would the gentleman yield on that point?

Mr. LUNGREN. Yes, sure.

Mr. WEINER. I am just curious. If the United States Government and the agencies in charge of making sure that people who are terrorists don't get onto planes, don't get access to secure places, if a person is on that list, isn't that—and someone knows they are on that list and sells them a weapon anyway, isn't that kind of a kind of precaution we might want to maybe possibly have? What is the harm? What is the harm that you see in saying that if someone knowing knows they are on that list, a list, by the way, that we rely upon for much tougher sanctions than this bill, what is the harm of saying if someone knowingly sells to someone——

Mr. LUNGREN. Well, I will take back my time, because what we are doing here is silly. Because you know the people don't have

that information. This is the reason why we decide that we don't give airlines the list. We give them—they are allowed to make queries into the list to find out if people are there. They don't know why people are on or not on. It is one of the reasons we try and make a delineation between law enforcement people who have had an opportunity to be cleared to know this information, and others.

So if you want to, you know, vote for the bill, or vote——

Ms. WATERS. Will the gentleman yield?

Mr. LUNGREN.—means something, you can. But the fact of the matter is it means absolutely nothing.

Ms. WATERS. What if Karl Rove leaked the information?

Mr. KING. Will the gentleman yield?

Mr. LUNGREN. I will yield whatever time I have.

Mr. KING. I thank the gentleman from California. And I would point out there is a distinction here, and that is the list that I read, the nine classifications of those who have been disabled of their constitutional rights, all the people who have been adjudicated, the list we are talking about in this amendment, though well-intentioned, is a list that includes those people who are under suspicion, not those who are adjudicated. And that is a real violation of the same kind of things that you are trying to avoid in many of your other amendments.

And I would yield back. Thank you.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina, Mr. Watt, seek recognition?

Mr. WATT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, I had to step out and I walked back in to what appears to me to be a surreal discussion. I want to address one aspect of it. I mean, I thought that one of the real problems we had with the PATRIOT Act across the board was the extent to which it treads on constitutional rights. And Mr. King's argument about the Second Amendment is the one that I just couldn't quite come to grips with. He seemed to be suggesting that he couldn't support this amendment because it would tread on the Second Amendment to the Constitution of the United States.

I did want to remind him of the provisions in the Sixth Amendment to the Constitution of the United States, which provides that accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district in which the crime shall have been committed, which district shall have been previously ascertained by law; and be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

If the marginal—even if you assume that the Second Amendment says what you believe that it says, I can't imagine that you think that what we have done is more an impediment on the Second Amendment than it is on this amendment. I mean, we have people locked up, no charges brought against them, no right to counsel, no—I mean, you know. So I thought we all had accepted that there was going to be some infringement. That is why we had such a long debate about the sunset provisions, because, you know, at

least you could go back and review the extent to which this is happening and get us back at some point to a balance that protects our constitutional rights. But you can't with integrity argue that you can protect only the Second Amendment, unless you are going to argue just as vigorously and vehemently that you are going to protect the other constitutional protections here.

So, I mean, I—now, I don't have any problem with you standing up for the Second Amendment. I mean, you know, I just want you to make it a little bit broader than the Second Amendment.

Mr. SCHIFF. Will the gentleman yield?

Mr. WATT. There is a whole bunch of provisions in the Constitution that we are treading and shredding—hopefully, temporarily. I just wanted to point that out. I will yield to the gentleman from California.

Mr. SCHIFF. I thank the gentleman for yielding. I just wanted to make a quick related point, and that is that a lot of the provisions of the Patriot bill that we are discussing today involve the Fourth Amendment right to be free from unreasonable searches and seizures. And in all the cases that we are talking about, about surveillance under FISA or other provisions, we are talking about people who are suspects. None of these people are adjudicated felons. We are all talking about suspects, and in some cases, with standards less than probable cause.

Now, here, yes, we are talking about people who are suspects, although I guess you could have people who are convicted also that are part of the Violent Gang and Terrorist Organization File. But yes, we are talking about suspects and their rights under the Fourth Amendment and suspects and their rights under the Second Amendment. And I find it, you know, very incongruous that we are saying that the Fourth Amendment rights we are willing to——

Mr. WATT. Fudge.

Mr. SCHIFF. Well, I wouldn't use the word "fudge," but, you know, we are willing to push the envelope on the Fourth Amendment vis-a-vis these suspect, but when it comes to the sacrosanct Second Amendment, and we are talking about knowingly giving a firearm to somebody who is a potential terrorist, that that is okay because they are only potentially terrorists. But we can surveill potential terrorists; we just can't take their gun away.

That seems to me an extraordinary result, that we can go up on a wiretap of a potential terrorist, but we can't stop someone from knowingly giving guns to a potential terrorist. And I don't know why the Fourth Amendment, apart from reasons that are unspoken here in Committee but plain to everyone in this Committee, I don't know why the Second Amendment is getting so much more vigilant protection here than the Fourth or, as my colleague mentions, the Sixth.

Chairman SENSENBRENNER. The gentleman's time has expired.

The question is on the Van Hollen amendment. Those in favor will say aye? Opposed, no?

The noes appear to have it.

Mr. CONYERS. Record vote, sir.

Chairman SENSENBRENNER. A record vote will be ordered. Those in favor of the Van Hollen amendment will, as your names are called, answer aye; those opposed, no. And the clerk will call the role.

The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?

Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Further members who wish to cast or change their vote? The gentleman from California, Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Boucher?
Mr. BOUCHER. No.
The CLERK. Mr. Boucher, no.
Chairman SENSENBRENNER. If there are no further members who wish to cast or change their vote, the clerk will report.
The CLERK. Mr. Chairman, there are 15 ayes and 22 noes.
Chairman SENSENBRENNER. The amendment is not agreed to.
Are there further amendments? The gentleman from California, Mr. Berman.
Mr. BERMAN. Mr. Chairman, I have an amendment at the desk, Berman and Delahunt, on data mining report.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to H.R. 3199, offered by Mr. Berman and Mr. Delahunt. At the appropriate place in the bill, insert the following: Section _____. Data mining report. (a) Definitions. In this section——
[The amendment of Mr. Berman and Mr. Delahunt follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. BERMAN AND MR. DELAHUNT

At the appropriate place in the bill, insert the following:

SEC. _____. DATA-MINING REPORT.

(a) DEFINITIONS.—In this section:

(1) DATA-MINING.—The term ''data-mining'' means a query or search or other analysis of 1 or more electronic databases, where—

(A) at least 1 of the databases was obtained from or remains under the control of a non-Federal entity, or the information was acquired initially by another department or agency of the Federal Government for purposes other than intelligence or law enforcement;

(B) the search does not use a specific individual's personal identifiers to acquire information concerning that individual; and

(C) a department or agency of the Federal Government is conducting the query or search or other analysis to find a pattern indicating terrorist or other criminal activity.

(2) DATABASE.—The term ''database'' does not include telephone directories, information publicly available via the Internet or available by any other means to any member of the public without payment of a fee, or databases of judicial and administrative opinions.

(b) REPORTS ON DATA-MINING ACTIVITIES.—

(1) REQUIREMENT FOR REPORT.—The head of each department or agency of the Federal Government that is engaged in any activity to use or develop data-mining technology shall each submit a public report to Congress on all such activities of the department or agency under the jurisdiction of that official.

(2) CONTENT OF REPORT.—A report submitted under paragraph (1) shall include, for each activity to use or develop data-mining technology that is required to be covered by the report, the following information:

(A) A thorough description of the data-mining technology and the data that will be used.

(B) A thorough discussion of the plans for the use of such technology and the target dates

for the deployment of the data-mining technology.

(C) An assessment of the likely efficacy of the data-mining technology in providing accurate and valuable information consistent with the stated plans for the use of the technology.

(D) An assessment of the likely impact of the implementation of the data-mining technology on privacy and civil liberties.

(E) A list and analysis of the laws and regulations that govern the information to be collected, reviewed, gathered, and analyzed with the data-mining technology and a description of any modifications of such laws that will be required to use the information in the manner proposed under such program.

(F) A thorough discussion of the policies, procedures, and guidelines that are to be developed and applied in the use of such technology for data-mining in order to—

(i) protect the privacy and due process rights of individuals; and

(ii) ensure that only accurate information is collected and used.

(G) A thorough discussion of the procedures allowing individuals whose personal information will be used in the data-mining technology to be informed of the use of their personal information and what procedures are in place to allow for individuals to opt out of the technology. If no such procedures are in place, a thorough explanation as to why not.

(H) Any necessary classified information in an annex that shall be available to the Committee on Governmental Affairs, the Committee on the Judiciary, and the Committee on Appropriations of the Senate and the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives.

(3) TIME FOR REPORT.—Each report required under paragraph (1) shall be—

(A) submitted not later than 90 days after the date of enactment of this Act; and

(B) updated once a year and include any new data-mining technologies.

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

Chairman SENSENBRENNER. The gentleman from Texas reserves a point of order. Without objection, the amendment is considered as read. Subject to the reservation, the gentleman from California is recognized for 5 minutes.

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

This amendment that Mr. Delahunt and I are offering would require the departments and agencies of the Federal Government to report to Congress on the development and implementation of data mining technologies.

When Mr. Delahunt offered this amendment on behalf of both of us during the intelligence reform markup of this Committee, it was accepted by a voice vote. The General Accounting Office issued a report in May 2004 that identified almost 200 data mining projects throughout the Federal Government that were either operational or in the planning stages. Many of them make use of personally identifiable data obtained by private sector databases.

Two concerns lead us to this amendment. The first is that Americans rightly have privacy concerns about these data mining technologies, particularly when we hear that there are 200 of them in the works. When the Total Information Awareness Program came to light, there was tremendous public concern about the extent of the project.

Congress ought to know about these programs not just as they are being put into place, but as they are being developed, so that we can ensure that privacy concerns are taken into account.

The second reason for the amendment is that the budget for the Total Information Awareness Program in the Defense budget alone in 2004 was $169 million. The Defense appropriations bill cut all of that funding. These technologies are not free. They are expensive to develop and run. When Congress is unaware of their development and steps in only at the implementation to cut funding, taxpayer dollars are wasted.

Law enforcement must have the necessary means to protect our safety, but the use of data mining technologies should not be allowed to put Americans' privacy at risk. By implementing a reporting requirement, we can ensure that Congress knows in advance of implementation and is able to respond appropriately.

I know that there is a question about the germaneness of this amendment, and I know that when it was adopted last time, there were problems in sequential referrals because we seek to get reports on data mining in a number of different agencies, not just agencies that the Judiciary Committee has oversight on. At the appropriate time——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. BERMAN. I would be happy to yield.

Chairman SENSENBRENNER. The gentleman from California and other members of the Committee know that the chair has been very concerned about data mining in an unchecked and unreportable manner by agencies of the Executive Department. Now, when the original PATRIOT Act was first considered, the final version of the PATRIOT Act did have provisions checking data mining activity by the Justice Department.

I believe that the concern of the gentleman from California is a very well-founded one. And while I don't think that the amendment he is offering is germane under the rules of the House, I do think that he is talking about a legitimate subject that should be legislated on sometime further on in the legislative process, either in this bill or in subsequent legislation. And I will give my commitment to the gentleman from California to work with him on this subject, because I believe that he has spotted something that does need to be addressed.

Mr. BERMAN. Thank you very much. Reclaiming my time, I thank the Chairman very much both for his comments and for his commitment. And before I withdraw the amendment, I would like to yield to my cosponsor, Mr. Delahunt.

Mr. DELAHUNT. I won't take any time. I just appreciate the offer by the chair. I think this is an issue, however, that has really raised concerns on a broad swath among the American people in terms of privacy interests and something that really compels us to address. And I am hopeful that before the legislation we are considering today comes to the floor, that we will be able to work out, in an appropriate fashion, language so that it could be incorporated in that legislation.

With that, I yield back.

Mr. BERMAN. I yield back.

Chairman SENSENBRENNER. Does the gentleman withdraw his amendment?

Mr. BERMAN. I do.

Chairman SENSENBRENNER. The amendment is withdrawn. The point of order is thus moot.

For what purpose does the gentleman from California, Mr. Schiff, seek recognition?

Mr. SCHIFF. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Nine, offered by Mr. Schiff and Ms. Waters. Add at the end of Section 8, page 9, after line 11, the following new Subsection E: Prohibition on delegation of application for order of production of records from library or bookstore or medical records containing personally identifiable information. Subsection A of such Section is amended——

Mr. SCHIFF. Mr. Chairman, I'd ask consent that the amendment be deemed as read.

Chairman SENSENBRENNER. Without objection, and the gentleman is recognized for 5 minutes.

[The amendment of Mr. Schiff and Ms. Waters follows:]

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AMENDMENT TO H.R. 3199

OFFERED BY MR. SCHIFF

Add at the end of section 8 (page 9, after line 11) the following new subsection:

(e) PROHIBITION ON DELEGATION OF APPLICATION FOR ORDER OF PRODUCTION OF RECORDS FROM LIBRARY OR BOOKSTORE, OR MEDICAL RECORDS, CONTAINING PERSONALLY IDENTIFIABLE INFORMATION.—Subsection (a) of such section is amended—

(1) by inserting ", subject to paragraph (3)," after "The Director of the Federal Bureau of Investigation or"; and

(2) by adding at the end the following new paragraph:

"(3) In the case of an application for an order requiring the production of tangible things described in paragraph (1) from a library or bookstore, or that are medical records, that contain personally identifiable information, the Director of the Federal Bureau of Investigation may not delegate the authority to make such application to any designee.".

Mr. SCHIFF. Thank you, Mr. Chairman. I'll try to do this in less than five.

This is a very simple amendment to Section 215 that says that vis a vis the records that have the most concerns among all of our constituents—library records, or bookstore records, or medical records—that the existing authority in Section 215, which allows the Director of the FBI to delegate to a subordinate the decision to seek these records he would not be able to delegate. That is that in the limited case of libraries, bookstores, and medical records that you could still get them under Section 215, but they'd have to be approved by the Director of the FBI himself or herself.

I imagine, listening to my colleagues on the other side of the aisle that—and in particular as far as the Attorney General has certified—the library provision has never been used, at least as of the last public disclosure. So it would be very seldom that I would hope that a library or bookstore or medical record would be sought, and I don't think this would impose an undue burden on the Director of the FBI, and given the sensitivity of this, I think it makes sense for the FBI Director and the Director alone to make that decision, not delegate it away.

The fact that the library record provision may or may not have been used at this point doesn't alter the fact that it affects the behavior of all of our constituents, who are concerned that their records might be the subject of search. So I think this added protection is warranted. It won't inhibit what the FBI does, but it will add another layer of safeguard, and I would urge my colleagues' support.

Ms. LOFGREN. Would the gentleman yield?

Mr. SCHIFF. Yes. I'd be happy to.

Ms. LOFGREN. I will support the gentleman's amendment, but I would note, and I guess this is really a question that this is actually a more conservative approach than the House itself took in the amendment to the appropriations that essentially prevailed—Mr. Sanders' amendments several weeks ago. Isn't that correct?

Mr. SCHIFF. Yes, it is. I mean this doesn't exclude the ability to get these records, but it says in this narrow category of the most sensitive information, it's a decision that the Director of the FBI should not be able to delegate to a field agent or a subordinate, but should be made at the top.

Ms. LOFGREN. If the gentleman will further yield. I will support the amendment. I actually prefer what the House voted on, and I suspect the gentleman may as well. But certainly, what you've recommended is an improvement over the laws that exist today, and I thank the gentleman for yielding.

Mr. SCHIFF. I thank the gentlewoman, and I'd be prepared to yield back the balance of my time.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes in opposition to the amendment.

The Chair realizes that there have been problems so with the interpretation of Section 215 and that a clarification of procedures and standards are in order.

The Flake Amendment that was adopted this morning does provide a partial clarification. The actual line of authority issue that the gentleman from California Mr. Schiff's amendment deals with

is at the present time being worked out, and will be the subject of a floor amendment when we get there next week.

I would be willing to offer to work with the gentleman from California, Mr. Schiff, and the gentlewoman from California, Ms. Waters, to work out language should they withdraw their amendment at this time.

But if they won't withdraw the amendment at this time, then I would urge the members to vote against it.

I yield back the balance of my time.

Mr. SCHIFF. Yeah. Mr. Chairman, I appreciate the offer to work together, and I would, given the likelihood of success in Committee, accept the Chairman's invitation to work together on language for the floor.

Chairman SENSENBRENNER. The amendment is withdrawn. Are there——

Mr. SCHIFF. Mr. Chairman, since I have withdrawn that, may I offer another?

Chairman SENSENBRENNER. Of course. The clerk will report the amendment.

Does the gentleman from——

Mr. SCHIFF. It's being provided to the desk, Mr. Chairman.

Chairman SENSENBRENNER. Does the clerk have a Schiff Amendment?

Mr. SCHIFF. My staff is bringing it to the desk right now, Mr. Chairman.

Chairman SENSENBRENNER. Perhaps—the Chair will recognize another member for offering an amendment and get back to Mr. Schiff. The gentleman from New York. Excuse me, the gentleman from Florida, Mr. Wexler, has had little to say today. For what purpose do you seek recognition?

Mr. WEXLER. It's a compliment for me to be from New York, Mr. Chairman. Others may not feel that way, but I do.

Chairman SENSENBRENNER. Does the gentleman from Florida have an amendment at the desk?

Mr. WEXLER. Yes, I do.

Chairman SENSENBRENNER. The clerk will report the Wexler Amendment.

The CLERK. Mr. Chairman, I do not have a Wexler Amendment.

Chairman SENSENBRENNER. Okay. I will now try the gentleman from New York, Mr. Weiner.

Do you have an amendment at the desk?

Mr. WEINER. Thank you, Mr. Chairman. Mr. Chairman, no.

Chairman SENSENBRENNER. The clerk will report the Wexler Amendment.

Mr. WEXLER. Thank you, Mr. Chairman.

The CLERK. Amendment to H.R. 3199, offered by Mr. Wexler of Florida. At the end of the bill add the following section preventing the revelation of information pertaining to active intelligence agents.

Mr. WEXLER. Mr. Chairman, I move that the——

The CLERK. Section 2239——

Chairman SENSENBRENNER. Reserve the point of order.

The CLERK. A of Title 18 United States Code is amended by inserting reveals any information pertaining to the identity of under-

cover intelligence officers, agents, informants, and sources that the person has or should——

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

Mr. SMITH. Mr. Chair, I reserve a point of order.

Chairman SENSENBRENNER. The gentleman from Texas reserves a point of order, subject to the reservation. Without the objection, the amendment is considered as read, and the gentleman from Florida will be recognized for 5 minutes.

[The amendment of Mr. Wexler follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. WEXLER OF FLORIDA

At the end of the bill, add the following:

SEC. ___. PREVENTING THE REVELATION OF INFORMATION PERTAINING TO ACTIVE INTELLIGENCE AGENTS.

Section 2339A(a) of title 18, United States Code, is amended by inserting ''reveals any information pertaining to the identity of undercover intelligence officers, agents, informants, and sources that the person has or should have reason to believe would be sufficient to be used to identify a United States intelligence operative, including, but not limited to, the name of the such covert agent, the name of any relative of the agent, current or prior location of the agent, or actions of specific covert agent, or'' after ''Whoever'' .

Mr. WEXLER. Thank you, Mr. Chairman. This amendment would expand Section 805 of the bill, which is the section which defines material support for terrorism to include acts that assist terrorist groups by undermining the safety of our intelligence agents by leaking information leading to the disclosure of their identities.

While it already a crime to knowingly disclose classified information that identifies a covert agent under Title 50, Section 421, of the U.S. Code, this amendment would strengthen existing protections by categorizing veiled or leading comments that identify undercover intelligence officers or agents as providing material support for terrorism, especially at this critical juncture when the Federal Government is calling on patriotic Americans to fight our War on Terrorism by serving in dangerous intelligence gathering positions.

We must treat the secrecy of covert agents with the greatest possible care. After the outrageous outing of Valerie Plame as a CIA operative, it is time for Congress to send an unequivocal message to our intelligence community that we are prepared to do our part to protect them, as they risk their lives to protect our nation from terrorism.

Flagrant disregard for the safety of our intelligence officials and their contacts is a shameful betrayal of our intelligence community and greatly diminishes America's counter terrorism efforts.

If brave and patriotic CIA and other intelligence operatives, whose unknown and unsung service is so crucial to the safety of our nation, are to effectively, objectively, and independently gather and analyze intelligence, they must trust absolutely that their identities are safe from both knowing admissions and from leading comments.

If we learned anything, just one thing from the catastrophe of September 11th, it is when our intelligence officials fail, every American becomes vulnerable to attack. CIA and other intelligence officials must not fear political retribution, whatever their conclusions or opinions are. They must not be pressured to abridge their conclusions and certainly the secrecy of their identities must be held sacred.

Those Americans, no matter how prominent or powerful they may be, who compromise the identity of our intelligence operatives, are doing nothing short of providing material support for terrorism. They undermine the security of the United States and should be subject to prosecution under the Patriot Act.

It is critical that we include extra protection for America's covert agents provided for in this amendment.

Surely, every member of this Committee condemns the outing of Ms. Plame, and I urge you to support the greater security for our intelligence operatives that they deserve, which is contained in this amendment.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Does the gentleman from Texas insist upon his point of order?

Mr. SMITH. Mr. Chairman, it is my understanding that the amendment has been redrafted and is now marginally germane, so I will withdraw my point of order.

Chairman SENSENBRENNER. Okay. The gentleman from Iowa, Mr. King.

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. I thank the Chairman and, you know, I listen with amazement to this amendment as it's being described by the gentleman from Florida, and I think I read about four words into this amendment before I identified this as the Carl Rove Amendment. And, you know, I'm wondering why it's not the Sandy Berger Amendment. I mean he really did have paper in his socks, and there really was something substantive there, but I didn't see any action on your part during that entire minimal and quiet investigation that took place.

And this is a serious business that we're ahead here marking up the PATRIOT Act, and there are a lot of amendments to be dealt with today, but this doesn't belong in this bill.

It's already a crime to divulge this information. And it isn't material support. It's a different definition. Material support is very clear and to expand it in this fashion, and then add, add the language that the person has or should have reason to believe would be sufficient to be used to identify a United States intelligence operative or should have reason to believe is about as ambiguous as anything I've ever read and anything that's come before this Committee. Who's going to make the judgment on what they should have had reason to believe? Can we make that today or can we do that after the fact?

So this redefines material support as something that's not material support. It's already a crime. There's already a way to deal with this, and that will be dealt with in due course in a proper fashion, and it should not be dealt with in the political field here while we're marking up a very important serious bill that's going to be protecting the safety of all the people in this nation for the next generation to come.

So I'd urge a no vote on the Wexler Amendment, and I'd yield back the balance of my time.

Chairman SENSENBRENNER. For what purpose does the gentleman from California, Mr. Berman, seek recognition?

Okay. The gentleman from New York, Mr. Weiner?

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

Chairman SENSENBRENNER. The gentleman is recognized.

Mr. WEINER. First of all, let the record indicate that now the consensus in the nation is complete regarding Carl Rove, and it even includes the majority members of the Judiciary Committee. And with that, I yield to my colleague from Florida, Mr. Wexler.

Mr. WEXLER. Thank you. I specifically didn't mention any names. But since the gentleman from Iowa did——

Mr. KING. Would the gentleman yield?

Mr. WEXLER. No, no, no.

Mr. KING. Valerie Plame would be a name.

Mr. WEXLER. I'm sorry?

Mr. KING. Would the gentleman yield.

Mr. WEXLER. Sure.

Mr. KING. Valerie Plame would be a name that you mentioned in your remarks——

Mr. WEXLER. That's true.

Chairman SENSENBRENNER. The time belongs to the gentleman from New York.

Mr. WEXLER. Yes, I did. I didn't mention any names in terms of people in the context of alleged violation of law. But since the gentleman from Iowa did, I think it's appropriate to respond in the context of Mr. Rove.

The present standard used to protect the identity of undercover agents actually criminalizes the knowing disclosure of classified information that identifies that covert agent, as the gentleman from Iowa so correctly pointed out.

It's clear, however, that Mr. Rove knew about the prohibition and carefully designed his comments to be revealing enough to lead a reporter to undercover Ms. Plame's identity without revealing Ms. Plame's actual name or affiliation outright. The effect, however, on the safety, security, and the ability of our undercover agents to do their job is exactly the same.

Whether his unquestionably egregious actions qualify as a violation of current law is obviously still under review. I'm not offering an opinion.

But what I do know is that our covert agents deserve the greatest possible degree of protection, not something that could possibly be circumvented with if I only say it this way, I'll avoid the law, but the effect will be the same: an undercover CIA agent, her or his identity, will be disclosed to the entire world, thereby, jeopardizing our intelligence operation.

The amendment would simply provide a broader standard of protection for the identity of undercover agents by amending Section 805 of the PATRIOT Act to include any information pertaining to the identity of an undercover intelligence officer. That's the least we should do to make certain that our CIA and intelligence officers have their identities protected.

This is bigger than Mr. Rove. It's bigger than any individual——

Mr. BERMAN. Would the gentleman yield?

Mr. WEXLER. I yield to the gentleman from California?

Mr. BERMAN. I thank the gentleman for yielding. Before the gentleman from Iowa gets too distraught about an amendment that proposes as a criminal standard has or should have reason to believe, I'm wondering if he had any information about how many of our criminal statues that can impose imprisonment or fines have that standard already in the law, because I haven't noticed any particular concern about narrowing the breadth of that phrase in the existing statutes.

Mr. KING. Would the gentleman yield?

Mr. CONYERS. Would the gentleman yield?

Chairman SENSENBRENNER. Time belongs to the gentleman from New York.

Mr. WEINER. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding. The Wexler Amendment, members of the Committee, simply extends the Section 805 to cover the specific case where, by using veiled references, you end up naming the person without putting the spelling of the name and the name of the organization.

And for that reason, it's a very important extension because this could be used again and again and again by people who want to avoid what the law presently provides to get around it. So I think

this is a very useful and important amendment. I thank the gentleman.

Mr. WEINER. And just reclaiming my time, you know, so far, we've heard the opponents to amendments that would seek to ban guns being sold to terrorists as silly. Something that seeks to make the laws tougher on leaking the names of covert operatives that could get them killed, it's being called political. Perhaps one of these amendments will be considered on its merits one of these days; that you'll say I don't believe that we should conceal the identity of covert operatives. I don't believe that we should prevent guns from coming into the hands of terrorists.

Let's have—this is an opportunity for us here to discuss the merits of some of these things, and I would encourage my colleagues to take the opportunity to do it.

You know, a pedantic it's silly or it's political does not do anything to diminish the merit of it, and I urge a yes vote on the Wexler Amendment.

Chairman SENSENBRENNER. The gentleman's time has expired, and the Chairman is to strike the last word and recognizes himself for 5 minutes.

It's no secret that there has been a special prosecutor that has been appointed by the Attorney General to look into the entire issue.

That special prosecutor is well known as a bulldog in the prosecutorial community and let's the chips fall where they may. I believe in his role as U.S. Attorney for the Northern District of Illinois, he indicted the former Republican governor of that state.

I don't think any of us can say whether the law on disclosing the names of covert CIA agents is adequate or inadequate until that special prosecutor issues his report, and either indicts people or decides that there is insufficient evidence to indict people.

This is a serious issue, but until Mr. Fitzgerald completes this investigation, I honestly think that we really do not know how useful or not useful the current law is in tracking down those that disclose the names of covert CIA agents.

I think my Ranking Member and I and perhaps Mr. Lungren, who were here at the time in the early '80's, remember that we dealt with this issue in terms of drafting the current criminal statute, extensively. And while that statute has never really come into play before now, I think it is into play now. I would also point out that even though the name of Carl Rove has been mentioned, this law would have no—or this proposed amendment would have no application to any case that may or may not involved Mr. Rove, because if this was enacted today, it would be an *ex post facto* law and the circumstances relative to the leaking of Ms. Plame's name to reporters for the news media could not be prosecuted under the law that is proposed by the Wexler Amendment.

For all these reasons, I would urge the defeat of this amendment.

Ms. WASSERMAN SCHULTZ. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Florida, Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman. Although the Chairman just said that he's not sure where we should be going on this, and that it's something that we should probably be looking at, I wanted to cite for you the remarks of George Herbert Walker Bush, the 41st President of the United States. In his speech at the dedication ceremony for the George Bush Center for Intelligence on April 26th of 1999, he said these are our enemies. "To combat them, we need more intelligence, not less. We need more human intelligence. That means we need more protection for the methods we use to gather intelligence and more protection for our sources, particularly our human sources, people that are risking their lives for their country.

"Even though I'm a tranquil guy now at this stage of my life, I have nothing but contempt and anger for those who betray the trust by exposing the name of our sources. They are, in my view, the most insidious of traitors."

It is pretty clear that we need more protection and not less in the law, and of all places to insert that protection, I would think it would be appropriate to insert it in the PATRIOT Act. And the gentleman from Iowa earlier stated that he could not—that he has not seen less more vague language than the language in the gentleman from Florida's amendment. One has only to peruse the vast majority of the PATRIOT Act to look and find vague language when it comes to the protections that are afforded to people who deserve quite a bit more certainty and clarity in the law than the PATRIOT Act affords them.

Mr. KING. Would the gentlelady yield?

Ms. WASSERMAN SCHULTZ. Yes.

Mr. KING. I thank the gentlelady, and I—the reason that I said I haven't seen language this ambiguous is because of the phrase or should have reason to believe. And I didn't believe when I said that, that that language existed anywhere in the U.S. Code and since that time we've confirmed that that language doesn't exist anywhere in the U.S. Code, so I think that would be a solid statement that this is very ambiguous, and I thank and I yield back.

Mr. BERMAN. Would the gentlelady yield?

Ms. WASSERMAN SCHULTZ. Yes.

Mr. BERMAN. Has the gentleman looked at the Foreign Corrupt Practices Act in making this decision, the conclusion about the U.S. criminal statutes?

Mr. KING. We had staff search the entire code.

Ms. WASSERMAN SCHULTZ. Mr. Chairman, I've reclaimed my time.

Mr. KING. I can't answer specifically.

Mr. BERMAN. If I—may I just?

Ms. WASSERMAN SCHULTZ. Yes. I'll yield to the gentleman from California.

Mr. BERMAN. It is my belief, based on working on this statute in the days when only Mr. Sensenbrenner and Mr. Hyde and Mr. Lundgren and Mr. Conyers would remember that one of the clear standards or vague standards in the Foreign Corrupt Practices Act is that when you pass money to your corporate agents, that if you knew or should have had reason to know that that—knew or should have reason to know that that money was going to be used

to bribe a foreign government official for corrupt purposes that is a crime. I'm unclear about what code you searched?

Mr. WEXLER. Would the gentleman yield?

Chairman SENSENBRENNER. Time belongs to the gentlewoman from Florida, Ms. Wasserman Schultz.

Mr. WEXLER. Will the gentlelady yield?

Ms. WASSERMAN SCHULTZ. I yield to the gentleman from Florida.

Mr. WEXLER. How about we make a deal? If Mr. King is right and the language is not in the U.S. Code, and, therefore, it is so nebulous, I'll withdraw the amendment. But if it is in the U.S. Code, then we accept it, because then, clearly, it's not nebulous, and we've got the criminal law that already exists. That's fair; right?

Mr. KING. If the gentlelady would yield?

Chairman SENSENBRENNER. Will the gentlewoman from Florida yield?

Ms. WASSERMAN SCHULTZ. I will.

Chairman SENSENBRENNER. As the honest broker here, maybe the gentleman could withdraw his amendment, and we can look further in the U.S. Code, and he can always reoffer it.

Mr. WEXLER. What did I get out of that deal?

Chairman SENSENBRENNER. The commitment you can reoffer it.

Mr. WEXLER. The Chairman certainly seems quite genuine, so I would respect his wishes if that's the case.

Chairman SENSENBRENNER. The amendment is withdrawn. Are there further amendments?

Mr. SCHIFF. Mr. Chairman, I have that amendment at the desk now.

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff, has an amendment at the desk.

The CLERK. Amendment to H.R. 3199, offered by Mr. Schiff. At the end of the bill add the following new section. Section Prohibition on Planning Terrorists Attacks on Mass Transportation. Section 1993 (a)(3) of title 18, United States Code is amended a) by redesignating paragraphs 6 through 8 as 7 through 9, respectively, and b) by inserting after paragraph 5 the following: 6. Surveils, photographs, videotapes, diagrams or otherwise collects information with the intent to plan or assist in planning any of the acts in the preceding paragraphs.

[The amendment of Mr. Schiff follows:]

AMENDMENT TO H.R. ___

OFFERED BY MR. SCHIFF

At the end of the bill add the following new section:

SEC. ___. PROHIBITION ON PLANNING TERRORIST ATTACKS ON MASS TRANSPORTATION.

Section 1993(a)(3) of title 18, United States Code, is amended—

(A) by redesignating paragraphs (6) through (8) as (7) through (9) respectively; and

(B) by inserting after paragraph (5) the following:

"(6) surveils, photographs, videotapes, diagrams, or otherwise collects information with the intent to plan or assist in planning any of the acts in the preceding paragraphs; or"

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff, is recognized for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman. This amendment is fairly straightforward. It amends the section of the PATRIOT bill that was designed to strengthen the criminal laws against terrorism in Section 801 of the PATRIOT bill. And it provides that if you were involved in surveilling, photographing, videotaping, diagraming or otherwise collecting information about a mass transit system with the intent to plan or assist in basically committing a terrorist act against that mass transit system, that ought to be a prohibited offense——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. SCHIFF. Yes, Mr. Chairman.

Chairman SENSENBRENNER. I think it should be a prohibited offense, too, and I am happy to accept the amendment.

Mr. SCHIFF. Thank you, Mr. Chairman. And I would yield back the balance of my time.

Mr. NADLER. Mr. Chairman, a point of inquiry.

Chairman SENSENBRENNER. The rules don't call for a point of——

Mr. NADLER. I just have a question.

Chairman SENSENBRENNER. Okay. Well, if maybe the gentleman should California should not yield back.

Mr. SCHIFF. I think I'd be yielding to the gentleman——

Chairman SENSENBRENNER. And yield to the gentleman from New York.

Mr. NADLER. Thank you. I have a question. Under your amendment, it's an element of the crime that he has to have the intent

to plan or assist. So if someone is simply photographing, you'd have to prove intent?

Mr. SCHIFF. Absolutely.

Mr. NADLER. Okay. I think it's a good amendment, and I thank the gentleman.

Chairman SENSENBRENNER. Okay. The question is on agreeing to the amendment offered by the gentleman from California, Mr. Schiff. Those in favor will say aye? Opposed, no?

The ayes appear to have it.

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentlewoman from California want a rollcall?

Ms. LOFGREN. No, I was just trying to be recognized for an amendment.

Chairman SENSENBRENNER. Well, the ayes appear to have it on the Schiff Amendment. The ayes have it. And the amendment is agreed to.

For what purpose the gentlewoman from California, Ms. Lofgren, seek recognition?

Ms. LOFGREN. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. LOFGREN. Number five.

The CLERK. Amendment to H.R. 3199 offered by Ms. Lofgren of California. Add the end of the bill, add the following: Section, Preventing the Transfer of 50-Caliber Sniper Weapons to Terrorists. Section 2239 (A) of Title 18 United States Code is amended 1) in Subsection A by inserting 1) transfers 50 caliber sniper weapon to an individual knowing that the individual is a member of al-Qaeda, or 2) after whoever and 2) in Subsection——

Ms. LOFGREN. I'd ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered. The gentlewoman is recognized for 5 minutes.

[The amendment of Ms. Lofgren follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MS. LOFGREN OF CALIFORNIA

At the end of the bill, add the following:

SEC. ___. PREVENTING THE TRANSFER OF 50 CALIBER SNIPER WEAPONS TO TERRORISTS.

Section 2339A of title 18, United States Code, is amended –

(1) in subsection (a), by inserting "(1) transfers a 50 caliber sniper weapon to an individual knowing that the individual is a member of al Qaeda, or (2)" after "Whoever"; and

(2) in subsection (b) –

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following:

"(4) the term '50 caliber sniper weapon' means a rifle capable of firing a center-fire cartridge in 50 caliber, .50 BMG caliber, any other variant of 50 caliber, or any metric equivalent of such calibers.".

Ms. LOFGREN. This is a simple and commonsense amendment that would punish those who sell dangerous rifles to known terrorists who are al-Qaeda members. I think the case for the amendment is clear and immediate. It's not a gun control issue. It's a national security issue. Fifty caliber anti-armor sniper rifles are an ideal tool for terrorists. Armored personnel carriers, rail cars carrying hazardous materials and most disturbingly civilian aircraft are vulnerable to these types of rifles.

In fact, even early promotional materials for the 50-caliber rifle referenced their threat to civilian aircraft. The promotional materials state that the weapon could target, and I quote: "the compressor section of jet engines, making it capable of destroying multi-million dollar aircraft with a single hit delivered to a vital area." The rifle's brochure goes on to say that the cost effectiveness of the 50-caliber cannot be overemphasized when a round of ammunition purchased for less than $10 can be used to destroy or disable a modern jet aircraft.

The military also recognizes this threat. A 1995 Rand report inspired the Air Force to train a special counter sniper team to respond to the 50-caliber sniper threat to its aircraft and personnel. Since 9/11, our country has made great efforts to secure our civilian airplanes and airports. Terrorists will obviously adapt to our tactics, so it's vital that we think ahead. It doesn't take a rocket scientist to figure out that if we make it difficult to get weapons on a plane or into an airport, terrorists may look to destroy airplanes from longer distances, and that's what the 50-caliber rifle is designed to do.

These rifles are accurate at ranges of at least 1,000 yards and even further in the hands of trained marksman. In essence, these weapons could give a terrorist the ability to take a shot at an aircraft from beyond most airport security perimeters.

There is already evidence that terrorists have sought these weapons. According to the Violence Policy Center, al-Qaeda bought 25 50-caliber anti-armor sniper rifles in the 1980's.

Although I personally believe that these weapons should be outlawed altogether, this amendment doesn't do that. It's more modest.

It simply provides that if you transfer a 50-caliber rifle to someone who you know is a member of al-Qaeda, that you will be guilty of providing material support for terrorism. In truth, this Congress should outlaw the transfer of any type of weapon to a person who's on the Terrorist Watch List, as Mr. Van Hollen suggest earlier. But today, at the least, let's outlaw the transfer of armor piercing, long-range sniper rifles to known al-Qaeda members. I don't see how anyone on this Committee could oppose that goal.

Preventing terrorism on our shores does not only mean securing our borders, it means preventing terrorists from obtaining the weapons they need to carry out their destructive acts.

This modest amendment will help to do that, and I urge my colleagues to support it. I would note that the discussion of—that we had under Mr. Van Hollen's amendment is avoided here. There need be no discussion, as my colleague from California indicated earlier about whether or not a list is accessible, whether it is classified. This amendment simply says if you know that the person you're selling a 50-caliber weapon to is an al-Qaeda member, then you fall within the statute.

So I hope that this amendment will be supported. I cannot imagine why anyone would not support it. And, Mr. Weiner, are you asking for—and I would yield back the balance of my time.

Mr. LUNGREN. Would the gentlelady yield?

Ms. LOFGREN. I would yield.

Mr. LUNGREN. Or just a question.

Ms. LOFGREN. Yes.

Mr. LUNGREN. And that is can the gentlelady tell me whether or not this activity is currently prohibited under current law. Because as I read it, it says whoever knowingly provides material support or resources to a foreign terrorist organization. This would be material support or resources. al-Qaeda is an identified foreign terrorist organization; is involved in a prohibited activity. So I'm just asking——

Ms. LOFGREN. Well, no.

Mr. LUNGREN. Yours appears to be more narrowly drawn than what the general law is now——

Ms. LOFGREN. No, because this would not be to al-Qaeda generally. It would be any member, any member of al-Qaeda.

Mr. LUNGREN. Well, as I understand—maybe someone could tell me if I'm wrong. But as I would understand it, if you give it to——

Ms. LOFGREN. I think you are.

Mr. LUNGREN.—individual as a member of a terrorist organization, that could be deemed as giving material support to the terrorist organization.

Ms. LOFGREN. This makes us very—you've got a deeming in there that I don't think the statute has clearly identified.

This makes it all totally clear. If you know that the person who is buying this 50-caliber weapon is an al-Qaeda member, then you've fallen afoul of the statute.

Chairman SENSENBRENNER. The gentlewoman's time has expired. The gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. I thank the Chairman, and I—you know, I have watched this consistent approach to the 50-caliber weapons consistently the last few years. I don't really know why the 50-caliber weapons have been demonized, but it continues.

And I'd inform the Committee a little bit of the history of 50-caliber weapons. They go back. I call them the original buffalo guns, the Sharps 50-caliber. Buffalo Bill Cody. They were the guns that settled the West.

They're a traditional gun in this country. They're hanging in the Smithsonian. There's more modern versions, of course, like there are with many other calibers of weapons.

To pick on the 50-caliber, if you could do that successfully, then you're going to see a 51-caliber, a 49-caliber. But that's not necessarily the point of this amendment.

And I concur with the gentleman from California in that there's already—it's already against the law to transfer these weapons to al-Qaeda members today, but I believe the flaw in this amendment is that it's only al-Qaeda.

And if you address al-Qaeda and say we cannot then send 50-caliber weapons to them, which I believe is against the law under the current code, then, by implication, if you continue adding to this section of the code, you're going to see the implication that you can transfer to maybe some other terrorist organization that's on that list of 41 terrorist watch lists.

Ms. LOFGREN. Would the gentleman yield?

Mr. KING. I would yield. I yield to the lady from California.

Ms. LOFGREN. If this would pass, I would happily offer additional amendments with additional terrorists organizations.

Mr. KING. Reclaiming my time, I appreciate the alertness of the gentlelady from California, and I yield back to the gentleman from California.

Mr. LUNGREN. I'm just trying to figure out how you give something to an organization without giving it to an individual?

Does someone give the weapon to the corporate organization al-Qaeda? It seems to me it's inherent in the already existing statute that one gives a weapon to a member of a terrorist organization; one is giving to the terrorist organization knowingly, knowingly; knowing that the individual is a member.

So I think what the gentlelady is suggesting is already covered and it doesn't have to be a 50-caliber. It could be any type of weapon as I read the statute currently.

Mr. KING. Reclaiming my time. And I'd add that the ammunition that's referenced by the gentlelady as ammunition is very strictly controlled ammunition. There's never been a jet or a plane shot down by a 50-caliber weapon, and it would be unlikely I think to ever get that perfect lucky shot at a moving jet for that to ever happen; but other calibers to do it as well under the same scenario. I'd yield to the gentleman from Texas.

Mr. NADLER. Would the gentleman yield?

Mr. GOHMERT. Well, he's yielded to me. Thank you. I appreciate the gentleman from Iowa. 18 U.S.C. Section 2, this is the Federal Criminal Code. It says whoever commits an offense against the United States or aids, abets, counsels, commands, induces, procures its commission is punishable as a principal. And I'm telling you what. That's pretty stout evidence. I've seen a whole lot less evidence convict and accomplice as a principal. If you transfer any kind of weaponry to a member of al-Qaeda, and you know they're a member of al-Qaeda, I'd say pretty well most everywhere except certain counties in California, you're toast. You're going to be convicted as a principal and I'd a whole lot—rather than be convicted—I'm sorry—deference to the gentleman from California.

But the law takes care of this already. You do anything knowing that somebody is a member of a terrorist organization, you're going to be a principal as a terrorist yourself. Thank you. I yield back to Mr.——

Mr. KING. I thank the gentleman from Texas and I would add that this amendment, though it maybe it's well intentioned, it does clutter the code. It's clearly prohibited in the existing code that we have, and I'd urge a no vote on the amendment. I yield back.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. I guarantee you I won't take 5 minutes. I just want to submit somewhere in the record the Barney Frank statements from years gone by when he served on this Committee. Redundancy is sometimes good. And when we hear people saying that the only objection that they have to something is because it's already in the statute, and is redundant, then you know—then you know they've kind of lost the way here.

Our statutes are replete with redundancies, and the fact that this may already be covered—may that doesn't trouble me at all. I'm wisely in favor of redundancy on this issue to make it absolutely clear.

Ms. LOFGREN. Would the gentleman yield?

Mr. WATT. I yield to the gentlelady.

Ms. LOFGREN. I appreciate his comment. I don't believe it is redundant, but if it is, I heartily concur that to be clear on this matter is to defend our country, and I would hope—I understand that we have a different point of view, and it's not entirely just based on party lines either. Certainly, Mr. Boucher has voted with the majority on all of the gun issues, and he's not here now. But the—this goes beyond the fight on gun ownership. And if we can't vote yes on this, I think we got some explaining to do, and I thank the gentleman for yielding.

Mr. WATT. I yield back.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I rise in support. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. I rise in support of this amendment and associate myself with the remarks of the gentlelady from California.

But I hadn't planned to speak on this amendment, but I had to correct the record in one respect. I heard someone say that no jet aircraft has ever been shot down by a 50-caliber weapon. I beg to differ. Anyone who knows anything about the history of the Korean War knows that every jet aircraft shot down by another jet aircraft in the Korean War was shot down by a 50-caliber weapon.

The MIGs and the F-86s and the F-80's were all armed with——

Mr. KING. Would the gentleman yield?

Mr. NADLER. With 50-caliber machine guns. That's how you shot down airplanes before you got the missiles. So don't tell people that you can't shoot down a jet aircraft——

Mr. KING. Would the gentleman yield?

Mr. NADLER.—with a 50-caliber weapon. Yes, I'll yield.

Mr. KING. I thank the gentleman. I'm referencing the definition that's in the amendment, which is a sniper rifle rather than twin 50-caliber machine guns. Thank you.

Mr. NADLER. Well, reclaiming my time, as was said before, a lucky shot from a even—not a machine gun, but from one—any—a 50-caliber weapon can, in fact, penetrate armor. It can shoot down an aircraft. It's dangerous. I yield back.

Mr. WEINER. Will the gentleman yield on that point?

Mr. NADLER. Yes, I yield back.

Mr. WEINER. And I would also point out that I don't believe that an aircraft had been used as a weapon before September 11th in an act of terrorism against the United States as well.

If our standard is to simply wait for some things to be used before we ban it, I would argue that we wait too long. And I yield back to the gentleman.

Mr. NADLER. And I yield back.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman and members. There must be people listening to this discussion and debate and wondering how we could spend so much time on this issue of whether or not we're going to ban a weapon from being given to or sold to terrorists, when, in fact, we're here talking about the reauthorization of the PATRIOT Act and how we can secure the homeland and make sure that we create public policy that will better secure the homeland even at the risk of undermining our civil liberties.

So you have an amendment that's clear. It has been argued that it's redundant; that it's already in law, and then I cannot help but raise the question so what harm will it do to reinforce what is existing law. Why is it a resistance so strong from the opposite side of the aisle on something that obviously can do no harm, but could better identify the meaning of the law as it relates to the transfer of arms to a terrorist organization?

It seems to me something else underlies this. Something else is at stake. What is it? What is this protection that is being offered from my friends on the opposite side of the aisle? Is it the sole argument that if you open the door in any way to limit the possession and the use and the ownership of guns, that somehow you're going to fly in the face of my friends of the gun lobby.

Mr. WATT. Would the gentlelady yield?

Ms. WATERS. Yes, the gentlelady will yield.

Mr. WATT. I heard that you were out meeting with Barney Frank before you made this statement. It sounds like he rubbed off on you on this redundancy issue. You're giving his speech.

Ms. WATERS. Well, this is my speech, Mr. Watt, and if you will sit back and listen to it——

Chairman SENSENBRENNER. Without objection, the copyright law is suspended for the next 3 minutes.

Ms. WATERS. That's right. So let me just continue with my speech and my take on this that says again that I think this is better an argument for why those on the opposite side of the aisle who would like to protect the gun lobby rather than a concern, a genuine concern, about bending over backwards to ensure that we secure the homeland and that we do everything possible to keep weapons out of the hands of terrorists.

Now, we've not had that part of the discussion. We have this discussion that's camouflaged about redundancy and a whole lot of other things. But the fact of the matter is it certainly is not going to do any harm.

So I would suggest that we hurry up again, Mr. Chairman, and get to the vote, because I want to see the votes cast on this one. So move it, Mr. Chairman.

Chairman SENSENBRENNER. The time of the gentlewoman has expired. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Okay. Thank you, Mr. Chairman. I'd like to ask a couple of questions or direct a couple of questions to the gentlewoman from California, Ms. Lofgren. And let me say at the outset that I don't doubt her sincerity or her motive in offering this amendment.

But I have two concerns. The first deals with the language where in the amendment it refers to a member of al-Qaeda. That's a specific and single organization; whereas, the statute, paragraph 2.339 refers to foreign terrorist organization, which might include many more terrorist organizations than just the ones she referred to.

Now, I realize that she can really do that under unanimous consent and insert that phrase. So let me mention my second concern, and it this: that as the gentlewoman knows when you interpret legislation, specific language holds greater sway than more general language, and I am concerned that by specifically mentioning a type of weapon here, the 50-caliber sniper gun or weapon, that that might, by implication, mean that other types of weapons, other types of arms might not be taken as seriously under the usual limitation of legislation.

So those are my two concerns and the reason that I would oppose the amendment, and the gentleman from California is welcome to respond to those concerns.

Ms. LOFGREN. Mr. Smith, I drafted this because I felt that in a way it was a test to see if there was anything that regulating guns and terrorists that would pass your side of the aisle.

If—first of all, if you feel that an amendment to clarify the terrorist heading needs to be made, I would move that we unanimously——

Mr. SMITH. Reclaiming my time, I was aware that you——

Ms. LOFGREN.—we do that by unanimous consent.

Mr. SMITH.—probably ask for UC for that, but my second concern was again the specificity that is mentioned in your amendment might undermine the intent in regard to other types of weapons.

Ms. LOFGREN. If—I don't believe it does, but on that point, if I may, I would ask unanimous consent to strike the reference to 50 calibers and make it any firearms, if the gentleman is suggesting that.

Mr. SMITH. Well, I still think you run into the same problem because——

Ms. LOFGREN. Firearms or weapon.

Mr. SMITH.—the statute goes beyond firearms and weapons. It talks about all—what' the—if the gentlewoman wants to take a look at it, it talks about all material support. Material support is a lot broader than just weapons or firearms.

Mr. LUNGREN. Would the gentleman from Texas yield?

Mr. SMITH. And so my concern would still hold I'm afraid.

Mr. LUNGREN. Would the gentleman from Texas yield?

Mr. SMITH. Yes. Be happy to yield.

Mr. LUNGREN. I mean specifically by the statute, as the gentleman refers to, material support of resources means all sorts of things, including weapons, lethal substances, explosives, personnel, transportation, other physical assets. So it is all inclusive. Obviously, the caliber and every other caliber——

Ms. LOFGREN. Would the gentleman yield?

Mr. LUNGREN.—is included within the statute already.

Mr. SMITH. It's my time and, yes, I'll yield.

Ms. LOFGREN. It seems to me that your side of the aisle can't have it both ways. Either it's already included or else it's—the specificity does not cause harm. It can't be both.

Mr. SMITH. Yes, it can. I'll reclaim my time, and I don't want to belabor the point. But the point is the statute is general. I think it's better to not single out any particular type of weapon or firearm. It's better to leave the statute general and have the entire section applied to any type of material support and not by implication say that some material support is more serious or less serious than others, and I'll yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Maryland, Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. I move to strike the last word, and I hadn't——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. VAN HOLLEN.—intended to join in this debate, but since we are focused in specifically on the language in the section that already exists in the PATRIOT Act regarding providing material support; and the argument is this is redundant. It is not. If you look at the existing language, one of the elements of proving somebody guilty of aiding material support here is they have to not just know that they're transferring to a member of al-Qaeda, but they have to have knowledge or intending that they are to be used in preparation for and carrying out in violation of certain acts.

And the mere transfer of the weapon under this—even if you know it's someone under al-Qaeda—is not covered by this section, providing material support, which is one of the reasons we offered the earlier amendment that related to transferring firearms to peo-

ple who were on the terrorist watch list. You can't have it both ways. You can't say this is too narrow because it only says al-Qaeda and doesn't cover other terrorist organizations. You can't say it's too narrow. It only covers 50-caliber and not all firearms, because the earlier amendment that you rejected covered people on the Terrorist Watch List and it covered all firearms.

And so what this amendment gets at is a very—it really does go just to how far we're willing to go in terms of providing terrorists with protections under the law.

And what this amendment does is says it is a—you are offering material support if you transfer a weapon, knowing someone is a member of al-Qaeda. The current language does not make that a crime. That does not make it part of providing material support. Under the current law, you not only have to know you're providing to al-Qaeda, but you have to prove that the individual knew that al-Qaeda member was going to then use that weapon in a criminal action.

I think we can reasonably conclude that if you know you're transferring it to a member of al-Qaeda, that the protection of the American people requires that that, by itself, be considered requiring material support, and that's what this amendment——

Ms. LOFGREN. If the gentleman would yield. I thank the gentleman for his clarification, and I guess, you know, you might know—not know what the al-Qaeda member wanted to do with the 50-caliber rifle. Maybe they wanted to use in that traditional buffalo gun referenced by our colleague from the other side of the aisle. But it's a balance. What's more important? The security of the American people or some mythic buffalo gun history when you're talking about a member of al-Qaeda?

I would just like to say this. I think that it's obvious that the members on the other side of the aisle are not going to accept this. I think the rationale for avoiding this has been tortured at best. I think it's quite transparent and unfortunate. And I yield back to Mr. Van Hollen, and thank you for yielding me the time.

Mr. VAN HOLLEN. I thank my colleague, and I just want to again emphasize the point that the existing language in this section on material support does not cover the contingency that the Lofgren Amendment covers. Thank you.

Chairman SENSENBRENNER. Would the gentleman yield back? The question is on the amendment offered by the gentlewoman from California, Ms. Lofgren. Those in favor will say aye. Opposed no?

Noes appear to have it.

Ms. LOFGREN. May I have a recorded vote, Mr. Chairman?

Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of the Lofgren Amendment will as your names are called answer aye. Those opposed, no. And the Clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?

[No response.]

The CLERK. Mr. Delahunt?

[No response.]

The CLERK. Mr. Wexler?

Mr. WEXLER. Aye.

The CLERK. Mr. Wexler, aye. Mr. Weiner?

Mr. WEINER. Aye.

The CLERK. Mr. Weiner, aye. Mr. Schiff?

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Ms. Sánchez?

Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?

Mr. VAN HOLLEN. Aye.

The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?

Ms. WASSERMAN SCHULTZ. Aye.

The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Members who wish to cast or change their vote? The gentleman from North Carolina, Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith?

Mr. SMITH. Mr. Chairman, I vote no.

The CLERK. Mr. Smith, no.

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Chairman SENSENBRENNER. Further members who wish to cast or change their votes? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 13 ayes and 22 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments?

The gentleman from New York, Mr. Weiner.

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

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. WEINER. Two one two. Area code for some of New York City.

The CLERK. Amendment to H.R. 3199, offered by Mr. Weiner and Ms. Sánchez. At the end of the bill, add the following new section. Section——

Mr. WEINER. Mr. Chairman?

The CLERK. Expansion of grants to first responders——

Mr. WEINER. Mr. Chairman?

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

Chairman SENSENBRENNER. Point of order is reserved. The gentleman from New York.

Mr. WEINER. Mr. Chairman, this is an amendment that——

Chairman SENSENBRENNER. Does the gentleman ask unanimous consent that the amendment be considered as read?

Mr. WEINER. I thought that had already been done. Yes, I do, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, subject to the reservation by the gentleman from Texas. The gentleman from New York is recognized for 5 minutes.

[The amendment of Mr. Weiner and Ms. Sánchez follows:]

AMENDMENT TO H.R. 3199
OFFERED BY MR. WEINER OF NEW YORK AND MS. LINDA T. SÁNCHEZ OF CALIFORNIA

At the end of the bill, add the following new section:

SECTION ___. EXPANSION OF GRANTS TO FIRST RESPONDERS.

(a) IN GENERAL.—Section 1005 of the USA PATRIOT ACT (28 U.S.C. 509 note) is amended in subsection (b)—

(1) by striking ''and'' at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

''(6) rehire law enforcement officers who have been laid off as a result of State and local budget reductions for deployment in community-oriented policing;

''(7) hire and train new, additional career law enforcement officers for deployment in community-oriented policing across the Nation;

"(8) procure equipment, technology, or support systems, or pay overtime, to increase the number of officers deployed in community-oriented policing;

"(9) improve security at schools and on school grounds in the jurisdiction of the grantee through—

"(A) placement and use of metal detectors, locks, lighting, and other deterrent measures;

"(B) security assessments;

"(C) security training of personnel and students;

"(D) coordination with local law enforcement; and

"(E) any other measure that, in the determination of the Attorney General, may provide a significant improvement in security; and

"(10) develop new technologies, including interoperable communications technologies, modernized criminal record technology, and forensic technology, to assist State and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime and to train law enforcement officers to use such technologies.".

(b) SPECIFIC PROVISIONS.—Such section is further amended—

(1) by redesignating subsections (d) through (f) as subsections (g) through (i), respectively;

(2) by inserting after subsection (c) the following new subsections:

"(d) MATCHING FUNDS FOR SCHOOL SECURITY.—In the case of a grant for the purposes described in subsection (b)(9)—

"(1) the portion of the costs of a program provided by that grant may not exceed 50 percent;

"(2) any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection; and

"(3) the Attorney General may provide, in the guidelines implementing this section, for the requirement of paragraph (1) to be waived or altered in the case of a recipient with a financial need for such a waiver or alteration.

"(e) RETENTION GRANTS.—The Attorney General may use no more than 50 percent of the funds under this section to award grants targeted specifically for retention of police officers to grantees in good standing, with pref-

erence to those that demonstrate financial hardship or severe budget constraint that impacts the entire local budget and may result in the termination of employment for police officers funded under this section.

"(f) GRANTS FOR OFFICERS WITH INTELLIGENCE, ANTI-TERROR, OR HOMELAND SECURITY DUTIES.—The Attorney General may use funds under this section to award grants to pay for officers hired to perform intelligence, anti-terror, or homeland security duties exclusively.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Such section is further amended in subsection (i) (as redesignated by subsection (b) of this section)—

(1) by striking "$25,000,000" and all that follows through the period at the end and inserting "—"; and

(2) by adding at the end the following:

"(1) $25,000,000 for each of fiscal years 2003 through 2005;

"(2) $1,032,624,000 for fiscal year 2006;

"(3) $1,052,176,000 for fiscal year 2007; and

"(4) $1,072,119,000 for fiscal year 2008.".

Mr. WEINER. Mr. Chairman, the amendment that the gentlelady from California and I offer is one that frankly has found favor in this Committee on two other occasions. When we considered the 9/11 Commission recommendation, the legislation to reauthorize the COPS Program and insert it in that vehicle, it was passed by this Committee, as it was in the DOJ reauthorization bill.

In both cases, the leadership of this House and the Rules Committee stripped that language from the bill. This is another thrust at the same attempt. This picks up on the grant making that was in the PATRIOT Act that we're reauthorizing today. It would provide $1 billion for the next 3 years; 13,000 new cops on the beat nationally each year. And it would do what Secretary Ridge argued we needed to do, which was to start our homeland security fight in our home towns.

I don't need to argue before this Committee the value of the COPS Program. Every member in this body that are in districts has been helped by the COPS Program. It provides Federal assistance to provide law enforcement that are now spending so much of their time doing anti-terrorism work, and in the interest of time, I yield to the gentlelady from California, Ms. Sánchez.

Ms. SÁNCHEZ. I'd like to thank the gentleman from New York for yielding some time and for letting me join him in offering this very important amendment.

Just very briefly, the Weiner-Sánchez Amendment achieves two very important homeland security objectives.

First, it provides more funding and authorization for law enforcement agents, including those in the community oriented policing programs. And second, it helps increase the security measures and new technologies that will help prevent us from future terrorist attacks.

As my colleague from New York has said, it's found favor with this Committee and I would urge my colleagues on both sides of the aisle to support this amendment.

And I yield back to the gentleman from New York.

Mr. WEINER. And before I yield back, I just want to commend the Chairman, who has been open minded in support of the idea of getting COPS reauthorized, and we've tried to do this on a couple of occasions. This is this year's moving vehicle and the most appropriate place to insert this language, and with that, I yield back my time.

Chairman SENSENBRENNER. Does the gentleman from Texas insist on his point of order?

Mr. SMITH. Mr. Chairman, I do insist on my point of order.

Chairman SENSENBRENNER. The gentleman will state his point of order.

Mr. SMITH. Mr. Chairman, I want to make the point of order that this amendment is not germane. Under House Rule 16, we are prohibited from considering any amendment that is—has a subject different from that under consideration.

And in this case, there is no provision, title, section in the PATRIOT Act that deals with the COPS Program and for that reason and because it doesn't fall under any other primary purpose of the PATRIOT Act, this amendment is non-germane, and I would insist on that point of order.

Chairman SENSENBRENNER. Does the gentleman——

Mr. WEINER. Mr. Chairman, may I be heard on the point of order?

Chairman SENSENBRENNER. The gentleman from New York.

Mr. WEINER. I would refer the gentleman to the section of the PATRIOT Act that he just said is not in the bill that refers to, and I quote: "first responder assistance." These are grant authorizations, terrorism prevention grants. In fact, there is a section in the PATRIOT Act that refers to this.

As far as there not being in the title, well, we are reauthorizing the PATRIOT Act as indicated on the notice from the Committee, as indicated on the bill from the Committee, as indicated on the discussion draft from the Committee, as indicated from the memo to members from the staff and the Chairman of the Committee. So clearly, it's within the purview of the PATRIOT Act as it has been in the past.

Mr. SMITH. Would the gentleman from New York yield briefly?

Mr. WEINER. Certainly.

Mr. SMITH. I just want to make the point that the provision to which the gentleman refers is actually not being reauthorized today, nor is it under the purview of the primary purpose of the bill being reauthorized today. And for that reason, I still think it's non-germane.

Mr. WEINER. Well, if it——

Chairman SENSENBRENNER. The chair is prepared to rule. Now, for the reasons articulated by the gentleman from Texas, Mr. Smith, that the amendment proposes a different subject than that contained in the bill, the chair sustains the point of order.

Are there further amendments? The gentlewoman from California, Ms. Lofgren?

Ms. LOFGREN. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. LOFGREN. It's 34.

The CLERK. Amendment to H.R. 3199, offered by Ms. Lofgren of California.

At the end of the bill, add the following: Section, Enhanced Review of Detention——

Ms. LOFGREN. I'd ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. And the gentlewoman from California is recognized for 5 minutes.

[The amendment of Ms. Lofgren follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MS. ZOE LOFGREN OF CALIFORNIA

At the end of the bill, add the following:

SEC. ___. ENHANCED REVIEW OF DETENTIONS.

Section 1001 of the USA PATRIOT ACT is amended by—

(1) inserting ''(A)'' after ''(1)''; and

(2) inserting after ''Department of Justice;'' the following: ''and (B) review detentions of persons under section 3144 of title 18, United States Code, including their length, conditions of access to counsel, frequency of access to counsel, offense at issue, and frequency of appearance before a grand jury;''.

Ms. LOFGREN. Mr. Chairman, the material witness law, enacted in 1984, allows the government to arrest persons who are needed as witnesses in ongoing criminal investigations, but who might not comply with the conventional subpoena.

In essence, this law was designed to get evidence from frightened or recalcitrant witnesses. It was not designed as a counter-terrorism tool to allow the government to detain anyone it had suspicions about.

Yet, there are real questions about how the Department of Justice is utilizing this statute. Specifically, it appears that the Department may be bending the material witness statute into a tool to detain suspects without charge or due process, while it investigates them for possible links to terrorism. As the Chairman may recall, during our hearings, I asked the Department of Justice for information on this very subject. And to date that information has not been forthcoming.

In June 2005, a report by Human Rights Watch found that 70 suspects held as material witnesses since 9/11, of the 70, almost half were actually never brought before a grand jury or a court to testify. The report also found that many were never told the reason for their arrest or allowed access to a lawyer.

Of the 70 suspects, only 28 were ever charged with a crime, most of which were unrelated to terrorism.

This report also states that about one-third were held for at least 2 months and that one material witness was imprisoned for a year. They claim or the report claims that many of these individuals were held in solitary confinement, subjected to harsh and degrading high security conditions usually reserved for prisoners accused or convicted of the most dangerous crimes. The report also says detainees described abuse.

Now I don't want to take the word of a outside group for it. I would like to look at what the Department itself has done and we are advised that the Department has apparently apologized to 13 people for using the material witness statute to detain them.

Among them, Brandon Mayfield, a lawyer in Seattle, he was—the FBI detained Mr. Mayfield as a material witness but in reality, he—they did not believe that Mr. Mayfield was a witness to anything. They believed he had participated in the Madrid terrorists bombings because they mistakenly linked his fingerprint to evidence found at the bombing site. Although Mr. Mayfield hadn't traveled abroad for more than 10 years and although the Spanish authorities doubted the print matched and the FBI picked up Mayfield as a material witness and held him for 2 weeks without bringing any formal charges against him, they ultimately released him and apologized.

A couple of months ago, the Chairman himself forwarded a letter to the Attorney General that reiterated the questions that I asked at the hearing, and to date I don't believe we have got the statistics that we requested. This amendment——

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. LOFGREN. I certainly will. I hope my statement is incorrect; that you're about to tell me so.

Chairman SENSENBRENNER. No. You've convinced me this is a good amendment, and I'm willing to accept it.

Ms. LOFGREN. Thank you, Mr. Chairman. This amendment only asks for reports, and I appreciate your willingness to accept it.

Chairman SENSENBRENNER. The gentlewoman yield back?

Ms. LOFGREN. I do .

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentlewoman from California, Ms. Lofgren. Those in favor will say aye. Opposed, no? The ayes appear to have it. The ayes have it. The amendment is agreed to. rollcall is requested.

Those in favor of the Lofgren Amendment will, as your names are called answer aye; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

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

The CLERK. Mr. Chairman, Mr. Gallegly is recorded as a no.

Mr. GALLEGLY. I'm sorry, aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Lofgren? Lungren?

[Laughter.]

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON Aye.

The CLERK. Mr. Cannon, aye. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis, aye. Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye. Mr. Keller?

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Mr. Issa?

Mr. ISSA. Aye.

The CLERK. Mr. Issa, aye. Mr. Flake?

Mr. FLAKE. Aye.

The CLERK. Mr. Flake, aye. Mr. Pence?

Mr. PENCE. Aye.

The CLERK. Mr. Pence, aye. Mr. Forbes?

Mr. FORBES. Aye.

The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
[No response.]
The CLERK. Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye. Mr. Conyers?
[No response.]
The CLERK. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
[No response.]
The CLERK. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Members who wish to cast or change their vote? The gentleman from Maryland, Mr. Van Hollen?
Mr. VAN HOLLEN. Thank you, Mr. Chairman. Aye.
The CLERK. Mr. Van Hollen, aye.
Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters?
Ms. WATERS. Ms. Waters, aye.
The CLERK. Ms. Waters, aye.
Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, I vote aye.

The CLERK. Mr. Smith, aye.

Chairman SENSENBRENNER. Further members who wish to cast or change their vote? The gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye.

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Meehan?

Mr. MEEHAN. Aye.

The CLERK. Mr. Meehan, aye.

Chairman SENSENBRENNER. Further members who wish to cast or change their vote? If not, the clerk will call the report.

The CLERK. Mr. Chairman, there are 34 ayes and 0 noes.

Chairman SENSENBRENNER. And the amendment is agreed to.

Are there further amendments?

Mr. SCHIFF. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.

Mr. SCHIFF. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. SCHIFF. And as an aside, I think rather than a Scott-Lungren amendment, we need a Lofgren-Lungren amendment. This, however, is not that.

Chairman SENSENBRENNER. Okay. The clerk will report the correct amendment.

The CLERK. Amendment to H.R. 3199, offered by Mr. Schiff of California. At the end of the bill add the following new section: Sec. _____. Electronic Surveillance Targets. Section 105(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)) is amended—(1) in paragraph (1)(A)——

Mr. SCHIFF. Mr. Chairman, I request consent to deem the amendment as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment of Mr. Schiff follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. SCHIFF OF CALIFORNIA

At the end of the bill add the following new section:

SEC. ___. ELECTRONIC SURVEILLANCE TARGETS.

Section 105(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)) is amended—

(1) in paragraph (1)(A), by inserting ''specific'' after ''description of the''; and

(2) in paragraph (2)—

(A) in subparagraph (C), by striking ''and'' at the end;

(B) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

''(E) in the case where the target is an individual, that the order shall apply only to the particular individual identified or described under subsection (c)(1)(A).''.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. Mr. Chairman and members, some have claimed that the PATRIOT Act authorizes so-called John Doe roving wiretaps, that is, orders that identify neither the specific target nor the specific location of the interception. My colleague, Mr. Issa, offered a good amendment, which was agreed to by the Committee, to make sure that there was some level of ascertainment of the location of the wiretap. My amendment goes to the individuals that are the targets of a roving wiretap.

The Department of Justice maintains that even if the Government is not sure of the actual identify of the target of a wiretap, FISA, nonetheless, requires the Government to provide a description of the target prior to obtaining the order. And it may be in many cases—and I think the Department is making a very legitimate argument—that although the identity is not known in the sense of knowing the name of the specific individual, they have a specific individual in mind that they are requesting the wiretap for. I think that's appropriate. That's an appropriate use of a John Doe wiretap.

The concern that has been raised is that if the description is general of the individual and the individual who's the target changes when more information is learned, it was in the beginning thought to be one person, later thought to be another person, it should not be sufficient to use the same application for a different individual target. And Attorney General Ashcroft explained in a letter to Chairman Hatch that the Government cannot change the target of its surveillance under a wiretap order. It must, instead, apply to the FISA court for a new order for the new target. That is, I think, the policy of the Justice Department. This would make it a legal requirement, and I think it does nothing more than ratify what Attorney General Ashcroft said is the practice of the Department, and that is, in the case of a roving wiretap where the identity is not known by name but the person has been identified, if subsequently it's learned that the real target is someone else, you should have to go back to the court identifying the other individual.

So this amendment would give some greater protection. It would make statutory what the Attorney General has said is Department of Justice policy. And I think in combination with what Mr. Issa offered, which ensured the protections were there for the targets that were not individuals, that were locations, this goes to individuals and says, yes, it's all right if you don't know the name, as long as you have a particular person in mind; if the particular person changes, you need to go back to get an application for the subsequent individual.

I'd be happy to entertain any questions, but I would urge your support of the amendment.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. SCHIFF. Yes, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.

Mr. ISSA. Mr. Chairman, I reluctantly rise in opposition, and I say that because I only—you know, this is somewhat new to me, your question. But looking at it, I believe we mostly have taken care of this with the 10-day return if there's a change in the com-

munication that's being tracked. And what I'd like to suggest, because we do have an ongoing work toward a floor amendment on 206, is that I'd be happy to work with the gentleman on making sure that we're both comfortable at the floor that this would be covered under the authority of the judge. And I think the gentleman from California would agree with me that what we're trying to do is make sure that there's a loop back when there's a change to the judge, because the truth is that we're not—we don't want to be handling individual cases, but we do want that branch of Government that normally handles these to handle them. But I——

Mr. SCHIFF. Would the gentleman yield?

Mr. ISSA. Yes, I would.

Mr. SCHIFF. I appreciate that, that the majority often gets no more notice of amendments than the minority gets of the majority amendments. And, you know, we looked at your amendment in good faith and supported it. My amendment is really, I think, the counterpart that deals with the individuals, whereas yours dealt with the locations. It does nothing more that I can see than codify what the Attorney General, the last Attorney General has said is the Department policy; that if it becomes known during the investigation that the tap requested on a specific individual turns out not to be the right one, that they can't simply apply that wiretap to someone else because they don't have a name attached to it. They have to go back to the court.

So this codifies what I understand is the Attorney General's policy, and if—you know, I'd be happy to work on language later if you find some question about that, but——

Mr. ISSA. Reclaiming my time, I do expect that we should continue having this discussion through the final passage of the bill. But what I want to point out is that you can't go to a judge with a description of a white male and that is not sufficient, that there is, in fact, already protections to the court that you have to have described the individual with a considerable—a lot more detail than that. And I believe that to be true, and so I believe this is unnecessary——

Mr. SCHIFF. May I——

Mr. ISSA.—but I would like to make sure that we both understand——

Mr. SCHIFF. May I give the gentleman a specific example of what I'm talking about?

Mr. ISSA. Certainly.

Mr. SCHIFF. Let's say that the target under the FISA application says an Arab male between the ages of 22 and 27, living at X address. It is later learned that the actual target is his roommate who also meets that description. The concern has been raised is that you can give a sufficiently general application and then apply it to someone else. The Attorney General has said, no, we don't operate that way; if we find out it's the roommate and not the one that we were seeking the warrant on, we'd go back to the court.

So this, I think, codifies that practice of the Department and gives a level of comfort and security to the American people to know that with this greater authority we gave with roving wiretaps that there is a limit to it, and that if we have identified the wrong party, when we identify the right party we go back for the application.

Mr. ISSA. Reclaiming my time, I again reiterate that my present understanding and the reason that I don't support this amendment at this time but do want to continue working with the gentleman is that I believe that the—that we are already close enough as a practical matter because a judge does have to say that's good enough, that's not good enough a description. But I do expect to be looking at 206 between now and the floor, and I absolutely promise the gentleman that I will include in our amendment if at that time we feel that we've gleaned something new. But as of right now, I don't believe your description is accurate. I believe—it may be that they would come and say it's one of these two individuals and these two individuals cohabitate and, therefore, we're going after them. But it is not—the judge's authority is already sufficient even if the Justice Department were to be less specific in their policy and, therefore, I believe this amendment is unnecessary. And I yield back.

Chairman SENSENBRENNER. The question is on——

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I just have some questions, and I'll yield to the gentleman from California, the proponent of the amendment. But maybe he could explain to members of the Committee, in a John Doe warrant what is the current practice when there is—there emerges sufficient information to identify by name the individual? What occurs then and does your amendment accommodate that new information?

Mr. SCHIFF. Will the gentleman yield?

Mr. DELAHUNT. I yield.

Mr. SCHIFF. I thank the gentleman for yielding.

Yes, the amendment does accommodate that situation. What Senator Hatch was concerned about, what he raised with the Attorney General was we don't want to have a situation where we have a roving wiretap not specific to any individual that can be moved from individual to individual. That's not the purpose of a roving wiretap. The purpose of a roving wiretap is when you have a suspect and they use different phone facilities, you don't want to have to go back to court for a different application every time they change phones.

It was not designed to say when we think it's one person but it turns out to be another person, we want the wiretap to follow whoever the latest suspect is. That was never the purpose of the roving wiretap. And the Attorney General told Senator Hatch that's not what we use it for, that's not how we operate. But, nonetheless, there is a concern out there among our constituents that there isn't a meaningful statutory limitation on when a roving wiretap can rove, if it can rove from person to person.

Now, I'm not hearing anyone on the other side of the aisle saying that this amendment is any different from the policy of the Justice Department. And if this is consistent, as I think it is, with the Attorney General's letter, there shouldn't be any opposition to this. And I appreciate the gentleman's offer, but I see no more objection to this amendment than we had to the gentleman's amendment, and I hope that my colleagues on the other side of the aisle will make the Justice Department practice, which is a solid one, the

law of the land. And I would hope also that my colleagues on the other side of the aisle wouldn't be advocating that we deviate or depart from the Justice Department policy and somehow adopt a broader practice that says when we've gone to court with a specific person in mind, even though we didn't know their name but we sufficiently identified them, and we find out it's somebody else, we shouldn't have to go back to court. I don't think that would be good policy. This amendment gives the country the confidence to know there is a limit, and it's a limit consistent with what the Attorney General has said.

Mr. ISSA. Would the gentleman from Massachusetts further yield?

Mr. DELAHUNT. I yield to the gentleman.

Mr. ISSA. Thank you. And I truly respect the gentleman's decision that he may feel that this isn't covered. I might suggest that, in fact, if you—if you played fast and loose, which the Justice Department doesn't as a matter of policy, you would also create a defect in the warrant. There is no question that the law does not allow you to specify somebody and then simply move it from people to people who might loosely fit that description. That would be a defect in the existing law that would, in fact, make it a defect in the warrant.

Mr. SCHIFF. Would the gentleman from——

Mr. DELAHUNT. Reclaiming my time, I yield to——

Mr. SCHIFF. I agree with the gentleman, but if that's the case, then we are clearly codifying existing practice and existing law, so there should be no objection. If you can't move from person to person, then this provision that says you can't move from person to person should be completely unobjectionable. And if it gives the American people greater confidence that there are some limits, then there's no reason not to provide that confidence. And I think we should. That's why we're here. And the gentleman's amendment, frankly, the same argument could have been made against that, that, in fact, this is the good practice of the Justice Department, it's already required by the court so we don't need to do what the gentleman did. But the gentleman offered it because we ought to make this very clear to the American people what the limits are. It's the same purpose behind my amendment, and I thank the gentleman for yielding.

Mr. DELAHUNT. Reclaiming my time, I would encourage my colleagues to support the amendment. All I've heard, to be perfectly candid, is the fact that it's unnecessary. I would suggest it could be critical. Right now it's a matter of Justice Department policy. The law needs clarity on this, and I think this is a positive amendment. And I would hope that the gentleman from California would support the amendment, and if there are differences and clarification is needed, to do that from Committee to when the floor is managed, and I yield back.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Gohmert.

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOHMERT. I have more of a problem than just redundancy or duplication. With regard to subsection (E), where it says "in the

case where the target is an individual, that the order shall only apply to the particular individual identified or described under subsection (c)(1)(A)," the problem there is, it strikes me, if I'm on the court of appeals, as I once was, and I'm reviewing something that comes in, if there is a recording of someone other than the target who is specified—and, let's face it, conversations are normally at least two-way, two-party situations. So you got someone who is not the target individual talking to somebody who is. They're talking about a crime. Under this, the way I read it, I think you only get to record half of the conversation. And if it violates this provision, if this were enacted into law, then some court's probably going to throw out half the conversation and keep it from making sense because it violates this provision.

So I see it creating a lot of problems for prosecution by complicating the matter. The way it stands now, they can record the whole conversation. They can use it in litigation, if necessary, in prosecution. And I hate to make—to tie the prosecutor's hands and keep him from recording and following up on whoever is involved in the conversation.

I yield to the gentleman from California.

Mr. ISSA. I thank the gentleman for yielding.

I might also, in speaking directly to the example the gentleman from California gave for why you thought you should have this, I might suggest that since—the reason for a roving wiretap being applied to a John Doe is that normally the John Doe is deliberately concealing their identity. We're looking for, you know, Mohammed XYZ who chose to have an alias. And our best belief is that we are—we are going after this person at this place. That may, in fact, change, but the John Doe we're going after never changes.

So, in your example, where we think that one of two people sitting in a residence is the John Doe we want, and it turns out to be the other John Doe, your—you would say you have to go back again or you have a defect because you got the wrong John Doe between two of them. In fact——

Mr. GOHMERT. Would the gentleman yield?

Mr. ISSA. Just 1 second. Let me finish the thought. In fact, as it is now and with the existing policy of the Justice Department, they are still going after the description of the John Doe that they believe to be the terrorist, and, in fact, that's where you would sort through the two at one location or ten different cell phones as they keep dropping them to find the real alias.

We are dealing, in the case of these John Does, normally with somebody who is trying to disguise who they are. And I yield back. The gentleman from Texas can——

Mr. GOHMERT. Thank you. Reclaiming my time, Mr. Chairman, I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman——

Mr. WEXLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Wexler.

Mr. WEXLER. Thank you, Mr. Chairman. And I'd defer to Mr. Schiff.

Mr. SCHIFF. I thank the gentleman for yielding.

Very briefly, Mr. Chairman, in response to the two points made by my colleague from Texas and my colleague from California, again, either my colleagues are arguing that the Justice Department should not maintain the policy of the Attorney General as expressed by Attorney General Ashcroft that the Attorney General has restricted the DOJ from being able to shift from one subject of a warrant to a completely different subject without having to go back to the court, I think that would be a tremendous misstep. And to the degree that you argue against this amendment, you argue against the policy of the Justice Department.

Second, the argument that you make that, well, somehow this will exclude half the conversations, that argument could be made with equal applicability to Mr. Issa's earlier amendment regarding the specificity of location. Well, what if the location is broader than described? Does that mean you can only listen to half the conversation? Frankly, I think it's a strained interpretation of both amendments, and I think a fair reading of this amendment is precisely what it appears to be, that where the target is an individual, the order shall apply to that individual. And that is what the Justice Department has said they are doing. That is what they say they must do. And we're making it clear in this amendment. But if my colleagues choose to vote against the policy of the Justice Department as reflected in this amendment, then that seems to be the position they're in. But I would hope that out of the same kind of bipartisan spirit that adopted Mr. Issa's amendment we would adopt this amendment as well. And I would hope we would not all fall in love with our own language so much that we can't find areas for improvement.

And I'd yield back, Mr. Chairman.

Chairman SENSENBRENNER. Does the gentleman from Florida yield back?

Mr. WEXLER. Yes.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from California, Mr. Schiff. Those in favor will say aye? Opposed, no?

The noes appear to have it——

Mr. SCHIFF. Mr. Chairman, I request a recorded vote.

Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of the Schiff amendment will as your names are called answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
[No response.]

The CLERK. Mr. Schiff?

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Ms. Sánchez?

Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?

Mr. VAN HOLLEN. Aye.

The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?

Ms. WASSERMAN SCHULTZ. Aye.

The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Members who wish to cast or change their vote? The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Chairman SENSENBRENNER. Further members who wish to cast or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 15 ayes and 22 noes.

Chairman SENSENBRENNER. The amendment is not agreed to.

Are there further amendments? The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I have an amendment at the desk. It's offered by myself and Ms. Jackson Lee. That's how you can identify it.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199, offered by Mr. Nadler and Ms. Jackson Lee. At the appropriate place in the bill, insert the following: Sec. _____. Limitation on Roving Wiretaps under Foreign Intelligence Surveillance Act of 1978. Section 105(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)) is amended—(1) in paragraph——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment of Mr. Nadler follows:]

AMENDMENT TO H.R. ___
OFFERED BY Mr. Nadler AND Mrs. Jackson-Lee

At the appropriate place in the bill, insert the following:

1 SEC. ___. LIMITATION ON ROVING WIRETAPS UNDER FOR-
2 EIGN INTELLIGENCE SURVEILLANCE ACT OF
3 1978.
4 Section 105(c) of the Foreign Intelligence Surveil-
5 lance Act of 1978 (50 U.S.C. 1805(c)) is amended—
6 (1) in paragraph (1)—
7 (A) in subparagraph (A), by inserting be-
8 fore the semicolon the following: ", however, if
9 the identity is unknown, the facilities and
10 places shall be specified"; and
11 (B) in subparagraph (B), by inserting be-
12 fore the semicolon the following: ", however, if
13 any of the facilities or places are unknown, the
14 identity of the target shall be specified".

Chairman SENSENBRENNER. The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you. Mr. Speaker, this—Mr. Speaker. Mr. Chairman, this amendment, as the last one, deals with Section 206, the roving wiretaps. Now, in the PATRIOT Act we provided for roving wiretaps, that is, wiretaps that require that—you know, where you identify the person and the wiretap applies to any site that that person might use. And that makes sense. It catches up with technology so that if you get a wiretap for one cell phone and he switches cell phones or uses a pay phone, you can just keep—you can follow him. You don't need a new application.

But then we did John Doe wiretaps where we say, okay, we know that someone is using a certain phone or a certain set of phones in a certain neighborhood that we have reason to believe that someone is for no good purposes but we don't know this fellow's name, so instead of getting a wiretap that follows a person, we get a wiretap a—wiretaps at certain places, certain phones, certain electronic facilities, without a name on it. And that's also fine.

The problem comes in when you combine those two and you have a John Doe roving wiretap, and, in effect, that gives the FBI almost limitless power to have a wiretap application that doesn't name an individual and doesn't name a place. So it's a roving wiretap with no specification of an individual, which means you can surveill the entire—an entire neighborhood. That is too much power. I am not sure that it was ever contemplated that these two separate sections could be combined.

What this amendment says, in effect, is you can have a roving wiretap without John—if you name the person. You can have a John Doe wiretap, but it can't be roving. In other words, you can wiretap either the person, wherever you think he may be speaking, or the place, looking for someone whom you don't know. But you can't combine them and say we're going to have an application for an unknown person in general places. That's almost like the British Writs of Assistance we objected to in 1760. It's a general writ. And American law cannot permit general writs. There's nothing more—there's nothing more offensive to the Fourth Amendment, and, in fact, the only reason that the justification for the constitutionality of the roving wiretap provision of the PATRIOT Act in Section 206 was that it required naming the particular—specificity of the particular person. But if you remove the specificity of the person and you have no specificity of the place, you have a general warrant. I don't see how it's constitutional.

Now, there may be circumstances where you want a roving wiretap, and that's fine. There may be circumstances where you want a John Doe wiretap. That's fine. But this amendment says you can have one or the other, but you can't combine them because then there's no limitation whatsoever.

Mr. CONYERS. Would the gentleman yield?

Mr. NADLER. Yes, I'll yield.

Mr. CONYERS. What would happen if they do two separate ones, one for each instance?

Mr. NADLER. Well, that——

Mr. CONYERS. Would it violate——

Mr. NADLER. Reclaiming my time, if you do it—but then you have to—if you're doing two separate ones, in one you have to

name a person, in the other you have to name a place, a specific—or a set of things. And all this amendment says is you have to name that. It says—one or the other. It says in paragraph (A), if the identity is unknown, in other words, it's a John Doe wiretap, you have to specify the facilities and places. If it says—if any of the facilities or places are unknown, in other words, it's a roving wiretap, you have to identify the target. You can't have an unknown target and an unknown place because then it's just general. And I can't imagine how we can allow general—general all-embracing wiretaps.

So I urge the adoption of this amendment, and I yield back.

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. And I do thank the gentleman from New York for looking at this, this complicated subject, and trying to come up with very worthy amendments.

In this case, I have to oppose this, and I have to oppose it specifically for what we're talking about, which is this—if we were to adopt Mr. Nadler and Ms. Jackson Lee's amendment, what would happen is we would be able to follow a Member of Congress who's using a disposable cellular phone, a new one every day, and we'd be able to deal with an al Qaeda operative who is clandestine as long as he stayed at the same phone. But we wouldn't be able to deal with that—that hidden person that is operating that we only know some things about because they're trying to remain anonymous if they went from phone to phone. Here——

Mr. NADLER. Would the gentleman yield?

Mr. ISSA. Just a moment. Here and in Afghanistan and in Iraq, we are using the techniques of knowing something about the individual we're looking for, and we know something about the one or two or three phones they may be using at a given time and changing. Specifically when we envisioned this legislation, we did envision the idea that you would not—you might know who the person was in principle but not by their correct name, which is all a John Doe warrant often is, and we clearly saw them as using modern technology to go from phone to phone.

With that, I'd yield for the question.

Mr. NADLER. Well, I think the gentleman—excuse me. I think the gentleman is a little incorrect. If you know the identity of the person, you know—it doesn't have to be his name. But if you know that the person with some identifying characteristics is a suspected al Qaeda agent, and you don't know where—you know, what facilities he's using, you'd get that as a roving wiretap with the identifying characteristics. But you have to have some identifying characteristics. If you don't have any identifying characteristics but you know where—where you think you know, then you—then you get a John Doe wiretap.

Mr. ISSA. Reclaiming my time, I wish I could agree with you because that understanding needs to be gleaned. A John Doe is anytime you don't actually know the guy's correct name. And often you have doing—and from my civil days, doing business as, it's still a John Doe. You don't know for sure the correct legal name, and so you still use John Doe.

The fact is John Doe is about not having an exact, but you can have a pretty darn good description. You can know the guy was in

Morocco last week and then he was here and he was there, and you can do an awful lot of describing and still be a John Doe.

So with all due respect to the gentleman from New York, the combination does exist. It exists every day in the pursuit of al Qaeda and other terrorist organizations in which you know a great deal, but you still don't have an exact, correct, verifiable name, and, by the way, they're using a new cell phone every day.

With that, I'd yield back.

Mr. BERMAN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Berman.

Mr. BERMAN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BERMAN. If the John Doe warrant—if this is—if the roving wiretap with the John Doe warrant is simply a way to get someone they have no—to give a blanket authorization for the FBI to surveill anyone at any place by having no description and no place, then I'm very supportive of the gentleman's amendment. But I would like—I hear you say if the identity is unknown. What if it is a John Doe warrant because they don't know the name, but they have very specific characteristics, enough to persuade a judge to issue a John Doe warrant, but they don't know where he is? They have a clear sense of who they want, but they don't know the person's name. If that is called a John Doe warrant, why—why do we want to limit their ability to get a roving wiretap on this person whose identity they have many descriptions of, and let's assume for a second they're operating in good faith, why do we want to restrict their ability to surveill that person in part to get that person's true identity and other information where they can—they can make the case that that person with those characteristics is an agent of a foreign power? That's the one problem I have with the word "the identity is unknown." Does the—are you saying if you have particular characteristics but don't know the name, then your section doesn't apply?

Mr. NADLER. If the gentleman would yield?

Mr. BERMAN. Sure.

Mr. NADLER. My intention here is not the simple fact—and I hope Mr. Issa will listen, too. We refer to it colloquially as a John Doe amendment—as a John Doe wiretap. But what we're talking about and what I intended—and I'm perfectly willing to entertain suggestions for making this clear—is what the gentleman was saying, some identifying characteristics. If you have enough to know who it is, you don't know his name—his name is not the important thing, but there has to be some limitation on the power so that it isn't a general writ. If you're doing a roving wiretap and you know generally about the person you're looking at and so you can describe it with some specificity, even without the name, then that would be okay. But that's what I'm trying to do in this amendment.

Mr. BERMAN. Reclaiming my time, in other words, if there's a practice going on or that could go on under this statute, which would essentially allow law enforcement to pocket authorizations to surveill without—they could apply at any time afterwards to anybody they wanted to based on at that point thinking that person might—might be a terrorist, I share your concern and think we

ought to correct that, but not clear for me from your amendment. I'll yield to somebody who's actually been in——

Mr. NADLER. Would the gentleman yield for a moment? Would the gentleman yield for a moment? Thank you.

I am going to, without prejudice, withdraw this amendment now and come back to it later or tomorrow with better—with language that will go into that because——

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I have an amendment at the desk. It's the Watt amendment, not the Watt-Waters amendment.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199, offered by Mr. Watt. Insert at an appropriate place the following——

Mr. WATT. Mr. Chairman, I ask unanimous consent——

Chairman SENSENBRENNER. The clerk will continue to read until we can see the——

The CLERK. Sec.01. Warrants executed in districts other than where issued. Whenever a warrant may be executed in a district other than the district in which it was issued, a person against whom it may be executed may seek to quash that warrant in the district in which it is served, or, if the person is a corporation, in any district in the State wherein the corporation was incorporated.

[The amendment of Mr. Watt follows:]

AMENDMENT TO 3199

OFFERED BY MR. WATT

Insert at an appropriate place the following:

SEC. 01. WARRANTS EXECUTED IN DISTRICTS OTHER THAN WHERE ISSUED.

Whenever a warrant may be executed in a district other than the district in which it was issued, a person against whom it may be executed may seek to quash that warrent in the district in which it is served, or, if the person is a corporation, in any district in the State wherein the corporation was incorporated.

Chairman SENSENBRENNER. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Chairman, I spent a lot of time in courts practicing law, 22 years, and I always had this philosophy that the courts and our court system should—should try to be as accessible to the people who were being brought into contact with it as possible.

Currently, Section 219 of the PATRIOT Act authorizes nationwide search warrants in terrorism-related investigations. Section 220 allows a single court in a single district to issue a search warrant for electronic evidence that is valid nationally, essentially expanding Section 219 to standard criminal investigation. I'm not sure that this result was intended, but that's certainly where we are at this point.

Receiving an out-of-State search warrant under either section may impose an insurmountable burden on the recipient if he wishes to challenge the warrant. For example, Section 220 makes it more difficult for large communication service providers to seek modification of burdensome disclosure orders. Instead of being able to contest within their home Federal district, they must challenge in whatever district throughout the country the order originated.

My amendment injects an element of fairness into the process for warrant recipients and their attorneys by allowing them to challenge a warrant issued under Sections 219 and 220 if an individual in the district where the warrant was served, and if a corporation in the district where it was incorporated. Again, I believe this amendment ensures openness and efficiency and more accessibility.

The deck should not be stacked against those against whom the Government has some suspicion, and it certainly shouldn't be stacked against some electronic provider against whom they have no suspicion, they're just trying to get evidence. I think the Government should be bearing this burden. Here this amendment nearly makes it possible for innocent targets to challenge unfair or erroneous warrants in a venue that is convenient to them. It imposes no harm on the Government. It does not undermine its investigative capacity, and I ask my colleagues to support the amendment, and yield back——

Ms. LOFGREN. Could I ask a question before you yield back?

Mr. WATT. Yes. I yield to the gentlelady.

Ms. LOFGREN. I thank you. The rationale for the section in the Act meant a lot to me, frankly, because it relieved a burden on the courts in San Jose, California, that ended up issuing almost all of the warrants for—even though the case had absolutely nothing to do with anything anywhere near Santa Clara County.

I do not object at all to what you're attempting to do, but I do want to clarify that this is at the discretion of those seeking to quash, and would not preclude quashing in the court where the warrant was issued. This would just be an addition to that?

Mr. WATT. Yes.

Ms. LOFGREN. Then I think this is perfectly sensible, and I thank the gentleman for yielding.

Mr. WATT. I yield back the balance of my time.

Chairman SENSENBRENNER. Gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, I oppose the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. And, Mr. Chairman, let me say in opposing the amendment, I don't oppose the gentleman from North Carolina's goal, which I think is a worthy one, and what he hopes to accomplish with this amendment. However, my problem is, frankly, that I don't——

Mr. WATT. Mr. Chairman, I'm having trouble hearing Mr. Smith. I'm sorry.

Mr. SMITH. I'm sorry. Mr. Chairman, my problem is that I'm not sure what problem it is that this amendment seeks to address. It has long been the case that grand jury subpoenas are issued in the district of the investigation to gather relevant information, and must be challenged there. The process has worked for grand jury subpoenas for many years with no apparent problems that I'm aware of. I'm also not aware of any evidence that the warrants issued in the district of the investigation cause any significant problems for keepers of electronic records or has deterred them from challenging warrants.

On the other hand, the benefits in efficiency and cost savings are obvious and have been substantial.

Finally, this amendment would create dueling district courts, which in some cases would operate in even different circuits. If a search warrant for electronic surveillance is challenged, the legality of the warrant should be determined by a judge familiar with the individual investigations.

In summary, Mr. Chairman, I'm not sure that we have any significant problems that need to be addressed by this amendment, and second of all, I think we ought to avoid the situation where you have really one district court almost becoming an appellate court for another district court, and I know the gentleman wouldn't want to see that occur either.

Mr. WATT. Will the gentleman yield?

Mr. SMITH. And I'll be happy to yield to the gentleman from North Carolina.

Mr. WATT. I thank the gentleman for yielding. First of all, if he doesn't think there is a problem, then he obviously didn't hear what either I or Ms. Lofgren said.

Mr. SMITH. If the gentleman would yield, I did hear what the gentlewoman from—reclaiming my time—what the gentlewoman from California said. but I was not persuaded that that was a problem of such significance that it overrode the advantages of having one district court not only issue——

Mr. WATT. Would my gentleman friend from Texas yield?

Mr. SMITH. Yes, I'm sorry, please.

Mr. WATT. I thank the gentleman for yielding again. Those are two separate issues, and the second one I understand more than I understand the first. Obviously, there is a problem because this is a remote—or the possibility of having to travel all the way across the country to deal with something. This is not a grand jury situation. I'm not trying to get people into dueling——

Mr. SMITH. District courts?

Mr. WATT.—dueling district courts. I presume that judges looking at the same evidence are going to reach the same result, but, you know, right now we're making this convenient for the Govern-

ment, but not convenient for the citizen, and the citizen in this case is not even the person that's suspect of anything. In most cases it's a corporation that happens to be a service provider.

Mr. SMITH. Reclaiming my time, I'm not sure I share the gentleman's confidence that district courts will not differ in their findings or differ in their conclusions, but in any case, I'll be happy to yield for the gentleman from Texas, Mr. Gohmert——

Mr. GOHMERT. Thank you.

Mr. SMITH.—the balance of my time.

Mr. GOHMERT. I appreciate my gentleman friend from Texas hearing my voice way out here in the wilderness.

Listen, I've dealt with this issue, and I'll tell you what, when you have a violent criminal that you issue a warrant on, and you set a high bond like a million dollar bond—and I have had this happen—he's picked up in some other jurisdiction. He comes in, he makes a contrite and lovely appearance before that trial judge, and that trial judge says, well, he seems like a nice enough guy. He sets a low bond, and a violent criminal gets away and does violence on other people. It is not a good situation.

And from what I understand, this was originally argued at length in the original PATRIOT Act, and that's why this wasn't a part of it. In fact, this is the very kind of thing that will allow somebody to go to a judge that doesn't know the history, doesn't know what happened, and then issue a warrant in the middle of the night to go kidnap a child at gunpoint, all because he wasn't privy to all the information the original trial judge had.

I think this is troublesome. I have seen it create problems down the road simply because a well-meaning judge just doesn't have all the facts. The original trial judge that issued the warrant does, or he wouldn't have issued it, so I would urge everyone to vote against this amendment.

Mr. SMITH. Mr. Chairman, I thank the former judge from Texas for his comments, and I'll yield back.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I think the only thing more troublesome than the situations that have been alluded to would be what would happen if this amendment is not agreed to. In a grand jury you're at least doing one crime and you're looking for evidence of that crime, so there's some natural limitation. In this you can have—if you get served in California on a warrant that is over broad and you have trouble complying with it, you got a choice, you can either comply with it at great hardship, or you can go to Virginia and argue about it.

Now, you got to bring yourself and your lawyer and everybody else cross-country to argue the case. Why can't you argue it right there somewhere in California? I would hope we would agree to this. Otherwise, you essentially have no right to contest a search warrant if you don't adopt this amendment.

Mr. DELAHUNT. Would the gentleman yield?

Mr. SCOTT. I'll yield.

Mr. DELAHUNT. In response to my friend from the wilderness, I think he—and I read the amendment on its face, and it just simply refers to warrants executed in districts. But this is not an arrest warrant. What we're speaking to here is an electronic search war-

rant, and I would ask the gentleman if that might somehow influence his concerns that he so eloquently expressed about that violent——

Mr. GOHMERT. Would the gentleman yield?

Mr. DELAHUNT.—criminal down in Texas.

Mr. GOHMERT. If the gentleman would yield?

Mr. DELAHUNT. I yield.

Mr. GOHMERT. I take it by your silence, yes. The same principles apply. The one that issued the warrants knows the facts and knows them well enough to have found probable cause to issue a warrant. Otherwise he's the one or she is the one that found that it complied with the constitutional requirements, and that is the principal court of jurisdiction. And again, as I understand it, this was argued at length. The same kind of principle would apply, let the judge that has the principal jurisdiction rule on it. Thank you.

Mr. DELAHUNT. Reclaiming my time, the problem you've got there——

Mr. GOHMERT. I yield back.

Mr. DELAHUNT.—is that somebody's going to be inconvenienced, and if you've got an overly broad warrant and cannot possibly comply, you're in a fix because either you've got to pluck yourself and your lawyer and all your files and everything cross-country to schedule something that may get unscheduled and rescheduled. You've got to come back another time to argue it. If this isn't adopted, you essentially have no effective right to contest a search warrant that may be overly broad, may bankrupt your company to try to comply with it. If you can't get it amended, you can't get it fixed, so that maybe you can provide most of the information, they'd be satisfied with that, you just got to go bankrupt or something. I yield to the——

Mr. ISSA. I thank the gentleman. And briefly, I'd like to say that although this may be well-intentioned, that there is a flaw even in the amendment, and that is that under the current law, for example, if you do business on the Internet, we don't have to go to your home jurisdiction. In fact, if you do business in the Internet and there's a portal that end up in my district, I can file in my district.

So when you start saying it would be overly burdensome, the best example is in fact when we're executing a search warrant on Internet material, we should not have to go to San Jose because the truth is, it's probably a Washington or an Alabama or whatever investigation. So this doesn't fix the problem that it says it fixes because we do often have corporations who in fact do not have the right to go to their home jurisdiction and say, "I'm going to answer it here," because they're doing business in Timbuktu, and as a result, they get served in Timbuktu.

So I believe that this amendment is so overly broad that even if we agreed with the principles—and I think Chairman Smith has said why the entire amendment is flawed—I also think that we need to look——

Ms. LOFGREN. Would the gentleman yield?

Mr. DELAHUNT. Would the gentleman yield?

Mr. WATT. Reclaiming my time, and I yield to the gentlelady from California.

Ms. LOFGREN. This was discussed at some length. I mean not tremendous length when we enacted the PATRIOT Act, and it is for

electronic evidence only. And really, the rationale behind—to allow the Government to seek a warrant either where the case was initiated or where the warrant was to be executed to relieve the burden, the judicial burden on my district, where all of the warrants were sought because they were all being executed in Silicon Valley.

What is being proposed here is just the other side of that coin. These are all large companies. These are not, you know, Joe the ax murderer.

Chairman SENSENBRENNER. The gentleman's time has expired.

Ms. LOFGREN. Mr. Chairman, I ask to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I can recall a handful of situations where the ISPs, who are the recipients of these search warrants, have taken the step of moving to quash. But the question in my mind is why should we inconvenience the ISP on those occasions when they move to quash the warrant that's been issued? We should at least grant them the same discretion.

I don't think this is a huge deal, frankly, because I don't think it happens that often, but I do think it's basic fairness. I appreciate the comments made about, you know, bad guys and robbers, but it really has absolutely nothing at all to do with this section of the Act, and never did, nor does it have anything to do with this amendment.

And I think this should be something where we could actually agree. I mean we've disagreed on many things, but this should be something where we could agree to make a modification that is modest yet sensible, and I am at a loss other than we just vote party line all the time, why we wouldn't agree on this very sensible manner.

I don't know if Mr. Watt would like to make any additions, or Mr Delahunt, who was asking to be recognized a minute ago.

Mr. WATT. I thank the gentlelady for yielding. I basically have said what I have to say about this. I mean I think it's a matter of fairness. It's not about protecting anybody who has done anything criminal because the people who are the subjects of these electronic warrants, search warrants, are really not the terrorists, they just have the information. I just—I thought this was going to be a real non-controversial amendment myself, and I can't imagine why we are so bent out of shape about this unless—I mean it is true that the Government now has the right to select the forum in which it gets its warrants, but I'm not even trying to give any advantage in the limited, very limited number of cases where a service provider is going to raise a question about a warrant. I'm not trying to give any advantage to them other than the advantage of convenience.

I'm assuming that a judge who looks at a certain set of evidence in Virginia, a district court judge, is going to—the judge in California is going to look at and decide the same thing.

Ms. LOFGREN. If I may reclaim my time.

Mr. WATT. I yield back.

Ms. LOFGREN. I mean this was—you know, I said it was my district. It wasn't just my district, but most of these warrants are executed either in Northern Virginia or in Silicon Valley, and this was proposed, really as my recollection is, by the department, really for

reasons of judicial economy to eliminate the burden on those judicial districts, and this doesn't increase the burden on those judicial districts, and I think if you take a look at the Act itself, Section 220, as well as 219, it becomes very clear what we have done and how modest is this amendment.

Before yielding back I'd ask Mr. Delahunt if he wanted to make his final comment?

Mr. DELAHUNT. I just, again, I would just echo what the gentleman, the proponent of the amendment has said. I just don't think it's a big deal. To me it's just a housekeeping amendment that really closes the loop of what we did when we passed the PATRIOT Act out of this Committee. It's the other side of that. And it does come down to convenience as opposed to putting the burden on—as opposed to putting the burden on the respondent. But if there's some rational argument that can be made for opposing it, I haven't heard it yet, and I would hope that those who oppose it would reconsider.

With that I'll yield back.

Ms. LOFGREN. And I'll yield back. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from North Carolina, Mr. Watt. Those in favor will say aye.

And those opposed, no.

The noes appear to have it——

Mr. WATT. Mr. Chairman, I request a recorded vote.

Chairman SENSENBRENNER. A recorded vote will be ordered. Those in favor of the Watt amendment will, as your names are called, answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Oh, I'm sorry. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Ms. Sánchez?
Ms. SÁNCHEZ. Pass.
The CLERK. Ms. Sánchez, pass. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. No.

The CLERK. Ms. Wasserman Schultz, no. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Members who wish to cast or change their vote? Gentleman from North Carolina, Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. Gentlewoman from California, Ms. Sánchez?

Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye.

Chairman SENSENBRENNER. Further members who wish to cast or change their vote?

[No response.]

Chairman SENSENBRENNER. If not, the clerk will report.

The CLERK. Mr. Chairman, there are 14 ayes and 24 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to. Gentleman from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I have three amendments at the desk which I'd like to offer en bloc.

Chairman SENSENBRENNER. The clerk will report the amendments.

The CLERK. Amendments to H.R. 3199 offered by Mr. Schiff of California.

Add at the end the following:

Sec. 9. Predicate offenses.

Section 2332b(g)(5)(B)(i) of Title 18, United States Code is amended: 1) by inserting 2339d, relating to——

Mr. SCHIFF. Mr. Chairman, I'd request that the amendments be deemed as read.

Chairman SENSENBRENNER. Without objection, so ordered, and without object, the amendments will be considered en bloc, and the gentleman from California is recognized for 5 minutes.

[The amendments of Mr. Schiff follow:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. SCHIFF OF CALIFORNIA

Add at the end the following:

SEC. 9. PREDICATE OFFENSES.

Section 2332b)(g)(5)(B)(i) of title 18, United States Code, is amended—

(1) by inserting ", 2339D (relating to military-type training from a foreign terrorist organization)" before ", or 2340A" ; and

(2) by inserting "832 (relating to nuclear and weapons of mass destruction threats)," after "831 (relating to nuclear materials),".

AMENDMENT TO H.R. 3199

OFFERED BY MR. SCHIFF OF CALIFORNIA

Add at the end the following:

SEC. 9. FORFEITURE.

Section 981(a)(1)(B)(i) of title 18, United States Code, is amended by inserting ''trafficking in nuclear, chemical, biological, or radiological weapons technology or material,'' after ''involves''.

AMENDMENT TO H.R. _____

OFFERED BY MR. SCHIFF OF CALIFORNIA

At the end of the bill, add the following new section:

SEC. ___. AMENDMENTS TO SECTION 2516(1) OF TITLE 18, UNITED STATES CODE.

(a) PARAGRAPH (c) AMENDMENT.—Section 2516(1)(c) of title 18, United States Code, is amended by striking ''or section 1546'' and all that follows through the semicolon at the end and inserting the following: ''section 1546 (relating to fraud and misuse of visas, permits, and other documents), section 37 (relating to violence at international airports), section 175b (relating to biological agents or toxins), section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities), section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 1361–1363 (relating to damage to government buildings and communications), section 1366 (relating to destruction of an energy facility), section 1993 (relating to terrorist attacks against mass transportation), sections 2155 and 2156 (relating to national-defense utilities), sec-

tions 2280 and 2281 (relating to violence against maritime navigation), or section 2340A (relating to torture);''.

(b) PARAGRAPH (p) AMENDMENT.—Section 2516(1)(p) is amended by inserting after ''other documents'' the following: '', section 1028A (relating to aggravated identity theft)''.

(c) PARAGRAPH (q) AMENDMENT.—Section 2516(1)(q) of title 18 United States Code is amended by inserting after ''; or'' at the end the following: ''section 2339 (relating to harboring terrorists), or section 2339D (relating to military-type training from foreign terrorists) of this title; or''.

Mr. SCHIFF. Thank you, Mr. Chairman. I'll try to summarize these very quickly. The first amendment amends the definition of a Federal crime of terrorism. Section 808 of the PATRIOT Act made a number of important changes to the definition of terrorism to include sections of the criminal code which were involved with terrorist offenses. Since the passage of the PATRIOT bill there have been a number of new terrorism offenses that should be made reference to and incorporated within the definition of "terrorism." This particular amendment would add offenses related to military type training from a foreign terrorist organization, and also offenses related to nuclear and weapons of mass destruction threats. These additional terrorism offenses were enacted via the 9/11 Commission bill.

A second amendment as part of the en bloc deals with civil forfeiture and trafficking in WMD technology or material, and this amends the PATRIOT bill to include trafficking in nuclear, chem, bio or radiological weapons technology or material. Section 320 of the PATRIOT bill amended Federal law to specify that the proceeds of foreign crimes specifically related to drug trafficking are subject to forfeiture in the United States, and my amendment would extend this concept to include trafficking in nuclear, chem, bio or radiological weapons technology or material. It will allow us to go after the proceeds of criminal rings like AQ Khan.

And finally, Mr. Chairman, I have an amendment to the omnibus Crime Control Provisions which add a number of provisions to the wiretap authority, which add additional terrorism and serious offenses to ensure law enforcement has the tools necessary to——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. SCHIFF. Yes, Mr. Chairman.

Chairman SENSENBRENNER. First let me say I think the gentleman has made three very constructive additions, and I am prepared to accept these amendments en bloc. I would ask, however, unanimous consent that the staff be authorized to make a technical correction to the third amendment offered by the gentleman from California, to put the sections that he had cited in the proper numerical order so that they appear at the proper place in the statute.

Mr. SCHIFF. I thank the Chairman.

Chairman SENSENBRENNER. Without objection, the modification is agreed to. I thank the gentleman for yielding.

Mr. SCHIFF. Mr. Chairman, I'd be delighted to yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendments——

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. Gentlewoman from California.

Ms. LOFGREN. I would like to ask a question of Mr. Schiff.

Chairman SENSENBRENNER. The gentlewoman strikes the last word——

Ms. LOFGREN. I do.

Chairman SENSENBRENNER.—and is recognized for 5 minutes

Ms. LOFGREN. On your amendment No. 64, I'm seeking to understand the impact of lines 6 and 7.

Mr. SCHIFF. Yes. Lines 6 and 7 refer to what's existing already in the PATRIOT bill. It doesn't add that, but because we're adding

all the language after that, and the previous language in lines 3, 4 and 5, says strike the beginning of that section.

Ms. LOFGREN. All right.

Mr. SCHIFF. So we're not adding——

Ms. LOFGREN. Not adding anything.

Mr. SCHIFF. We're not adding the "fraud and misuse of visas, permits." That was already there. We're adding what appears thereafter, violence at airports, biological agents and toxins, nuclear and weapons of mass destruction threats, et cetera.

Ms. LOFGREN. So the renumbering argument I understand now, and I thank the Chairman for recognizing me and yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendments offered by the gentleman from California, Mr. Schiff, en bloc. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendments en bloc are agreed to.

Are there further amendments? The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. I have an amendment actually coming to the desk.

Chairman SENSENBRENNER. The clerk will report the amendment once it is received.

The CLERK. Amendment to H.R. 3199 offered by Ms. Lofgren of California.

At the end of the bill add the following:

Section _____. Clarification of habeas corpus

No act of Congress passed since the terrorist attacks of 9/11, including USA PATRIOT Act, shall be construed to limit or suspend the writ of habeas corpus.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

[The amendment of Ms. Lofgren follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MS. LOFGREN OF CALIFORNIA

At the end of the bill, add the following:

SEC. __. CLARIFICATION OF HABEAS CORPUS

No act of Congress passed since the terrorist attacks of 9/11, including the USA PATRIOT Act, shall be construed to ~~limit or~~ suspend the writ of habeas corpus.

Ms. LOFGREN. Mr. Chairman, the writ of habeas corpus in Article I, Section 9 says that the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.

As the Chairman will recall, I'm sure, the very first unpublic draft of the United States PATRIOT Act sent over from the Department of Justice contained a chapter titled "Suspension of habeas corpus," and as we all know, the Congress declined to—with the

Chairman's leadership—to accept that provision, Yet many Americans are concerned that what has been done since 9/11 has, through back-door methods, in essence, accomplished that same result.

For example, the administration has claimed the power to declare suspected terrorists, including American citizens, "enemy combatants" and to hold them indefinitely without access to U.S. courts. Last year the Supreme Court disagreed and recognized that detainees have the right to file habeas writs in Federal courts. Unfortunately, the Court left many details unanswered, and so many, including Mr. Jose Padilla, an American citizen, are still being held indefinitely without charge.

In addition, it appears that the Department of Justice has used the material witness statute as a means to hold suspects without charge, which I addressed during the discussion of a previous amendment.

Habeas corpus is one of the foundations of American freedom. It was first enshrined in the Magna Carta 700 years ago and forms a key foundation for the U.S. Constitution. It prevents the Government from arresting a person and holding them indefinitely without charge.

Now, I realize that these issues are not squarely within the Act itself, but I'm sure the members of the Committee will recall the dialogue that I had with the witness from the Justice Department on this very issue. And I hope you'll recall that when I asked the Justice Department, the Assistant Attorney General, whether or not he agreed that including a reaffirmation of the writ of habeas corpus in whatever we did in the PATRIOT Act would be a good idea, he did not disagree.

I hope that we can clarify that nothing the Congress has done has suspended the writ of habeas corpus. I think it may make—some have guessed otherwise. I think it would clarify that point in a way that would be very healthy for our Republic and very useful for the Judiciary, and I hope that this is something that we can do unanimously, reaffirming the great writ that has kept America free for so many years.

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

Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Mr. Chairman, I rise in opposition to this amendment.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. LUNGREN. I mean this is so broad, no act of Congress passed since the terrorist act of 9/11 should be construed to limit or suspend the writ of habeas corpus. We have a bill that is being entertained by this Committee right now talking about streamlining appellate procedures which affects the writ of habeas corpus, and some would suggest it gets rid of some of the excesses of habeas corpus that are, I would suggest, being observed in certain parts of the country, particularly in the Ninth Circuit at the present time. I just think——

Ms. LOFGREN. Would the gentleman yield?

Mr. LUNGREN. Yes, I'll be happy to yield.

Ms. LOFGREN. I would ask unanimous consent to remove the words "limit or" from the amendment.

Mr. LUNGREN. I appreciate that. If the Chairman recognizes you to——

Mr. Chairman, she's asking unanimous consent to remove the words——

Ms. LOFGREN. "Limit or."

Mr. LUNGREN. "Limit or."

Chairman SENSENBRENNER. Without objection, the modification is agreed to.

Mr. LUNGREN. And with that, I would remove my objection.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentlewoman from California, Ms. Lungren—Ms. Lofgren. [Laughter.]

I'm falling into the trap too.

Those in favor will say aye.

Opposed no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments? The gentleman from California, Mr. Schiff.

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

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199 offered by Mr. Schiff of California.

Page 6, line 7, strike "(5)" and insert "(6)".

Page 6, after line 6, insert the following new paragraph:

(5)(A) In the case of an order requiring the production of tangible things from a library or bookstore or medical records that contain personally identifiable information and subject to subparagraph (B), at the conclusion of an——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from California is recognized for 5 minutes.

[The amendment of Mr. Schiff follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. SCHIFF OF CALIFORNIA

Page 6, line 7, strike ''(5)'' and insert ''(6)''.

Page 6, after line 6, insert the following new paragraph:

''(5)(A) In the case of an order requiring the production of tangible things from a library or bookstore or medical records that contain personally identifiable information and subject to subparagraph (B), at the conclusion of an investigation described in subsection (a) of an individual who is a citizen of the United States, the nondisclosure requirements of this section shall cease to apply.

''(B) The Director of the Federal Bureau of Investigation or designee of the Director may make an application to a judge of the court established by section 103(a) to continue the application of the nondisclosure requirements of this subsection after the completion of such an investigation.''.

Mr. SCHIFF. Thank you, Mr. Chairman. This amendment is offered by myself and also by Ms. Waters.

This applies to Section 215 and again applies specifically to those records that Americans have the most concern about preserving their privacy, that is, library records or book store records or medical records. And when this amendment very simply does, is it says that—and it's very narrowly drawn—that the—well, let me back up 1 second.

The debate on the library records, I think has been a very difficult one when you get into the weeds on what's involved. When you compare the grand jury process to the FISA process, in the grand jury process you can get a grand jury subpoena for library records or any other kind of record without prior court approval. However, there's no prohibition on telling the subject of the grand jury subpoena that their records have been subpoenaed. In the FISA context you have prior court approval, which is positive, but at the same time you have a statutory prohibition on ever disclosing the FISA order to the subject of the order, and therefore, there's really no check on the issuance of that order.

What my amendment does is it says that first the existing prohibition on disclosure of a FISA order for a medical record or a library record would be lifted after the investigation has been concluded; second, this would only apply to U.S. citizens. So this does not extend to foreign nationals, or as Ms. Lofgren pointed out to me earlier, even lawful permanent residents. It only applies to U.S. citizens' library records, U.S. citizens' book store records, and U.S. citizens' medical records.

And third, the FBI would have the ability to petition the court for good cause shown, the FISA Court, that the non-disclosure requirement should not be lifted in that particular case.

So this couldn't be drawn more narrowly. It only applies to library records, book store records and medical records. It only applies after the investigation has concluded, and it has the additional safety valve of allowing the FBI to go to the FISA Court, and for good cause shown, continue to maintain the non-disclosure order. So I can't imagine how it could be drawn more narrowly. At the same time I think it protects American citizens in their expectation of privacy with their medical records and their library records, and I hope that it may be the one amendment in this area that the majority will find acceptable.

I would be happy to yield back the balance of my time.

Mr. GOODLATTE. [Presiding] Who seeks time?

The gentlewoman from Florida is recognized for 5 minutes.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman. I support the gentleman from California's amendment, and just wanted to make a suggestion, depending on the will of the Committee, not necessarily on this amendment, but on the one which he withdrew earlier as well, which is the same issue, that the Director of the Federal Bureau of Investigation may or may not be the appropriate person to do the review because if you had the Attorney General do that review, as well as in the amendment earlier today, you would have both a law enforcement agent doing the request for the tangible things like library books or medical records, and the review by the Attorney General would be done by a prosecutor.

Simply because there is no judicial review of this whole process, it would be, I think, helpful to have both the prosecutor and the law enforcement agent be part of that process. That's just my thoughts.

And I yield back.

Mr. GOODLATTE. Gentlewoman yields back. The gentleman from California is recognized for 5 minutes.

Mr. LUNGREN. Strike the last word. If I could ask the gentleman from California, the author of this bill, a couple of questions.

You say at the conclusion of the investigation described in Subsection (A) of the individual, if there are a series of investigations, this being just one of them, but information gained in this go to the other investigation which is not yet completed, would they be required to disclose without going to the court?

Mr. SCHIFF. No. Will the gentleman yield?

Mr. LUNGREN. Sure.

Mr. SCHIFF. No, there's nothing that mandates disclosure here. What it says is that we remove the legal prohibition of disclosure so that—when you issue a grand jury subpoena now for a business record, a library record or whatnot, there's no mandate that the library disclose the subpoena request or that the business disclose it. In fact, they are heavily discouraged from doing it. But they're not legally prohibited from doing it, and this would remove the legal prohibition.

In the circumstance you mentioned, either, (A) the investigation would be deemed to be ongoing because there's a related investigation ongoing, or (B) if there were any question about it and the investigative agency, the FBI, felt that by disclosing to the American citizen that their library record had been requested, would it somehow impede the related investigation, they could go to court and that would be good cause for the court to extend the non-disclosure. So in the circumstances you described, the Government would still be able to protect its investigation.

Mr. LUNGREN. So the gentleman would remove the current state of the law which obviously promotes non-disclosure. The assumption—the presumption that non-disclosure is necessary in these foreign intelligence surveillance cases.

Mr. SCHIFF. If the gentleman would yield, in very narrow circumstances, first of all, vis-a-vis only U.S. citizens; second, under the whole range of records under 215, only vis-a-vis library, book store and medical records; and third, only where the Government decides that they can't show good cause——

Mr. LUNGREN. Right, but the premise is for the very use of this section is that it's a case involving international terrorism or clandestine intelligence activity, and what you're saying is if a U.S. citizen is involved in that, that disclosure takes place.

Mr. SCHIFF. Not that disclosure takes place, but that the prohibition on disclosure——

Mr. LUNGREN. Prohibition against non-disclosure——

Mr. SCHIFF. Prohibition against non-disclosure is removed, that there's an affirmative obligation of the Government to tell the Court why it's necessary to continue non-disclosure to an American citizen that their library record was requested.

Mr. LUNGREN. And so the gentleman's argument is that in an international terrorism case or clandestine intelligence activity, we

do make a distinction under your amendment between a U.S. citizen and non U.S. citizen?

Mr. SCHIFF. We do. I mean there are foreign nationals in the United States who are here very legitimately and may be here very illegitimately that we wouldn't want to protect this way, but what really is the broader picture I think is that the American people are concerned were their library records being subject of review. And I think that we can satisfy all of the legitimate law enforcement interests and also protect the civil liberties interests of Americans to know that their reading habits aren't being scrutinized, and that there isn't a prohibition on disclosure unless good cause has been shown for why that should continue after the investigation is concluded.

And again, we put in so many safeguards here, American citizen, only certain records, only after investigation is done, and only when the Government chooses not to go to court or can't show good cause to continue the non-disclosure order.

Mr. KING. Would the gentleman yield?

Mr. SCHIFF. Yes.

Mr. KING. I thank the gentleman. I'm reading here from the amendment, and lines 6, 7 and 8, of an individual who is a citizen of the United States, the non-disclosure requirements of this section shall cease to apply.

Does your amendment, Mr. Schiff, presume that terrorists will not be U.S. citizens in the fashion of the bombers in London that were British citizens? How does that play out within this—as you envision this language?

Mr. SCHIFF. Will the gentleman yield?

Mr. KING. Yes.

Mr. SCHIFF. I would assume that the circumstances in which a U.S. citizen is the subject of a FISA order are far the exception and not the rule because the FISA rules are, No. 1, directed at agents of foreign governments. But, no, it doesn't assume that it will never be the case that an American might be involved in terrorism, but it does say that where there is an American who is the subject of an order to produce their library record or the medical record or records which it's hard to imagine things being more personal and private, that at the conclusion of the investigation, when the investigation is done and the Government no longer has any good cause to refrain from informing the person, presumably because the investigation either revealed that they were not properly the suspect or they've already been convicted of an offence, then disclosure is not legally prohibited.

The reason why I think this is important is that unlike the grand jury process, there is no safeguard of ultimate notification in this, and even with this very limited amendment, the Director of the FBI and his designee can go and ask for a continuing non-disclosure order.

Mr. KING. Would the gentleman yield again?

Mr. SCHIFF. Yes.

Mr. KING. I thank the gentleman. But wouldn't this put a non-citizen, someone who has either an unlawful presence or a lawful presence in the United States at a disadvantage as opposed to a United States citizen with regard to this type of investigation, and

wouldn't that be a distinction that generally one wouldn't support as we approach this level of jurisprudence on these cases?

Mr. SCHIFF. You know, I think that we can and we do distinguish between U.S. residents, citizens and lawful residents, and foreign nationals. They have different expectations of privacy. I frankly, if the gentleman wants to suggest it, would be happy to include lawful residence in addition to U.S. citizens. I think that makes sense.

But I think it also is perfectly appropriate to distinguish levels of privacy expectation of foreign nationals in the country and of American citizens and lawful residents.

Mr. KING. I thank the gentleman.

Mr. FRANKS. Would the gentleman yield?

Mr. GOODLATTE. The gentleman from California, Mr. Lungren, controls the time.

Mr. LUNGREN. I'm trying to reclaim it, but I will yield to whoever is asking for it right now.

[Laughter.]

Mr. FRANKS. Thank you, Mr. Lungren.

I wanted to ask, in line 2, the library or book store, that seems to be potentially a fairly broad possibility. Would that include all libraries, book stores? Would it include things like 7-11 perhaps? I mean are there any specific definitions there? And with the same respect to personally identifiable information, what would be included in that and how would you specify that?

Mr. SCHIFF. If the gentleman will yield.

Mr. FRANKS. I will yield.

Mr. SCHIFF. If I were the FISA Court I wouldn't interpret 7-11 as a book store unless they had an awfully good magazine rack, and even then. So I would not interpret it that way, but again, when you look at the scope of business records that are subject to the FISA Court, which is unlimited, we're talking about a very narrow subsection which also is that narrow subsection which is of most concern to the American people. It's not an arbitrary choice, and it's because these records are of such concern to the American people, that I think they're deserving of greater protection.

Chairman SENSENBRENNER. [Presiding] The time of the gentleman has expired.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I will yield to my friend from California, the proponent of the amendment. I think he alluded to it, but I think we've got to put some context here. I think we all probably sense that among the American people there is a profound concern about what Government is doing, what is happening. And I think it's understandable that we have recalibrated, if you will, the tensions between national security on one hand and individual liberties and privacy on another. But at the end of the day, in a healthy viable democracy, openness and transparency and respect for privacy is what it's about in terms of securing the confidence of the people that there is a viable functioning democracy.

I think the gentleman's amendment is a gesture towards recalibrating, if you will, those interests, particularly privacy interests, and the interest of transparency and understanding what the Gov-

ernment is doing. In a larger sense it's a gesture towards moving that back in a direction that I think is important.

With that, I'll yield to my friend from California. And I applaud him, and I think this is an amendment that is a gesture.

Mr. SCHIFF. I thank the gentleman for yielding, and I think what this amendment really ought to speak to the American people whose concern is that the Government might be looking or interested in their reading habits or their medical history, that I hope we're going to say to them, look, if the Government has a legitimate reason to request of the FISA Court your library record or your medical record, and you're an American citizen, when the investigation is done, if there's no good cause not to inform you of it, we will inform you of it.

And I would hope the America people at a minimum have a right to expect that, that when the investigation is done, if they're exonerate or they're incarcerated, whatever the case may be, and there's no further impact on the investigation, there can be no good cause shown, that there shouldn't be a legal bar of a library to tell their patron that their record was requested. I hope we're not going to say to the American people that even in these narrow circumstances we're not prepared to protect your privacy or provide any check.

So I haven't heard opposition yet from my colleagues.

Mr. LUNGREN. Would the gentleman yield?

Mr. SCHIFF. I hear the struggle to find a reason to oppose, but don't work so hard.

Mr. LUNGREN. Well, you keep talking and——

Mr. SCHIFF. I'll stop.

Mr. DELAHUNT. Reclaiming my time, I would just note that the Director of the Information Security Oversight Officer for the Executive Branch has suggested that we are on a record pace in terms of classification. We are putting a veil over the operations of Government in this country, and we've got to start to begin to reverse that trend. And again, this is noting of great significance, with all due respect, in the larger scheme of things. But I think it's a demonstration to the American people that we recognize that there is a balance between national security and the values that we actually are fighting for in terms of dealing with the issues of terrorism.

With that I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from California, Mr. Schiff. Those in favor will say aye.

Opposed, no.

The ayes appear to have it.

Mr. SMITH. We would like a recorded vote.

Chairman SENSENBRENNER. The gentleman from Texas asked for a recorded vote. A recorded vote is ordered. Those in favor will, as your names are called, answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye. Mr. Chabot?
[No response.]
The CLERK. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
[No response.]
The CLERK. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]

The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their vote? Gentleman from Indiana, Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Chairman SENSENBRENNER. Gentleman from Ohio, Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Chairman SENSENBRENNER. Gentleman from Florida, Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Chairman SENSENBRENNER. Further members who wish to cast or change their vote?
[No response.]
Chairman SENSENBRENNER. If not, the clerk will report.
The CLERK. Mr. Chairman, there are 13 ayes and 20 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments? The gentleman from Florida, Mr. Wexler?
Mr. WEXLER. Thank you, Mr. Chairman. I will be quick. I just would like to follow up on the amendment that we spoke about.
Chairman SENSENBRENNER. Is the gentleman offering an amendment or moving to strike the last word?
Mr. WEXLER. Yes, amendment.
Chairman SENSENBRENNER. The clerk will report the amendment.
Mr. WEXLER. The same amendment that was offered before.
The CLERK. Amendment to H.R. 3199 offered by Mr. Wexler of Florida.

At the end of the bill add the following:

Section _____. Preventing the revelation——

Mr. WEXLER. Move that we consider it as read, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, so ordered. The gentleman is recognized for 5 minutes.

[The amendment of Mr. Wexler follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. WEXLER OF FLORIDA

At the end of the bill, add the following:

1 SEC. ___. PREVENTING THE REVELATION OF INFORMA-
2 TION PERTAINING TO ACTIVE INTELLIGENCE
3 AGENTS.

4 Section 2339A(a) of title 18, United States Code, is
5 amended by inserting "reveals any information pertaining
6 to the identity of undercover intelligence officers, agents,
7 informants, and sources that the person has or should
8 have reason to believe would be sufficient to be used to
9 identify a United States intelligence operative, including,
10 but not limited to, the name of the such covert agent, the
11 name of any relative of the agent, current or prior location
12 of the agent, or actions of specific covert agent, or" after
13 "Whoever".

Mr. WEXLER. Mr. Chairman, I will be brief. We concluded the previous debate. The gentleman from Iowa had suggested that the language that was included in the amendment was either too broad or nebulous. There was a discussion as to whether similar language was actually contained in the U.S. Code, particularly in the criminal sections. In fact, there is precisely the same language in the espionage section, and there are several sections that contain almost exactly the precise language.

Mr. Chairman, I thought your remarks at the end of the debate were exactly on point. This amendment would not in any way affect the investigation of or the conclusion or ramifications of the investigation regarding Mr. Rove. The issue is really quite simple. The issue is current law, on its face, criminalizes the knowing disclosure of classified information that identifies a covert agent.

What this amendment would adopt is to go a step further in the protection of our CIA and intelligence agencies, to simply provide in addition to that standard, that if a person provides information pertaining to the identity of an undercover intelligence officer, agent, informant, or source, that the person has or should have reason to believe would be sufficient to identify that person, then it would be actionable under this section of the PATRIOT Act.

And I will conclude with that, Mr. Chairman, and ask that we adopt this language to support the undercover work that our agents, our patriotic agents are doing.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. WEXLER. Yes.

Chairman SENSENBRENNER. The gentleman from Iowa, Mr. King.

Mr. KING. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. I thank the gentleman, and as I understand this agreement here before this Committee—and I had made the statement that the language, "a person has or should have reason to believe," didn't exist elsewhere in the code. And my information that comes from our staff, that has twice now done a word search through the entire U.S. Code, it comes back to—this is my information. There are multiple uses of "has reason to believe" but there are no occurrences of "should have reason to believe" or "has or should have reason to believe." So I would ask the gentleman to please produce that language. If I am proven incorrect, I am certainly happy to make that apology, and I would hope the gentleman would——

Chairman SENSENBRENNER. Will the gentleman from Iowa yield?

Mr. KING. I would yield.

Chairman SENSENBRENNER. During the interim since the gentleman from Florida offered this amendment previously, we had the Office of Law Revision Counsel do a U.S. Code search using the words "should have reason to believe." The result of the search is zero documents found, zero returned. So the language that the gentleman is proposing to insert appears nowhere else in the U.S. Code according to the Office of Law Revision Counsel. I yield back to the gentleman from Iowa.

Mr. KING. I thank the gentleman. I rest my case.

Mr. BERMAN. Would the gentleman yield further?

Mr. KING. I would yield.

Mr. BERMAN. Just like an attorney talking off the top of his head, I cited a specific statute that I had bee involved with back in the mid '80's. Your side actually listened to what I said and checked it out and found out that the section I was referring to was repealed in 1988. How I let that happen, I don't know, but——

[Laughter.]

Mr. BERMAN. I probably wasn't anticipating this day at the time.

Mr. WEXLER. Would the gentleman yield?

Mr. KING. I have a—reclaiming my time, and I will in a moment, Mr. Wexler. But I'd like to point out that the gentleman, Mr. Berman, has a memory that goes back specifically to specific language in 1988, and I suspect he has some current knowledge of the code as well that hasn't been divulged yet today.

And I'd yield to the gentleman from Florida.

Mr. WEXLER. Not to belabor the point, there are several references in the statutes with respect to "has reason to believe." If we're arguing over "has" or "have," that's fine. It really is not relevant to the issue before the Committee. And as a point, Mr. Berman is exactly correct, but ironically, the language that was adopted in the amendment, as Mr. Berman suggested, I would respectfully suggest is even more nebulous than the original language where it talks about if a person is aware of a high probability of the existence of such circumstance. That's actually current law.

So all I'm trying to insert is language, as we have discussed, "have reason to believe," "has reason to believe," all of that doesn't get to the issue. The issue is, if a person provides information which that person reasonably would believe would disclose the identity of a covert agent, do you think it ought to be actionable, or do you think it ought to be just okay?

Mr. KING. Reclaiming my time. My statement was that the language, "should have reason to believe" is vague, it's nebulous, and it puts an extra level of responsibility on an individual, and it might go so far as to say that they should have gone and done research, gotten an education, investigated. I think the language is too broad. That was my issue then. And the gentleman from Florida, I would expect, given the agreement, that he would offer this, if that language wasn't correct, finding out that this language exists nowhere in the code, I would hope the gentleman would withdraw his amendment.

Mr. WEXLER. I would request unanimous consent—it does exist once. But that's not the argument. I would be happy to ask for unanimous consent to conform with the has reasoned to believe rather than have reason to believe, which, if I understand it correctly, is presented in the statutes on many occasions. Be happy to do that.

Chairman SENSENBRENNER. Is there objection to the unanimous consent? Objection is heard.

The question is on agreeing to the Wexler Amendment. Those in favor will say aye. Opposed, no.

Noes appear to have it. The noes have it, and the amendment is not agreed to.

For what purpose does the gentleman from Indiana, Mr. Hostettler seek recognition.

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

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199, offered by Mr. Hostettler. Nothing in this bill shall be construed as repealing or modifying any provision contained in Public Law 109-72.

[The amendment of Mr. Hostettler follows:]

AMENDMENT OFFERED BY MR. HOSTETTLER

Nothing in this bill shall be construed as repealing or modifying any provision contained in Public Law 109-72.

Chairman SENSENBRENNER. The gentleman from Indiana is recognized for 5 minutes.

Mr. HOSTETTLER. I thank the Chairman. Mr. Chairman, this amendment would simply clarify and actually remove a probability that an amendment offered earlier and accepted by the Committee by Ms. Lofgren would not be able to repeal a provision that was passed earlier this year in the Real-ID Act that was authored by Rules Chairman David Dreier that would prevent criminal aliens from delaying their deportations through excessive appeals.

My amendment would make sure that her amendment would not be so construed to effectively repeal the Dreier Amendment. Criminal aliens should not get two bites of the apple, and the Real-ID Act provided their appeals in the U.S. Circuit Courts and not in U.S. District Courts with regard to a final order of removal and it would not allow them to go initially to the District Courts and then to circuit courts, but would rather require them to go immediately to the circuit courts. And with that, I yield back the balance of my time.

Mr. BERMAN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Berman.

Mr. BERMAN. One, is it too late for me to reserve a point of order?

Chairman SENSENBRENNER. Yes, it is. The gentleman has—from Indiana has already been recognized.

Mr. BERMAN. Yeah. I didn't—I mean I didn't see the amendment.

Chairman SENSENBRENNER. The amendment was read in full.

Mr. BERMAN. But if I will read this amendment, and you tell me what it's about. Nothing in this law shall be construed as repealing or modifying any provision contained in Public Law 109-72.

I may remember something that was in the law in 1980, but I don't remember it by the number of the bill.

Chairman SENSENBRENNER. If the gentleman will yield. That is the Iraq Supplemental Appropriation bill.

Mr. BERMAN. Oh, no. Based on the description of the gentleman in describing his amendment, I understand the amendment. Let me ask for an advisory opinion.

Do you give advisory opinions?

Chairman SENSENBRENNER. The chair is not authorized to do so.

Mr. BERMAN. Would provisions that affect the immigration law that were not germane to this bill now become germane to this bill if this amendment were to pass?

Chairman SENSENBRENNER. The chair is not in the business of providing advisory opinions.

Mr. BERMAN. How about speculative musings?

[Laughter.]

Chairman SENSENBRENNER. The chair plays by the rules, and I don't see any section of the Rules of the House or of the Committee with the heading speculation.

Mr. BERMAN. Could, on my time, the gentleman once again describe exactly what provision of the law so I can prepare the many amendments I think would be good on the issue of immigration.

Mr. HOSTETTLER. If the gentleman will yield?

Mr. BERMAN. And exactly know where I'll have germane provision?

Mr. HOSTETTLER. If the gentleman would yield?

Mr. BERMAN. Yes. Oh, sure.

Mr. HOSTETTLER. To the extent that the amendment offered by Ms. Lofgren affected and was allowed to be offered to affect immigration law, my amendment would likewise potentially affect immigration law.

Mr. BERMAN. Ms. Lofgren offered an amendment on suspension of writ of habeas corpus.

Mr. HOSTETTLER. And my amendment says that nothing shall be construed as repealing or modifying any provision contained in Public Law 109-72.

Mr. BERMAN. Well, I guess we have to bring a case or controversy before the Committee. And thank you.

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. Not having the Iraq appropriations bill handy, I will rely on my memory, but there was concern, at least on my part, when that measure was considered that there was an impingement on the writ of habeas corpus.

But I don't think there was a suspension of habeas corpus. And I think this goes to the point made by my colleague from California, Mr. Lungren, earlier, which relates to the ability of the Congress to prescribe procedural limitations on the exercise of the writ of habeas corpus that falls short of the action that the Congress needs to take in Article I, Section 9, to suspend the writ of habeas corpus only in cases of rebellion or invasion when the public safety may require it.

So unless the gentleman from Indiana is suggesting that the Congress has suspended habeas corpus in its prior action, I would suggest that this amendment should be rejected.

And I really do think that, you know, although this was adopted because no one wants to say that we're suspending habeas corpus, there is a very serious issue here, and the—Mr. Chairman, the Committee is not in order.

Chairman SENSENBRENNER. The gentlewoman is correct. The Committee will be in order. Conversations will cease.

Ms. LOFGREN. Thank you, Mr. Chairman. I do think that when we are discussing the suspension of the writ of habeas corpus, we should pay attention. And Mr. Hostettler seems to be suggesting, by his amendment, that, in fact, the Congress did act, as only the Congress may, as we learned from President Lincoln's abortive attempt to suspend the writ through executive order, that the Con-

gress has acted in the Iraq appropriations bill, to suspend the writ of habeas corpus.

I think that is not the case, but if this amendment is passed, I think it affirms that, in fact, the Congress did suspend the writ of habeas corpus, unknowingly I would assume on the part of some.

So I think that this is not a harmless amendment. It really has great import for the actions and of the Congress, and as a precedent for the nation. As we know, the Congress has never, in the entire history of the United States, acted to suspend the writ of habeas corpus. And I would argue that if, in fact, Mr. Hostettler is suggesting we did so in Public Law 109-72 that we have not met the predicate that is outlined in Article I, Section 9 because we are not in the situation of rebellion or invasion that is required—that the Congress is required to find before deciding that public safety requires the suspension of the writ.

So I would—I think this is very serious business. I strongly urge the Committee to reject Mr. Hostettler's amendment, and I hope that all of us can go home to our districts this weekend and let them know that we have not, for the first time in the proud history of the nation, acted to suspend the great writ in this Congress.

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

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostettler?

Mr. HOSTETTLER. Mr. Chairman, I withdraw my amendment and I move to reconsider the amendment offered by Ms. Lofgren.

Chairman SENSENBRENNER. The question is shall the vote by which the Lofgren Amendment was agreed to be reconsidered. Those in favor will say aye. Opposed, no.

The noes appear to have it.

A rollcall will be ordered.

The question is shall the vote by which the Lofgren Amendment was agreed to be reconsidered? Those in favor will as your names are called answer aye. Those opposed, no.

Mr. NADLER. Mr. Chairman, parliamentary inquiry.

Chairman SENSENBRENNER. The chair has already put the question to the clerk to call the roll.

Mr. NADLER. Question on the question.

Chairman SENSENBRENNER. It went—once the question is put, then the rollcall begins.

Mr. NADLER. Could I ask which amendment we're talking about? That's all I want to know.

Chairman SENSENBRENNER. This the Lofgren Amendment relative to habeas corpus; is the one the gentleman made his motion to reconsider. Those in favor of reconsidering the vote by which the amendment was agreed to will as your names are called answer aye. Those opposed, no, and the clerk will call the role.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?

Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye. Mr. Chabot?
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye. Mr. Lungren?
Mr. LUNGREN. Aye.
The CLERK. Mr. Lungren, aye. Mr. Jenkins?
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye. Mr. Cannon?
Mr. CANNON Aye.
The CLERK. Mr. Cannon, aye. Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye. Mr. Inglis?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye. Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye. Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye. Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye. Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye. Mr. Pence?
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye. Mr. Forbes?
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye. Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Berman?
Mr. BERMAN. No. .
The CLERK. Mr. Berman, no. Mr. Boucher?
Mr. BOUCHER. No.
The CLERK. Mr. Boucher, no. Mr. Nadler?
Mr. NADLER. No..
The CLERK. Mr. Nadler, no.. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
[No response.]

The CLERK. Mr. Delahunt?
Mr. DELAHUNT. No.
The CLERK. Mr. Delahunt, no. Mr. Wexler.
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no. Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Ms. Sánchez?
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no. Mr. Van Hollen?
Mr. VAN HOLLEN. No.
The CLERK. Mr. Van Hollen, no. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. No.
The CLERK. Ms. Wasserman Schultz, no. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Members who wish to cast or change their vote. The gentleman from Illinois, Mr. Hyde?
Mr. HYDE. Aye.
The CLERK. Mr. Hyde, aye.
Chairman SENSENBRENNER. The gentleman from South Carolina, Mr. Inglis?
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis, aye.
Chairman SENSENBRENNER. Further members who wish to cast or change their vote. If not, the clerk will report.
The CLERK. Mr. Chairman, there are 23 ayes and 15 noes.
Chairman SENSENBRENNER. And the motion to reconsider is agreed to. The question now occurs on agreeing to the amendment offered by the gentlewoman from California, Ms. Lofgren, relative to habeas corpus.
Those in favor will say aye. Opposed, no?
The noes appear to have it. The noes have it.
Ms. LOFGREN. Recorded vote please, Mr. Chairman.
Chairman SENSENBRENNER. Recorded vote will be ordered. Those in favor of the Lofgren Amendment will as your names are called answer aye. Those opposed, no, and the clerk will call the roll.
The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
Mr. BACHUS. No .
The CLERK. Mr. Bachus, no. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye. Mr. Nadler?
Mr. NADLER. Aye..
The CLERK. Mr. Nadler, aye.. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Ms. Sánchez?

Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?

Mr. VAN HOLLEN. Aye.

The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?

Ms. WASSERMAN SCHULTZ. Aye.

The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Members who wish to cast or change their vote. The gentleman from California, Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Weiner?

Mr. WEINER. Aye.

The CLERK. Mr. Weiner, aye.

Chairman SENSENBRENNER. Further members who wish to cast or change their vote. If not, the clerk will report.

The CLERK. Mr. Chairman, there are 14 ayes and 23 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments? Are there further amendments? The gentleman from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I have an amendment numbered 82 at the desk.

Chairman SENSENBRENNER. The clerk will report amendment number 82.

The CLERK. Amendment to H.R. 3199, offered by Mr. Schiff of California. At the end of the bill, add the following new section: Section. Obligation of All Amounts in Crime Victims Funds. Section 1402 of the Victims of Crime Act of 1984, 42 U.S.C. 10601, is amended by adding at the end the following——

Mr. SCHIFF. Mr. Chairman, I'd request that the amendment be deemed as read.

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

Chairman SENSENBRENNER. Well, a point of order is reserved by the gentleman from Texas. Without objection, the amendment is considered as read, subject to the point of order reserved, and the gentleman from California is recognized for 5 minutes.

[The amendment of Mr. Schiff follows:]

AMENDMENT TO H.R. ____

OFFERED BY MR. SCHIFF OF CALIFORNIA

At the end of the bill, add the following new section:

SEC. ___. OBLIGATION OF ALL AMOUNTS IN CRIME VICTIMS FUND.

Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended by adding at the end the following new subsection:

"(h) OBLIGATION OF ALL FUNDS.—

"(1) IN GENERAL.—Except as otherwise specifically provided in this Act (including the emergency reserve referred to in subsection (d)(5)), the Director shall ensure that all sums in the Fund in a fiscal year are in fact obligated in the subsequent fiscal year.

"(2) NOT TO BE SUPERSEDED EXCEPT BY SPECIFIC REFERENCE.—A provision of law may not be construed as modifying or superseding the provisions of paragraph (1) unless that provision of law—

"(A) specifically refers to this subsection; and

"(B) specifically states that such provision of law modifies or supersedes the provisions of this subsection.".

Mr. SCHIFF. I thank the Chairman. Section 621 of the PATRIOT Act allow the Department of Justice to establish a $50 million anti-terrorism emergency reserve for supplemental grants to compensate and assist victims of terrorism or mass violence.

It also removed the otherwise applicable caps on the amounts transferred to the Victims of Crime Act Fund in response to the terrorist acts of September 11th.

The Victims of Crime Act Fund is an important part of the effort to aid those affected by terrorism and crime more generally. The trust fund is composed of criminal fines, forfeited bail bonds, penalty fees and special assessments collected by U.S. Attorneys offices, courts, and the Federal Bureau of Prisons.

These dollars come from Federal criminals. They do not come from taxpayers.

Currently, this fund is the only Federal program that provides support services to victims of all types of crimes.

The PATRIOT bill removed some of the caps, but not all of the caps. This would remove the final remaining caps so that more of this funding could be distributed. This is very similar to a measure, bipartisan bill, introduced by Rob Simmons of Connecticut that as 23 bipartisan co-sponsors. It is plainly germane to the provisions that were amended in the PATRIOT bill that lifted some of the caps. This lifts the remaining caps. And it assures that more of this money will go out to victims more expeditiously.

In the last couple years, the amount of money available to states has been capped at $500 million despite collections of over a billion dollars. So this I think is a completion of a partial effort made in the PATRIOT bill that will more speedily provide support to victims of other terrorist acts other than September 11th, as well as the victims of crime generally. And I'd be happy to yield back the balance of my time.

Chairman SENSENBRENNER. Does the gentleman from Texas insist on his point of order?

Mr. SMITH. Mr. Chairman, I do insist on a point of order.

Chairman SENSENBRENNER. The gentleman will state his point of order.

Mr. SMITH. Mike is working here. Okay.

Mr. Chairman, the reason I feel that this particular amendment is non-germane is simply because the subject, which is crime victims fund, while it's in the PATRIOT Act, is not under any of the provisions that we are considering here today. And under Rule 16 of the House Rules, amendments that differ in subject from the provisions under consideration are not considered germane. And for that reason, I would insist on my point of order.

Mr. SCHIFF. Mr. Chairman, may I be heard on the point of order? Will the gentleman——

Chairman SENSENBRENNER. The gentleman from California.

Mr. SCHIFF. This is a reauthorization of the PATRIOT bill. And I know that the subject of the base bill pertains to certain of the PATRIOT bill provisions, but this crime victims fund was amended by the PATRIOT Act that we are in effect reauthorizing today with this legislation.

This is the PATRIOT and Intelligence Reform Reauthorization Act of 2005. And unless the gentleman has any objection to the merits, considering it it amends the same section and in the same

fashion in terms of lifting caps. I think it is both germane and good policy supported by 23 members of the House, both Democrats and Republicans.

Chairman SENSENBRENNER. The Chair is prepared to rule. Line 3 of the amendment offered by the gentleman from California, Mr. Schiff, expressly states that the Victims of Crime Act of 1984 is amended by language in his amendment. The Victims of Crime Act is not the subject matter of the bill before us that relates to the PATRIOT Act, and, as a result, the gentleman from Texas' point of order is sustained.

Are there other amendments? The gentleman from North Carolina, Mr. Watt.

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

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. WATT. Watt-Waters.

The CLERK. Amendment to H.R. 3199, offered by Mr. Watt and Ms. Waters. Strike Subsection C of Section 8, and insert the following: (C), non-disclosure. Section 501(d) of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. 1861(d) is——

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

Chairman SENSENBRENNER. Without objection, so ordered. The gentleman is recognized for 5 minutes.

[The amendment of Mr. Watt and Ms. Waters follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. WATT AND MS. WATERS

Strike subsection (c) of section 8 and insert the following:

(c) NONDISCLOSURE.—Section 501(d) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(d)) is amended to read as follows:

"(d) NONDISCLOSURE.—

"(1) IN GENERAL.—No person who receives an order under subsection (c) shall disclose to any person that the Federal Bureau of Investigation has sought or obtained tangible things under this section for 180 days after receipt of such order.

"(2) EXCEPTION.—A person who receives an order under subsection (c) may disclose that the Federal Bureau of Investigation has sought or obtained tangible things under this section to—

"(A) those persons to whom disclosure is necessary in order to comply with an order under this section; or

"(B) an attorney in order to obtain legal advice regarding such order.

"(3) EXTENSION.—The Director of the Federal Bureau of Investigation, or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge), may apply for an order prohibiting disclosure that the Federal Bureau of Investigation has sought or obtained access to tangible things under this section for an additional 180 days.

"(4) JURISDICTION.—An application for an order pursuant to this subsection shall be made to—

"(A) a judge of the court established under section 103(a); or

"(B) a United States Magistrate Judge under chapter 43 of title 28, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of the court established under section 103(a).

"(5) APPLICATION CONTENTS.—An application for an order pursuant to this subsection must state specific and articulable facts giving the applicant reason to believe that disclosure that the Federal Bureau of Investigation has sought or obtained tangible things under this section will result in—

"(A) endangering the life or physical safety of any person;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target.

"(6) STANDARD.—The judge may issue an ex parte order pursuant to this subsection if the judge determines there is reason to believe that disclosure that the Federal Bureau of Investigation has sought or obtained access to tangible things under this section will result in—

"(A) endangering the life or physical safety of any person;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously endangering the national security of the United States by alert-

ing a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target.

"(7) RENEWAL.—An order under this subsection may be renewed for additional periods of up to 180 days upon another application meeting the requirements of paragraph (5) and a determination by the court that the circumstances described in paragraph (6) continue to exist.".

Mr. WATT. Thank you, Mr. Chairman. This amendment deals with Section 215 of the PATRIOT Act, which the Chairman's mark improves, and we're trying to improve it further. Section 215 expanded the FBI's authority to obtain business records, including records from libraries and the bookstores under the Foreign Intelligence Surveillance Act.

For example, the Washington Post reported that the FBI agents—that FBI agents asked libraries for a list of everyone who checked out a book on Osama bin-Laden. Any person, any child simply trying to educate themselves about the attacks of September 11 could become a target of such an inquiry. Not only may American citizens become unsuspecting targets of a Section 215 order, those receiving the order, including bookstores and libraries, are required to comply and may not disclose the specifics or contents of the order.

The Chairman's bill makes some improvements. It amends Section 215 to allow the recipient of the order to challenge the order and clarifies that the recipient may consult with counsel or those necessary to comply with the order, and sets up a judicial review process and standards for issuing the order. And Mr. Flake's amendment earlier dealt with that consultation process, and improved on that.

My amendment would make additional and necessary improvements by doing two additional things. First, it would require the government to apply for a gag order establishing why it is necessary for the recipient of an order and their counsel to be prohibited from divulging the existence or content of the order.

In instances where the government believes a gag order is needed, the burden is placed where it should be—on the government.

If the government can establish that disclosure of such information might tip off possible terrorist suspects that they are under investigation or if officers believe disclosure would endanger someone, the government could apply for a gag order.

Second, my amendment places a 180-day time limit on the gag order, which is renewable upon a showing that the order remains necessary.

This would allow the government to obtain necessary information to combat terrorism while providing transparency to the public without jeopardizing national security.

Mr. WATT. The government should not and will not, if my amendment is accepted, be able to completely shield from public view its use of this powerful tool. The public must be able to speak out when abuses occur and government secrecy all too often leads to government abuse.

This amendment helps protect us from that kind of abuse. I ask my colleagues to support the amendment, and I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Pence, is recognized for 5 minutes.

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. PENCE. Thank you, Mr. Chairman. Mr. Chairman, I would oppose the amendment offered by Mr. Watt and Ms. Waters.

While I support clarifying Section 215 to allow for a recipient to disclose receipt of a Section 215 order to an attorney, this provision inappropriately places an artificial time limit on non-disclosure generally and places the burden on the government to demonstrate that adverse effects will occur upon disclosure when seeking an extension on that period. Essentially, it flips the burden of proof in these cases. And given the nature of national security investigations, the time limit imposed by this amendment, I would argue, Chairman, is with respect unrealistically short. Investigations of terrorist organizations, for example, can last years, and requiring notice of a disclosure under Section 215 would require investigators essentially to tip off suspects, which could enable them and their associates to go into hiding, to flee to change their plans, and even accelerate their plots.

And I would yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Watt Amendment.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. I have co-authored this amendment because I think it's very important. Among the things that have been discussed, this amendment allows the recipient of a Section 215 order at least to consult with their lawyer, allowing the recipients to speak to their lawyers, injects a vital due process protection that is put in place that helps to ensure that Section 215 authority is not abused without any mechanism for recourse.

Mr. Chairman, in its current form, Section 215 of the PATRIOT Act allows the FBI to seize and search any records on any person they chose as long as they can show it is relevant to a terrorism investigation.

Moreover, the recipient of Section 215 orders are subject to an automatic gag order prohibiting them from telling anyone about the search or seizure, including his or her lawyer.

Mr. Chairman, this automatic gag order prevents the recipient of a Section 215 order from being able to question the order at all. The recipient would have to risk criminal sanctions to simply ask their lawyer whether the order is legal or to be advised of their rights under the order.

This secrecy leaves Section 215 open for government abuse and exploitation. For example, under Section 215 orders, the government can secretly monitor a public library's computers and be able to monitor who looks at what Internet sites, and who has checked out specific books. This can all be conducted without giving anybody notice that they're under surveillance. This gives the government too much secret surveillance power and eliminates any recourse for recipients of Section 215 orders.

Mr. Chairman, recipients of orders to produce records should have a right to be able to consult with their lawyers to be advised of their rights. And the government should not be allowed to conduct investigations in secret, for secret investigations all too often lead to government abuse.

Therefore, I would ask my colleagues to please support the Watt-Waters Amendment, to place some commonsense restrictions on Section 215, and I yield back the balance of my time.

Mr. LUNGREN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Mr. Chairman, I must not be reading the bill that you introduced, because I note in the bill that you introduced you have provided an opportunity for people to disclose to their attorney, and I recall we adopted Mr. Flake's amendment, which made it very specific as to what one could do with respect to talking to their lawyer, not only to respond to this, but also to challenge it. And if that's the proper reading of Mr. Flake's amendment, I don't understand the comments of the gentlelady from California that we just heard, nor the purpose of the amendment that we have here, if the purpose of the amendment we have now before us is to allow people to disclose to their attorney, which on its face is in the bill that's before us.

I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. I rise to support the amendment of the gentleman from North Carolina. And I merely want to point out that the objective of this bill is to make discretionary the issuing of the gag order rather than it being automatically applying under Section 215 to everybody, and so it wouldn't be just a matter of whether the attorney could be consulted, but it would cover libraries that can't let their patrons know that the government has asked for information or a service provider cannot let its customer know that his or her records have been seized. And all we're saying in this amendment is not to place a gag order automatically under 215; and that the government would have to prove to then authorizing judge why a gag order is necessary.

And it's in that sense that I think this is an excellent amendment and I support it without question. I return my time.

Chairman SENSENBRENNER. The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Let me just reiterate what Mr. Lungren mentioned. My amendment sought to correct that, or just to clarify within the law that you can consult an attorney not just to respond to the case, but also to—with anything with respect to the case. So I think it's fairly clear that the subject of any action has the ability now to consult a lawyer.

Ms. WATERS. Will the gentleman yield?

Mr. FLAKE. Yes.

Ms. WATERS. I have just been handed the amendment by you, Mr. Flake, which does refer to Section 501(d), and I suppose as it is written, it would take care of my concerns and my concerns that would linger with this would have to do simply with the gag order.

Mr. FLAKE. Thank you.

Ms. WATERS. Thank you very much.

Mr. FLAKE. I yield back.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, the point has been made that this changes the presumption. The presumption is always that you notify someone that you're searching their property. It's the only way that you're going to have any sunshine on the practice, whether or not you're in the right place, whether or not you're overly broad. This would allow a gag order to remain in effect for 180 days, and you can extend it indefinitely if you can show cause. Otherwise, you have a permanent gag order operating in secret. I think this is an appropriate balance, and I would hope that we would adopt the amendment, and I yield to the gentleman from North Carolina.

Mr WATT. Let me just make this point. I appreciate the gentleman yielding. I think we all are probably getting tired here because we're ceasing to listen to each other. The amendment is about whether a gag order goes into effect without anything or whether the government needs to get a court authorization for a gag order. That's the only thing this amendment is about.

The 180 days is there as a presumptive time, but if the government needs more time than 180 days, all it has got to do is go to the court and say that. The thing that's troubling about this discussion is that the very people who are always—have always expressed so much concern about the size and power of the government now seem to be defending the exercise and size and power of the government against individual citizens. I thought—I really thought you all were really about downsizing government and downsizing the power of government. We're not trying to encourage terrorism. We're trying to create a balance between the government—what the government can do without saying anything to anybody, without notifying anybody. All we're trying to do set up a counterbalance to something that is unprecedented. This is unprecedented stuff that our government could go in and look at our library records, and for you all to sit here and defend the government against that kind of intrusion, against even having to ask a court to evaluate whether any kind of disclosure of that clandestine, quiet, secretive action by the government should be exposed to the light of day seems to me just to be unbelievable.

I'm beginning to think you all have lost your bearings here. I—well, I thank the gentleman for yielding.

Mr. SCOTT. Mr. Chairman, reclaiming my time, I just to remind everybody that the person whose privacy is being invaded will never know that their privacy is being invaded, even if secrecy is not necessary. All this amendment does is after 180 days let people know that the records were obtained and if secrecy is necessary, let the government say that secrecy is necessary.

I mean there's—I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from North Carolina, Mr. Watt.

Those in favor will say aye. Opposed, no.

Noes appear to have it. The noes——

Recorded vote will be ordered. Those in favor of the Watt Amendment will as your names are called answer aye; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
[No response.]
The CLERK. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
Mr. BACHUS. No .
The CLERK. Mr. Bachus, no. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye..
The CLERK. Mr. Nadler, aye.. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms Lofgren?

Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their vote. The gentleman from Illinois, Mr. Hyde.
Mr. HYDE. No.
The CLERK. Mr. Hyde, no.
Chairman SENSENBRENNER. Further members who wish to cast or change their vote. If not, the clerk will report.
The CLERK. Mr. Chairman, there are 13 aye and 23 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments?
The gentleman from Virginia, Mr. Scott.
Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
Mr. SCOTT. Mr. Scott 34. It's page 9, line 11.
The CLERK. Amendment to H.R. 3199, offered by Mr. Scott of Virginia.
Page 9, line 11, strike the close quotation mark and the second period. Page 9, after line 11, insert the following: 4) a person who prevails on a challenge of the legality of an order under this subsection is entitled to reasonable attorneys fees, if any, incurred by the person in pursuing the challenge.
[The amendment of Mr. Scott follows:]

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AMENDMENT TO H.R. 3199

OFFERED BY MR. SCOTT OF VIRGINIA

Page 9, line 11, strike the close quotation mark and the second period.

Page 9, after line 11, insert the following:

"(4) A person who prevails on a challenge of the legality of an order under this subsection is entitled to reasonable attorney's fees, if any, incurred by the person in pursuing the challenge.".

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, page 7, line 16, purports to give a person who gets one of these orders the right to challenge it. What this amendment would do is if he can get through all of the legalities and actually wins, he ought to be able to get his attorneys fees.

Now, let's remember what's going on here. You get a library or somebody who gets an order to give up somebody's private material, if they're going to contest it, if it is obviously overly intrusive and not necessary, are they going to incur $10,000, $20,000, $25,000 worth of legal expenses in order to contest it for someone else when they can't tell the other person that they're actually going to go through this on their behalf or are they just going to comply with the order and give up individual private information that shouldn't have been asked for.

All this says if you can get through all of the legal mumbo jumbo and actually win the case, if you have a slam dunk, that you can afford to bring it.

Otherwise, the fact that you have the paper right to bring the case is ridiculous because you can never do it because you can't afford it.

And I would hope that we would at least allow attorneys fees for that one in a million case that can actually bring a case and win it so that they could—would actually bring the case if the warrant was not necessary.

I yield back.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman. I'd just like to simply offer—it's a little vague, since—it says a person who prevails on a challenge. Does that mean you win one challenge and you lose a whole bunch. But I would offer this—and I can only speak for myself personally—but if the gentleman from Virginia and those across the aisle would agree to have a lose or pay situation in tort cases, you've got my vote on your amendment right here. And I'll yield back my time.

Mr. SCOTT. If the gentleman would yield?

Mr. GOHMERT. Yeah. I've yielded back my time to the Chairman.

Chairman SENSENBRENNER. The question is on the Scott Amendment. Those in favor will say aye. Opposed, no.

Noes appear to have it. The noes have——

Recorded vote will be ordered. Those in favor of the Scott Amendment will as your names are called answer aye. Those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?
[No response.]
The CLERK. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
Mr. BACHUS. No .
The CLERK. Mr. Bachus, no. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye..
The CLERK. Mr. Nadler, aye.. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?

Mr. DELAHUNT. Aye.

The CLERK. Mr. Delahunt, aye. Mr. Wexler.

Mr. WEXLER. Aye.

The CLERK. Mr. Wexler, aye. Mr. Weiner?

Mr. WEINER. Aye.

The CLERK. Mr. Weiner, aye. Mr. Schiff?

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Ms. Sánchez?

Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?

Mr. VAN HOLLEN. Aye.

The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?

Ms. WASSERMAN SCHULTZ. Aye.

The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Members who wish to cast or change their vote. The gentleman from California, Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no.

Chairman SENSENBRENNER. Further members who wish to cast or change their vote. If not, the clerk will report.

The CLERK. Mr. Chairman, I have 14 ayes and 22 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments.

Mr. SCHIFF. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I have an amendment at the desk, numbered 75.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199, offered by Mr. Schiff. Amend Section 4 to read as follows: Section 4, Extension of Sunset Provision relating to Individual Terrorists as Agents of Foreign Powers. Subsection B of Section 6001 of the Intelligence Reform and Terrorism Prevention Act——

[The amendment of Mr. Schiff follows:]

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AMENDMENT TO H.R. 3199

OFFERED BY MR. SCHIFF

Amend section 4 to read as follows:

SEC. 4. EXTENSION OF SUNSET PROVISION RELATING TO INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.

Subsection (b) of section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3742) is amended to read as follows:

"(b) SUNSET.—(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall cease to have effect on December 31, 2008.

"(2) With respect to any particular foreign intelligence investigation that began before the date on which the amendment made by subsection (a) ceases to have effect, such amendment shall continue in effect.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. And the gentleman from California will be recognized for 5 minutes.

Mr. SCHIFF. Mr. Chairman, this provision is fairly straightforward. It provides a 3-year sunset for the so-called lone wolf provision. And I want to explain why I think this is different in kind than the earlier debate we've had on sunsets. And that is the authority to go after loan wolves was just recently enacted in December of last year, so we haven't had the same kind of track record we have had with other sections of the PATRIOT bill.

The loan wolf provision eliminates the requirement in FISA that surveillance or searches be carried out only against persons suspected of being agents of foreign powers or terrorist organizations. It was an attempt to fix a loophole potentially that would allow or preclude us from going after lone terrorists where we couldn't show an affiliation to an international terrorist group.

But there have been a number of concerns raised on this Committee with the application of this provision to individuals where you can't show a connection to a foreign government or an international terrorist organization. In fact, a compromise proposal based on language of Senator Feinstein was offered by Mr. Berman in the 9/11 bill, which I believe was adopted with bipartisan support in this Committee.

Rather than take that approach which was one of presuming that a lone terrorist was acting in concert with international organization or with another government, rather than take that approach, it might be simpler and cleaner to provide a sunset in a reasonable period of time—3 years—so that we'll have 4 years of experience in total so that we can evaluate and make sure that this is only being applied in the right circumstances.

It's not the intention of FISA to go after people who want to commit acts of domestic terrorism, like blowing up a Federal building over hostility to the government or to tax policy or what not. And want to make sure that this lone wolf provision is being appropriately applied.

So this would basically give the lone wolf provision the same sunset that the rest of the PATRIOT bill had, but because this is a late edition, we don't have the same track record with it. And I would urge my colleagues' support.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. SCHIFF. Yes, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa?

Mr. ISSA. Thank you, Mr. Chairman. And I rise in opposition to this——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman. The provisions—the lone wolf provisions in the original version of H.R. 10 is virtually identical to the lone wolf provision contained in Senate 113, which was passed in the Senate by a 90 to 4 vote, and was co-sponsored by Senators Biden and Schumer. I do appreciate the gentleman from California's belief that there hasn't been enough time or that perhaps this could be abused. But I think it's clear that with London bombing just days ago, on 7/7, that we're going to continue to have

lone wolves. We're going to continue to have individuals who cannot either at the time before or even immediately following a crime necessarily be linked to an international terrorist group, and that, in fact, this legislation, as it is, is important to be left as it is. There has been no case for sunsetting because there—although you mentioned concerns, there have been no examples of abuse or anything inappropriate under the current law.

And I would suggest that if you have a reform of the current law, this is an appropriate time to bring it, but not simply to sunset something for which we have not yet discovered a flaw.

I'd yield to the gentleman from California for a question.

Mr. SCHIFF. I appreciate the gentleman yielding. Did the gentleman support the 9/11 bill? The amendment offered by Mr. Berman, which would have modified this section to provide additional protection? I think it was supported on a bipartisan basis. If it was good then, it should be good now.

And, in fact, this is less——

Mr. BERMAN. It was good then.

Mr. SCHIFF. —restrictive.

Mr. BERMAN. It was good then.

Mr. ISSA. Mr. Berman is assuring us, reclaiming my time, that it was good then. You know, this is the—we are existing with the law today. What you're proposing to do is to sunset rather than potentially amend. I mean we're glad—I'm happy to talk about amendments. That's what we're here for. But I'm going to be—resist and ask my colleagues on both sides of the aisle to resist simply kicking the can down the road 3 more years in case we discover something. I believe that appropriate and routine oversight now is what we're going to have on this.

Chairman SENSENBRENNER. Would the gentleman yield back?

Mr. ISSA. Yeah. I yield back.

Chairman SENSENBRENNER. The gentleman from California, Mr. Berman?

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BERMAN. I think this is a very good amendment. Mr. Schiff has explained it well. But I want to just remind my colleagues on the Committee and the lone wolf—it is certainly true that there can be this lone operator out there and engaged in terrorist acts or planning terrorist attacks so we want to have the tools to deal with that person. But remember the fundamental structure of all this. It's all base on a FISA Court where there is a lower threshold for getting surveillance warrants and all these different things, not probable cause that a crime has been committed.

And the only reason it—the real reason why it's been considered to be constitutional is because it's geared to foreign powers or agents of foreign powers.

Almost by definition, the lone wolf is not and can't be an agent of a foreign power, 'cause he's a lone wolf.

Mr. ISSA. Would the gentleman yield?

Mr. BERMAN. Yes.

Mr. ISSA. You know, I don't want to be the ultimate conspiracy theorist, but was Lee Harvey Oswald, in his trips back and forth to Cuba, a lone wolf or was he an agent of foreign government? We

don't always know that. We have a good-faith belief that somebody may be an agent of a foreign government. And I certainly think that on the next amendment which I understand you are going to offer, we can have further discussion. But when it comes to the sunsetting, I think we are dealing with sunsetting here, not with the substance of your amendment.

Mr. BERMAN. Well, but, I mean, the same logic that we debated how long the sunset should be certainly applies to this as well. But I wasn't planning to offer the amendment, and you haven't said enough to make me think I should rethink my position yet.

Mr. ISSA. I will be glad not to have you rethink your position.

Mr. BERMAN. But look, let me just—the constitutional requirement that the lesser standards and privacy protections authorized for FISA surveillance pass constitutional is that they are limited to use against foreign powers and their agents. There is a constitutional question here. I had offered an amendment before that created a presumption that the FISA court could apply, a presumption that the lone wolf was an agent of a foreign power. That was adopted, and then somehow disappeared.

But, so particularly where you have something that is constitutionally at least arguably questionable here, the logic of a sunset is even greater because it imposes a kind of review and helps—becomes a forcing mechanism for us to look at a way to salvage a provision which, in the context of what we want to do on terrorism, makes sense.

And so I think you ought to give Mr. Schiff the sunset clause here, and then let's create a process that sort of empowers us to—or that forces us to figure out the right way. Maybe it is not the presumption. Maybe there is something else we can do to deal with the constitutional questions involved in letting this kind of surveillance take place against someone who might not have any connection to a foreign power or be an agent of a foreign power.

Mr. DELAHUNT. Would the gentleman yield?

Mr. ISSA. Sure.

Mr. DELAHUNT. I wonder if the gentleman from California and the Chairman would consider, if Mr. Schiff was willing to, by unanimous consent, amend his amendment and bring it in line in terms of the sunset with the other two provisions that Mr. Lungren's amendment made part of the bill today, that would give us three provisions. And particularly, given the arguments that both Mr. Berman made and I think Mr. Schiff accurately made, it would give us a period of time to test the——

Chairman SENSENBRENNER. The gentleman's time has expired.

The question is on the amendment offered by the gentleman from California, Mr. Schiff. Those in favor will say aye? Opposed, no?

The noes appear to have it.

Mr. SCHIFF. Mr. Chairman, I request a recorded vote.

Chairman SENSENBRENNER. A recorded vote will be ordered. Those in favor of the Schiff amendment will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
[No response.]
The CLERK. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?

Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their vote? The gentleman from North Carolina, Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from Arizona, Mr. Flake.
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Chairman SENSENBRENNER. Further members who wish to cast or change their vote? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 14 ayes and 22 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
Mr. NADLER. Mr. Chairman?
Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.
Mr. NADLER. Thank you, Mr. Chairman.
I have an amendment at the desk. It is labeled Nadler-Jackson Lee-Waters.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to H.R. 3199, offered by Mr. Nadler, Ms. Jackson Lee, and Ms. Waters. Add at the end the following: Sec. _____. Limitation on Time to Delay Notice of Search Warrants. Section 3103a(b)(3) of title 18, United States Code, is amended by striking "a reasonable period" and inserting "30 calendar days, which period, upon application of the Attorney General, the Deputy Attorney General, or an Associate Attorney General, may thereafter be extended by the court for additional periods of up to 60 calendar days."
[The amendment of Mr. Nadler follows:]

AMENDMENT TO H.R. _____

OFFERED BY MR. NADLER OF NEW YORK, MRS. JACKSON-LEE AND MRS. WATERS

Add at the end the following:

1 SEC. ___. LIMITATION ON TIME TO DELAY NOTICE OF
2 SEARCH WARRANTS.
3 Section 3103a(b)(3) of title 18, United States Code,
4 is amended by striking "a reasonable period" and
5 inserting "30 calendar days, which pe-
6 riod, upon application of the Attorney General, the Deputy
7 Attorney General, or an Associate Attorney General, may
8 thereafter be extended by the court for additional periods
9 of up to 60 calendar days".

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

Chairman SENSENBRENNER. A point of order has been reserved by the gentleman from Texas.

The gentleman from New York, Mr. Nadler, is recognized for 5 minutes, subject to the point of order reserved.

Mr. NADLER. Thank you, Mr. Chairman.

This is a very simple amendment. Section 213 of the PATRIOT Act allows the FBI to conduct secret searches—it is the so-called sneak-and-peek section. It allows the FBI to conduct secret searches in any investigation, including run-of-the-mill criminal investigations, and indefinitely delay notice to the target of the search.

Right now, they can delay notice for a reasonable period, which can be anything. And what this amendment says is it should be 30 calendar days. However, upon application to the Attorney General, the Deputy Attorney General, or an Associate Attorney General, it can thereafter be extended by the court—I am sorry, an application "by" the Attorney General or his deputies—can be extended by the court for additional periods of up to 60 calendar days.

Now, those can be any number of additional 60 calendar days. And it is very simple. If you are going to conduct a search of a person's home or business, there may be a good reason not to tell them afterwards. There may be a good reason that, if you told them, it would result in destruction of evidence or in flight from the jurisdiction or in death or something, and therefore you don't want to tell them. But it is an invasion of liberty to be able to—it is an invasion of our traditions to be able to conduct a search without telling them afterward. So this simply says after a certain period of time, 30 days, if you think that you still can't tell them, you tell the court why. And then 60 days and 60 days and 60 days. It is simply giving the court the authority to limit how long the lack of notification after a search of someone's premises can be.

Now, the PATRIOT Act extended sneak-and-peeks from where they were to cases where the Fourth Amendment is applicable and, frankly, to somewhat questionable constitutionality, this probably ameliorates any challenge to its constitutionality. But it is the right thing to do from a liberty aspect. Where you really need to keep that secret for any length of time, that is fine; you can do that. And where you shouldn't, you have to review it every 60 days.

So I urge the adoption of this amendment.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. NADLER. Yes, he does.

Mr. SMITH. Mr. Chairman, I will withdraw my point of order.

Chairman SENSENBRENNER. Reservation is withdrawn.

The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. This is with regard to the 30 calendar days you are asking for.

Mr. NADLER. Thirty calendar days, and after—would the gentleman yield?

Mr. FLAKE. No, let me explain first and then I will yield.

Mr. NADLER. Well, I think you just asked a question. Just to answer your question.

Mr. FLAKE. Okay, yes.

Mr. NADLER. Thirty calendar days and 60-day extension by the court.

Mr. FLAKE. I do have an amendment that will come up on the floor, if it is made in order, which would have—instead of 30 days, it would be 180 days. It would be the maximum time allowed now, and additional periods up to 90 days.

Mr. NADLER. It would be 180 days for the first?

Mr. FLAKE. Yes.

Mr. NADLER. And then additional period of 90?

Mr. FLAKE. Ninety days, yes. And I would be happy to work with the gentleman on an amendment.

Mr. NADLER. Would the gentleman yield?

Mr. FLAKE. Yes.

Mr. NADLER. Well, first of all, I am glad to hear it was made in order. I didn't know the rules——

Mr. FLAKE. No, no, I said if it is made in order.

Mr. NADLER. Oh, if it is made in order. Well, I would certainly support that amendment. I think 30 and 60 is better—what did you say, 180 and 90?

Mr. FLAKE. One hundred eighty and 90.

Mr. NADLER. Well, I think 30 and 60 is better, because you ought to—I could support 180, but I think 30 is better. I think 60 is better to go back to courts. I would hope the gentleman would support this in Committee. I don't know why we wait for the floor to do this if it is a good idea.

Mr. FLAKE. I will support it anywhere. But——

Mr. NADLER. Well, I hope you support this amendment.

Mr. FLAKE. No, no. No, I would like to support my amendment. And my understanding is we would like to do it on the floor.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. FLAKE. I yield back.

Chairman SENSENBRENNER. The question is on the——

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, this is an interesting process where everybody is going to have their amendments on the floor rather than in—subject to a hearing, subject to Subcommittee markup and a Committee markup. We got the bill just a few days ago. We haven't had a hearing on the bill. And here we are with the rules people taking—I don't know whether the Rules Committee will allow these amendments or not, but it is just an unusual circumstance.

The purpose of the notice and the presumption of notice, usually there is an extraordinary situation that you would sneak and peek for a search warrant anyway. If there is a mistake, the fact that you have notified someone right there on the spot, they can tell you that you are searching the wrong house. This is a tremendous invasion. It is a constitutional right to be secure in your person and property.

The amendment is reasonable. And we ought to have a debate on the amendment rather than just hide the ball and spring it on us. We don't know what these amendments are going to look like on the floor, and we ought to debate it here in a fair debate. It is just an unusual circumstance and procedure that people—I don't know what happened in the cloak room back there. But I will yield to the gentleman from New York.

Mr. NADLER. Thank you. I would ask the gentleman from Arizona if you think it is a good idea to do—I mean, I am realistic. I have seen the fate of most amendments today. If you think you could support 180 days and 90 days, I will be happy to change this amendment to 180 and 90 and maybe we could get support for that right here.

Mr. FLAKE. I will agree to work with the gentleman on it. This deserves more time, but——

Mr. NADLER. Would you support it in this Committee?

Mr. FLAKE. No, I would prefer to go with my own amendment on that.

Mr. SCOTT. Reclaiming my time. Will the gentleman offer his amendment now so we can see it?

Mr. FLAKE. I am still working on it, but—on the precise language of it. All I have looked at, and I would have to compare it to the language I am working on, but I see the 30 and 60, I know that I have gone 180 and 90. I haven't looked at the precise language other than that. I would need more time to do that.

Mr. SCOTT. Reclaiming my time. Would the gentleman want to join in my complaint that we haven't had time to consider this in Committee? I mean, you haven't had time to prepare your amendment. I assume you notice that this is a rushed process. You have amendments you are still working on. We haven't had Subcommittee, and here we are in Committee on a short notice. Does the gentleman acknowledge that this is a rushed process; you have not had adequate time to prepare your amendments?

Mr. FLAKE. I would not acknowledge any such thing. We have had 12 hearings. You mention there has not been a hearing on the amendment. To my knowledge, we don't typically call hearings on amendments. But on the bill, the underlying bill, we have held 12 hearings on. This has been quite a deliberative process.

Mr. SCOTT. Reclaiming my time. I would remind the gentleman that we have had no hearings on the bill.

Mr. FLAKE. Well, we actually did have a hearing on delayed notice.

Mr. SCOTT. Well, we have had no hearings on the bill. We have had hearings on the act, we have had hearings on the subjects, but we have not seen the bill. And that is why the gentleman is having trouble with his amendments. Can't get them ready because we haven't had a hearing. Now, had we had a hearing on the bill, the gentleman would have possibly had time to prepare an amendment where it could be considered in the normal process.

I yield to the gentleman from California.

Mr. ISSA. Thank you. And I think, to find a common agreement, I think it is wonderful we have a member on this side of the aisle who talked to you in principle, what he is looking at. It is different than what you are looking at by a significant amount of days. But——

Mr. NADLER. But we are willing to change it to those days.

Mr. ISSA. What I would suggest is either withdraw—and I would suggest withdraw without prejudice—and work on it behind the scenes. Because at this point, I think what we agree on is we disagree on the number of days, so why have a vote? Why not get a——

Mr. NADLER. Would the gentleman yield?

Mr. SCOTT. Reclaiming my time, I yield to the gentleman from New York.

Mr. NADLER. Thank you. I think I said a few moments ago, I am willing to change the number of days to the same number of days that the gentleman mentioned a moment ago, 180 and 90. So there is no difference on that. I am not aware of what language there is here. It is simply a question of listing the number of days.

There seems to be a determination not to do an amendment on this subject in Committee, but only on the floor. Now, maybe there is a reason for that, but it is not the——

Mr. FLAKE. Will the gentleman yield? I would like to ask unanimous consent to include in the record the chronology of the hearings that we have held on this subject.

Chairman SENSENBRENNER. Without objection.

[The chronology of hearings follows:]

HEARING CHRONOLOGY:
House Judiciary Committee Consideration
of the USA PATRIOT Act
As of June 21, 2005

FULL COMMITTEE CONSIDERATION:

June 10, 2005: Full Committee - Oversight Hearing on the Reauthorization of the USA PATRIOT Act: Carlina Tapia-Ruano, First Vice-President of the American Immigration Lawyers Association (Minority witness); Dr. James J. Zogby, President of the Arab American Institute (Minority witness); Deborah Pearlstein, Director of Human Rights First (Minority witness); and Chip Pitts, Chair of the Board of Amnesty International USA.

June 8, 2005: Full Committee - Oversight Hearing on the Reauthorization of the USA PATRIOT Act: Deputy Attorney General James B. Comey.

April 6, 2005: Full Committee - Oversight Hearing on the Department of Justice, The Use of the Law Enforcement Authorities Granted under the USA PATRIOT Act: Attorney General Alberto Gonzales.

SUBCOMMITTEE CONSIDERATION:

May 26, 2005: Crime, Terrorism, and Homeland Security Subcommittee - Oversight Hearing on Material Witness Provisions of the Criminal Code and the Implementation of the USA PATRIOT Act: Section 505 that Addresses National Security Letters, and Section 804 that Addresses Jurisdiction over Crimes Committed at U.S. Facilities Abroad: Chuck Rosenberg, Chief of Staff to the Deputy Attorney General of the Department of Justice (Majority witness); Matthew Berry, Counselor to the Assistant Attorney General of the Department of Justice (Majority witness); Gregory Nojeim, Acting Director of the Washington Legislative Office of the American Civil Liberties Union (Minority witness); and Shayana Kadidal, Staff Attorney, Center for Constitutional Rights (Minority witness).

May 10, 2005: Crime, Terrorism, and Homeland Security Subcommittee - Oversight Hearing on the Prohibition of Material Support to Terrorists and Foreign Terrorist Organizations and on the DOJ Inspector General's report on Civil Liberty Violations under the USA PATRIOT Act: Honorable Glenn Fine, Inspector General of the Department of Justice (Majority witness); Honorable Gregory G. Katsas, Deputy Assistant Attorney General, Civil Division of the Department of Justice (Majority witness); Barry Sabin, Chief of the Counterterrorism Section of the Criminal Division of the Department of Justice (Majority witness); and Ahilan Arulanantham, Staff Attorney for the American Civil Liberties Union of Southern California (Minority witness).

May 5, 2005: Crime, Terrorism, and Homeland Security Subcommittee - Oversight Hearing on Section 212 of the USA PATRIOT Act that Allows Emergency Disclosure of Electronic Communications to Protect Life and Limb: Honorable William Moschella, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice (Majority witness); Willie Hulon, Assistant Director of the Counterterrorism Division, Federal Bureau of Investigation (Majority witness); Professor Orrin Kerr, Professor of Law at the George Washington University Law School (Majority witness); and James X. Dempsey, Executive Director of the Center for Democracy and Technology (Minority witness).

May 3, 2005: Crime, Terrorism, and Homeland Security Subcommittee - Oversight Hearing on Sections 201, 202, 213, and 223 of the USA PATRIOT Act and Their Effect on Law Enforcement Surveillance: Honorable Michael J. Sullivan, U.S. Attorney for the

District of Massachusetts (Majority witness); Chuck Rosenberg, Chief of Staff to the Deputy Attorney General (Majority witness); Heather Mac Donald, John M. Olin fellow at the Manhattan Institute (Majority witness); and the Honorable Bob Barr, former Representative of Georgia's Seventh District (Minority witness).

April 28, 2005: Crime, Terrorism, and Homeland Security Subcommittee - Oversight Hearing - Section 218 of the USA PATRIOT Act - If it Expires will the "Wall" Return?: Honorable Patrick Fitzgerald, U.S. Attorney for the Northern District of Illinois (Majority witness); David Kris, former Associate Deputy Attorney General for the Department of Justice (Majority witness); Kate Martin, Director of the Center for National Security Studies (Minority witness); and Peter Swire, Professor of Law at Ohio State University (Minority witness).

April 28, 2005: Crime, Terrorism, and Homeland Security Subcommittee - Oversight Hearing - Have sections 206 and 215 improved FISA Investigations? (Part II): Honorable Kenneth L. Wainstein, U.S. Attorney for the District of Columbia (Majority witness); James Baker, Office for Intelligence Policy and Review, U.S. Department of Justice (Majority witness); Robert Khuzami, former Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York (Majority witness); and Greg Nojeim, the Associate Director and Chief Legislative Counsel of the American Civil Liberties Union's Washington National Office (Minority witness).

April 26, 2005: Crime, Terrorism, and Homeland Security Subcommittee - Oversight Hearing - Have sections 204, 207, 214 and 225 of the USA PATRIOT Act, and Sections 6001 and 6002 of the Intelligence Reform and Terrorism Prevention Act of 2004, improved FISA Investigations? (Part I): Honorable Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania (Majority witness); James Baker, Office for Intelligence Policy and Review, U.S. Department of Justice (Majority witness); and Suzanne Spaulding, Managing Director, the Harbour Group, LLC (Minority witness).

April 21, 2005: Crime, Terrorism, and Homeland Security Subcommittee - Oversight Hearing on Crime, Terrorism, and the Age of Technology - Section 209: Seizure of Voice-Mail Messages Pursuant to Warrants; Section 217: Interception of Computer Trespasser Communications; and Section 220: Nationwide Service of Search Warrants for Electronic Evidence: Laura Parsky, Deputy Assistant Attorney General of the Criminal Division, U.S. Department of Justice (Majority witness); Steven M. Martinez, Deputy Assistant Director of the Cyber Division, Federal Bureau of Investigation (Majority witness); James X. Dempsey, Executive Director of the Center for Democracy and Technology (Majority witness as a favor to Minority); and Peter Swire, Professor of Law, Mortiz College of Law, the Ohio State University (Minority witness).

April 19, 2005: Crime, Terrorism, and Homeland Security Subcommittee - Oversight Hearing on Sections 203(b) and (d) of the USA PATRIOT Act and their Effect on Information Sharing: Barry Sabin, Chief of the Counterterrorism Section of the Criminal Division of the Department of Justice (Majority witness); Maureen Baginski, Executive Assistant Director of FBI Intelligence (Majority witness); Congressman Michael McCaul (Majority witness); and Timothy Edgar, the National Security Policy Counsel for American Civil Liberties Union (Minority witness).

Mr. NADLER. Reclaiming—reclaiming somebody's time. I don't——

Chairman SENSENBRENNER. The time of the gentleman from Virginia has expired.

Mr. NADLER. Could I ask unanimous consent for an additional 2 minutes to the gentleman's——

Chairman SENSENBRENNER. Without objection.

Mr. NADLER. And I assume he yields to me, since he is talking.

I don't have any quarrel or complaint about the fact that we had only 12 hearings and maybe we should have held 13. That is not what anybody is saying here. What we have been saying is that there has been no—my complaint is that we have had no time, really, since we saw the Chairman's bill, which was only Friday night, or late Friday. And as I said at the beginning of this hearing back at—you know, a few hours ago, we should have had time to send this bill out for comment to everybody across the country, to the law schools, the Civil Liberties Union, the Conservative Union, and the libertarian groups, and get their comments and fashion amendments with that. That would have also given us time so that the gentleman from Arizona could have had his amendment ready for this Committee.

But the fact is, we are willing to go with an amendment—Let me put it this way. If you don't—we are willing to go with an amendment now that says 180 and 90 days. And if the gentleman thinks, upon further reflection before the floor, that for some reason, if we were to pass that amendment with the gentleman's support, that the language—the only language here is the time. If the language needs changing, you can certainly try to do that on the floor. But it would certainly be helpful I would think to the process if we agree on 180 days and 90 days, to get that concept at least in the bill at this point.

At this point, let me ask unanimous consent to change my amendment to 180 days and 90 days.

Chairman SENSENBRENNER. Is there objection?

Hearing none, the modification is agreed to.

Mr. COBLE. Objection.

Chairman SENSENBRENNER. Objection is heard.

Mr. NADLER. Objection is heard to—?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

The question is on the option——

Mr. NADLER. Well, Mr. Chairman, I will withdraw the amendment and submit another amendment with the appropriate number of days in about 20 minutes. If you want to waste the time, I am perfectly willing to do that.

I withdraw the amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

Ms. JACKSON LEE. Mr. Chairman, I have an amendment.

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman very much. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. JACKSON LEE. It should be—I don't want to mislabel it. I have it as 052, amendment to—I am sorry, excuse me. Let's see. Excuse me, I am sorry. The amendment is 001 XML Section 218.

The CLERK. Amendment to H.R. 3199, offered by Ms. Jackson Lee. At the appropriate place in the bill insert the following new section.

Sec. 218. Notice of Search or Surveillance If Subject of Such Search Or Surveillance Is A United States Person That Is Not An Agent Of A Foreign Power.

(a) Electronic Surveillance. —Section 106 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by adding at the end the following new subsection:

"(1) Where an electronic surveillance authorized and conducted pursuant to section 105 involves a United States person—"

Ms. JACKSON LEE. Mr. Chairman, I would ask unanimous that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment of Ms. Jackson Lee follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MS. JACKSON LEE

At the appropriate place in the bill insert the following new section:

1 **SEC. 218. NOTICE OF SEARCH OR SURVEILLANCE IF SUB-**
2 **JECT OF SUCH SEARCH OR SURVEILLANCE IS**
3 **A UNITED STATES PERSON THAT IS NOT AN**
4 **AGENT OF A FOREIGN POWER.**

5 (a) ELECTRONIC SURVEILLANCE.—Section 106 of
6 the Foreign Intelligence Surveillance Act of 1978 (50
7 U.S.C. 1806) is amended by adding at the end the fol-
8 lowing new subsection:

9 "(l) Where an electronic surveillance authorized and
10 conducted pursuant to section 105 involves a United
11 States person, and, at any time after the electronic surveil-
12 lance the Attorney General determines the person is not
13 an agent of a foreign power, the Attorney General shall
14 provide notice to the United States person of the fact of
15 the electronic surveillance conducted pursuant to this Act
16 and shall identify any information acquired pursuant to
17 such electronic surveillance. Such notice shall be provided
18 not later than 180 days after the date on which the Attor-

1 ney General determines the person is not an agent of a
2 foreign power.".
3 (b) PHYSICAL SEARCH.—Section 305(b) of such Act
4 (50 U.S.C. 1825(b)) is amended to read as follows:
5 "(b) Where a physical search authorized and con-
6 ducted pursuant to section 105 involves a United States
7 person, and, at any time after the physical search the At-
8 torney General determines the person is not an agent of
9 a foreign power, the Attorney General shall provide notice
10 to the United States person of the fact of the physical
11 search conducted pursuant to this Act and shall identify
12 any property of such person seized, altered, or reproduced
13 during such search. Such notice shall be provided not later
14 than 180 days after the date on which the Attorney Gen-
15 eral determines the person is not an agent of a foreign
16 power.".
17 (c) PEN REGISTERS, TRAP AND TRACE DEVICES.—
18 Section 405 of such Act (50 U.S.C. 1845) is amended by
19 adding at the end the following new subsection:
20 "(i) Where the use of a pen register or trap and trace
21 device authorized and conducted pursuant to this title in-
22 volves a United States person, and, at any time after the
23 use of the pen register or trap and trace device the Attor-
24 ney General determines the person is not an agent of a
25 foreign power, the Attorney General shall provide notice

1 to the United States person of the use of the pen register
2 or trap and trace device conducted pursuant to this Act
3 and shall identify any information acquired pursuant to
4 the use of such pen register or trap and trace device. Such
5 notice shall be provided not later than 180 days after the
6 date on which the Attorney General determines the person
7 is not an agent of a foreign power.".

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I note throughout the day the vigorous——

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

Chairman SENSENBRENNER. It is too late to reserve a point of order. The gentlewoman has already been recognized.

Ms. JACKSON LEE. May I proceed, Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman is recognized.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

I note throughout the day that there has been a vigorous discussion, and I would hope that that discussion might have lent itself to a number of opportunities to work together. As I started this morning, I indicated my departure was on the basis of a historic day today, and that is the return to human space flight.

We have an historic opportunity, which is to recognize that we are a Nation of laws and, of course, a Nation of liberty. This amendment tries to focus on that particular point and it addresses part of the number of abuses that have occurred under the USA PATRIOT Act. In particular, I would like to bring attention to an abuse in the Brandon Mayfield case. The FBI used Section 218 to secretly break into his house, download the contents of four computer drives, take DNA evidence, and take 355 digital photographs. Though the FBI admits Mr. Mayfield is innocent, they still will not divulge a secret court order to him or allow him to defend himself in court. It is unclear how the search was for any reason but to find evidence incriminating Mr. Mayfield.

In Virginia, we are told of a physician of Pakistani origin. In fact, I believe his discipline is as a neurologist. Well-respected in his community, arrested. We understand that his property may have been searched. Ultimately, after a period of time, he was released. To his friends and family, they welcomed him back. But at the same time, suspicion still presides over him among his peers and neighbors.

And so I speak strongly in support of an amendment that I believe speaks to the question of liberty. In general, this amendment would amend the FISA to protect the Fourth Amendment rights of individuals whose homes are secretly searched, or conversations overheard, but who turn out not to be spies and terrorists, by requiring that they may be notified of the search or surveillance, of the fact.

More specifically, the amendment states that where electronic surveillance is authorized for use on a United States person, if at any time it is determined by the Attorney General that the person is not an agent of a foreign power, the Attorney General must give notice to the person no later than 180 days after the date it is determined that the person is not an agent of a foreign power.

Under the amendment, the same principle is applied to physical searches, pen registers, taps, and trace devices.

Before moving forward, it is important to mention why this amendment is needed. Section 218 broadens the circumstances when secret surveillance and secret searches targeted against Americans may be used. In fact, the number of FISA surveillances and searches have substantially increased since the PATRIOT Act. Having eliminated a key safeguard against abuse of these extraor-

dinary powers, Congress should now act to protect constitutional rights at issue in FISA surveillance.

Today we cannot ignore the Constitution in reauthorizing this legislation. Congress can do so without erecting a new wall against information sharing, one of the rationales for adopting Section 218. The suggested protections will not interfere with information sharing; in all events, Section 504 of the PATRIOT Act explicitly states that FISA information may be shared with law enforcement personnel. FISA, unlike sneak-and-peek searches under Section 213 of the PATRIOT Act, authorizes searches and wiretaps that are kept permanently from the Americans whose homes and conversations are targeted, where secrecy raises serious Fourth Amendment concerns. As a result of Section 218, the use of these extraordinary powers has increased.

The ability or the inability to give notice to someone proven innocent also lends itself to one of our ugliest accusations in America, and that is racial profiling and religious profiling, leaning more toward individuals of a particular religion or race in the course of our efforts to secure the homeland. FISA procedures also raise due process concerns when individuals are charged based on FISA evidence. The only time the Government is required to inform an individual that he has been subject to FISA surveillance is when it brings charges against him.

This amendment is transparent when necessary. It is transparent when the individual has been proven innocent, no charges have been brought against him. It seems absolutely no reason that the individual cannot, if you will, be given notice no later than 180 days after the date it is determined that the person is not an agent of a foreign power. It seems that this comports with our——

Mr. SMITH. (presiding) The gentlewoman's time has expired.

Ms. JACKSON LEE. It seems that this comports, Mr. Chairman, with our effort at adhering to laws and to liberty. I would ask my colleagues to support this amendment.

Mr. FEENEY. Mr. Chairman?

Mr. SMITH. The gentleman from Florida, Mr. Feeney, is recognized.

Mr. FEENEY. I move to strike the last word, and I appreciate the gentlelady's——

Mr. SMITH. The gentleman is recognized for 5 minutes.

Mr. FEENEY. I appreciate the gentlelady's comments. In the first place, we are very mindful of the constitutional requirements of the Bill of Rights and elsewhere. There is no part of the PATRIOT Act that has been determined to be infirm by any Federal court as unconstitutional.

Secondly, while the gentlelady talks about the rights of citizens—and they are very important on this side of the aisle, I can assure her—we are not talking about criminal investigations of citizens. We are talking about terrorist investigations or spy investigations.

And thirdly, while the gentlelady's amendment goes to notification by third parties of individuals if they are determined by the Justice Department not to actually be an agent of a foreign power, her amendment doesn't say anything about the case where this individual that was originally a target turns out to be connected to a spy, perhaps the husband or the wife of a spy, perhaps a partner of a spy. And what the gentlelady is forcing the Justice Depart-

ment to do with her amendment is to have our folks in the middle of an international terrorist or spy investigation show our cards to the whole world, including the bad guys. And I suggest that it is a bad idea.

I yield back the balance of my time.

Mr. SMITH. The gentleman yields back the balance of his time. Are there any other members who wish to be heard on the amendment?

If not, the vote occurs on the amendment. All those in favor——

Mr. SCHIFF. I would move to strike the last word and I would yield my time——

Mr. SMITH. The gentleman from California is recognized for 5 minutes.

Mr. SCHIFF. And I yield to the gentlewoman.

Ms. JACKSON LEE. Mr. Chairman, let me beg to differ with my good friend. A number of sections have been found unconstitutional. Let me share with the gentleman. Section 805 has been found unconstitutional by three separate courts. That is the question of material support for terrorism. The 9th Circuit found the provision prohibiting personnel in training was overly vague. The Central California District Court found the provision prohibiting expert advice and assistance was overly vague. A New York District Court found the provision prohibiting personnel and acting as a quasi-employee overly vague.

A number of these provisions have been found to be abusive and, of course, an over-reach. I join my distinguished friend to argue for security. We have had a number of incidences of which we even recognize the importance of intelligence, such as the tragedy of the rail explosions in London, England. My point is that there comes a point, when the individual is found not to be part of a foreign agent, when you tell that individual.

Now, if you have information against, if you will, the wife, the cousin, the neighbor of this individual, then that is who the FBI should be reaching out to, not the particular person who has been cleared of being a foreign agent. And cleared. If the FBI wants to start this process again, they can start the process again. This simply provides them with the appropriate notice after they have been cleared and determined that they are not an agent of a foreign power, which is the basis of this particular section.

Mr. FEENEY. Will the gentlelady yield?

Ms. JACKSON LEE. I yield for a moment.

Mr. FEENEY. The point is, it is too late after you tell Mrs. Benedict Arnold that she was the subject of an investigation, if you find out that it is her husband that wants to throw the war to the bad guys.

Ms. JACKSON LEE. Reclaiming my time. I think that it is not too late, frankly. And I think that when the FBI or when law enforcement makes a determination that this individual is not an agent of a foreign power, you can be assured that in the course of doing so they have investigated all of their extended family members, friends, neighbors, and otherwise. And they have the ability to, if you will, to secure those persons in the appropriate way so that if they have information that is relevant, they can have those individuals incarcerated.

This provides—contributes to the list of abuses that has been generated by the PATRIOT Act, and in actuality it offers more of an undermining of our attempt to be secure than it does in enhancing our attempt to be secure. It casts a wide net on people that are already established as not being an agent of a foreign power.

I frankly believe that this is not working, that this is an amendment that is clearly not over-broad. It simply makes a statement of giving notice. It simply allows someone to proceed to further clear themselves and to be made aware that they have been determined not to be an agent of a foreign power.

Again, it does not stop the authorities from investigating all other people associated with them.

And I would ask my colleagues to support this amendment.

Mr. SMITH. The question occurs on the amendment. All those in favor, say aye. All those opposed say nay.

Ms. JACKSON LEE. rollcall.

Mr. SMITH. The noes have it, and the amendment is not agreed to. The clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

[No response.]

The CLERK. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

[No response.]

The CLERK. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

[No response.]

The CLERK. Mr. Green?

[No response.]

The CLERK. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

[No response.]
The CLERK. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there any members who wish to cast or change their votes? The gentleman from North Carolina is recognized.
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from California, Mr. Gallegly, is recognized.
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Chairman SENSENBRENNER. The gentleman from within, Mr. Green, is recognized.

Mr. GREEN. No.

The CLERK. Mr. Green, no.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. The gentleman from Tennessee, Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Gohmert?

Mr. GOHMERT. No.

The CLERK. Mr. Gohmert, no.

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Chairman SENSENBRENNER. The gentleman from Iowa, Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt?

Mr. WATT. Aye.

The CLERK. Mr. Watt, aye.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Aye.

The CLERK. Ms. Waters, aye.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler?

Mr. NADLER. Aye.

The CLERK. Mr. Nadler, aye.

Chairman SENSENBRENNER. Are there any other members who wish to vote or change their vote? If not—Excuse me, the gentleman from Michigan, Mr. Conyers?

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye.

Chairman SENSENBRENNER. The clerk will report.

The CLERK. Mr. Chairman, there are 10 ayes and 23 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to.

The gentleman from Arizona, Mr. Flake, is recognized for an amendment.

Mr. FLAKE. I have an amendment at the desk and I ask unanimous consent that it be considered the Flake-Nadler amendment.

Chairman SENSENBRENNER. The clerk will read the amendment. And without objection, it will be so named.

The CLERK. Mr. Chairman, I don't have a copy of the amendment.

Chairman SENSENBRENNER. Okay. It will be forthcoming, I think. The gentleman from Arizona, Mr. Flake, is recognized for 5 minutes to explain his amendment.

Mr. FLAKE. I thank the Chairman. I thank Mr. Nadler for bringing this up. I have worked with Mr. Nadler and others on PATRIOT Act Reform Caucus and many of the amendments that we have talked about were discussed within that group.

Mr. SCOTT. Mr. Chairman, point of order. Have copies been distributed?

Mr. FLAKE. I am in the process.

Mr. SMITH. If the gentleman from Arizona will suspend just for a minute while the amendment is distributed.

[Pause.]

Mr. NADLER. Would the gentleman yield for a question while we are——

Mr. SMITH. Which gentleman?

Mr. NADLER. Mr. Flake.

Mr. FLAKE. I yield for a question.

Mr. SMITH. Before we proceed, I would like to make sure that the amendment has been passed out. Without objection, the amendment will be considered as read.

[The amendment of Mr. Flake and Mr. Nadler follows:]

AMENDMENT TO

OFFERED BY MR. FLAKE / NADLER

Add at the end the following:

SEC. 9. PERIOD OF REASONABLE DELAY UNDER SECTION 213 OF THE USA PATRIOT ACT.

Section 3103a(b)(3) of title 18, United States Code, is amended—

(1) by striking "of its" inserting ", which shall not be more than ~~120~~ 180 days, after its"; and

(2) by inserting "for not more than 90 days" after "may be extended".

Mr. SMITH. The gentleman from Arizona is recognized for 5 minutes. And if he wants to yield for a question——

Mr. FLAKE. I yield for a question.

Mr. NADLER. My question is, just looking at this amendment right now, it says—the second part—by inserting "for not more than 90 days" after "may be extended."

Is that one 90-day extension, or is that a succession of——

Mr. FLAKE. It has to be in increments of 90 days.

Mr. NADLER. In increments. But it is not limited to one?

Mr. FLAKE. It is not limited to one.

Mr. NADLER. Thank you.

Mr. FLAKE. I will go ahead and explain the amendment. This is—we have had concern about the delayed notification. I have always felt that we needed some better structure there. This, as I mentioned, has been an item that the PATRIOT Act Reform Caucus has been concerned about. We took 180 days; that is the outside edge right now that can be held. And we have codified that. And then not-more-than-90-day extensions beyond that time, in increments.

And with that, I will yield back.

Mr. SMITH. The gentleman yields back his time. The gentleman from New York, Mr. Nadler, is recognized.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, I would have preferred, as my amendment a few minutes ago made clear, a shorter time periods, although, since in any event they are increments, they could amount to the same thing in the end, but more frequent judicial review. But putting 180 days, and 90-day increments after that, is a constructive step forward. I commend Mr. Flake for it. And I will certainly support the amendment.

I notice that in the haste, it doesn't have the name of the sponsor on it. I assume the names of the sponsors will be Mr. Flake and a few others——

Mr. FLAKE. I just asked unanimous consent to have it be considered the Flake-Nadler amendment.

Mr. NADLER. And perhaps some others who wanted to, if they also want to.

Mr. FLAKE. That would be okay with me.

Mr. NADLER. I thank the gentleman, and I urge everyone to support this very worthy amendment.

Mr. SMITH. The gentleman yields back his time. Are there any other members who wish to be heard on the amendment?

If not, all in favor say aye? All opposed, nay?

The ayes have it and the amendment is agreed to.

Are there any other amendments? The gentleman from Michigan, Mr. Conyers, is recognized.

Mr. CONYERS. Mr. Chairman, I have an amendment at the desk and I ask that it be brought up at this time.

Mr. SMITH. The clerk will report the amendment.

The CLERK. Mr. Chairman, I have two Conyers amendments.

Mr. CONYERS. This deals with the—the longer one, the three provisions that comprise the bill.

The CLERK. Amendment to H.R. 3199, offered by MR. Conyers. At the end of the bill, add the following:

Section ———. Reinstating the——

Mr. SMITH. Without objection, the amendment will be considered as read.

[The amendment of Mr. Conyers follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. CONYERS

At the end of the bill, add the following:

SECTION ___. REINSTATING THE COMMITTEE'S INTENT DURING CONSIDERATION OF THE ORIGINAL PATRIOT ACT

(a) IN GENERAL - Section 2515 of title 18, United States Code, is amended –

(1) by striking 'wire or oral' in the heading and inserting 'wire, oral or electronic';

(2) by striking 'Whenever any wire or oral communication has been intercepted' and inserting '(a) Except as provided in subsection (b), whenever any wire, oral or electronic communication has been intercepted, or any electronic communication in electronic storage has been disclosed';

(3) by inserting 'or chapter 121' after 'this chapter'; and

(4) by adding at the end the following:

'(b) Subsection (a) does not apply to the disclosure, before a grand jury or in a criminal trial, hearing, or other criminal proceeding, of the contents of a communication, or evidence derived therefrom, against a person alleged to have intercepted, used or disclosed the communication in violation of this chapter, or chapter 121, or participated in such violation.'

(b) SECTION 2517 - Paragraphs (1) and (2) of section 2517 are each amended by inserting 'or under the circumstances described in section 2515(b)' after 'by this chapter'.

(c) SECTION 2518 - Section 2518 of title 18, United States Code, is amended -

(1) in subsection (7), by striking 'subsection (d)' and inserting 'subsection (8)(d)'; and

(2) in subsection (10) –

(A) in paragraph (a) –

(i) by striking 'or oral' each place it appears and inserting ', oral, or electronic';

(ii) by striking the period at the end of clause (iii) and inserting a

semicolon; and

(iii) by inserting 'except that no suppression may be ordered under the circumstances described in section 2515(b).' before 'Such motion'; and

(B) by striking paragraph (c).

(d) CLERICAL AMENDMENT - The item relating to section 2515 in the table of sections at the beginning of chapter 119 of title 18, United States Code, is amended to read as follows:

'2515. Prohibition of use as evidence of intercepted wire, oral or electronic communications.'

(e) Section 2703 of title 18, United States Code, is amended by adding at the end the following:

'(h) REPORTS CONCERNING THE DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS -

'(1) By January 31 of each calendar year, the judge issuing or denying an order, warrant, or subpoena, or the authority issuing or denying a subpoena, under subsection (a) or (b) of this section during the preceding calendar year shall report on each such order, warrant, or subpoena to the Administrative Office of the United States Courts –

'(A) the fact that the order, warrant or subpoena was applied for;

'(B) the kind of order, warrant, or subpoena applied for;

'(C) the fact that the order, warrant, or subpoena was granted as applied for, was modified, or was denied;

'(D) the offense specified in the order, warrant, or subpoena, or application;

'(E) the identity of the agency making the application; and

'(F) the nature of the facilities from which or the place where the contents of electronic communications were to be disclosed.

'(2) In January of each year the Attorney General or an Assistant Attorney General specially designated by the Attorney General shall report to the Administrative Office of the United States Courts —

'(A) the information required by subparagraphs (A) through (F) of paragraph (1) of this subsection with respect to each application for an order, warrant, or subpoena made during the preceding calendar year; and

'(B) a general description of the disclosures made under each such order, warrant, or subpoena, including –

'(i) the approximate number of all communications disclosed and, of those, the approximate number of incriminating communications disclosed;

'(ii) the approximate number of other communications disclosed; and

'(iii) the approximate number of persons whose communications were disclosed.

'(3) In June of each year, beginning in 2006, the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders, warrants, or subpoenas authorizing or requiring the disclosure of the contents of electronic communications pursuant to subsections (a) and (b) of this section during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by paragraphs (1) and (2) of this subsection. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by paragraphs (1) and (2) of this subsection'.

(f) Section 2707(c) of title 18, United States Code, is amended by striking '$1,000' and inserting '$10,000'.

Mr. SMITH. The gentleman from Michigan is recognized for 5 minutes to explain his amendment.

Mr. CONYERS. Mr. Chairman and members of the Committee. In 2001, everyone on this Committee agreed to the three provisions which I have now brought together under one proposal, which provided necessary and reasonable checks on the Government.

Problem: These provisions were removed when the bill went to the Rules Committee somewhere in the middle of the night before it came to the floor the next day.

And here is what I propose in this bill, is that we restore these three provisions, which I think are pretty straightforward and are based on a rationale that we had originally agreed to. The first is that the Government shouldn't be able to use electronic communications as evidence when they are illegally intercepted. The second is that the Government should have to report to Congress about disclosures of stored wire and electronic communications. And the third is that we increase the amount of civil damages a person can recover against those who willfully disclose stored communications.

With reference to the first, we agreed to provide necessary and reasonable checks on the Government that they shouldn't be able to use electronic communications as evidence when they are illegally intercepted. Under current law, you recall, illegally obtained oral and wire intercepts can't be used by someone in court. However, illegally obtained electronic communications can be, and what we do with this amendment is simply correct that problem.

For the second point, we want disclosures of stored wire and electronic communications reported to Congress, and I have provided for that. Criminal wiretap and pen trap and trace statutes already require similar reporting. This provision of my amendment merely asks the Government to report on disclosures of stored wire and electronic communications as well.

And finally, we increase the civil damages a person can recover against those who willfully disclose stored communications. And this raises it from a pittance of $1,000——

Mr. SMITH. The gentleman's time has expired. Without objection, he will be recognized for an additional minute.

Mr. CONYERS. Thank you. We merely increased the damages to $10,000 in the order rather than $1,000, to ensure that the disclosures don't occur.

These are common-sense, reasonable protections originally agreed to by the Committee. I hope that that will occur again.

Thank you for the time.

Mr. SMITH. Thank you, Mr. Conyers.

The gentleman from California, Mr. Lungren, is recognized.

Mr. LUNGREN. I rise in opposition to the amendment.

Mr. SMITH. The gentleman is recognized for 5 minutes.

Mr. LUNGREN. Obviously, I was not here during the Committee's consideration of the original PATRIOT Act. But in looking at the gentleman's amendment, with respect to the suppression provisions, it is my understanding that under current law as passed there is a good faith exception, which is not part of the gentleman's amendment. And I just wonder if that is the intention of the gentleman.

Mr. SMITH. Is the gentleman here?

Mr. CONYERS. Yes. We add the stored—there is that provision that you suggest, but it doesn't——

Mr. LUNGREN. By court rule rather than statute, as I understand it, and yours would change it. Correct?

Mr. CONYERS. Exactly right. And we are just adding stored wire and electronic communications to be reported to the Congress, that the electronic communications as evidence that are illegally intercepted be excluded as court law, and that we raise the fine from $1,000 to $10,000.

Mr. LUNGREN. All right, based on what the gentleman has said, I would have to oppose this amendment, because it seems to me that the good faith exception is one that is appropriate, particularly in these cases. And again, as I understand what the gentleman does is remove a good faith exception with respect to the suppression part of his amendment—I don't speak to the other parts of his amendment because, frankly, I don't have those before us.

I yield back the balance of my time.

Ms. LOFGREN. Would the gentleman yield?

Mr. SMITH. The gentleman has yielded back the remaining of his time.

Ms. LOFGREN. I move to strike the last word.

Mr. SMITH. The gentlewoman from California, Ms. Lofgren, is recognized.

Ms. LOFGREN. I won't use the 5 minutes. But I do think that, certainly, my colleague from California, Mr. Lungren, was not a member of the Committee when the PATRIOT Act was drafted. But for those who were on the Committee at that time, I would hope and expect that they would vote once again for this language. This was unanimously passed by the entire Committee, and I think we will be looking closely at members who voted for it once, expecting that they would be consistent in their vote this time.

And I would yield back.

Mr. SMITH. The gentlewoman yields back the balance of her time. Are there any other members who wish to be heard on this amendment?

Ms. LOFGREN. I ask unanimous consent to reclaim my time and yield it to Mr. Conyers.

Mr. SMITH. The gentlewoman yields the balance of her time to Mr. Conyers, then.

Mr. CONYERS. I just wanted the gentleman from California to know that we are happy to include the good faith exception part that he raised, because we have no—we are in agreement with it. We just want to make it clear, because that is not a point of contention between us.

Mr. SMITH. The gentlewoman yields back the balance of her time.

The vote is on the amendment. All in favor, say aye?

Does the gentleman wish to continue to be recognized?

Mr. CONYERS. Yes. Mr. Chairman, I just ask unanimous consent that, under 215(a)(2)(B), that we add "or when done in good faith." So it would read, (B) when done in good faith whenever any wire, oral, or electronic communication has been intercepted.

The point is to emphasize the good faith exception for purposes of clarification for anyone that might think that it is not involved.

Mr. SMITH. Without objection, so ordered.

Now the vote——

Mr. SCOTT. Reserving the right to object, I would like to ask a question.

Mr. SMITH. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Is that in good faith pursuant to a warrant?

Mr. CONYERS. I don't know if the statute, Mr. Scott, speaks to whether there is a warrant involved or not. I think that good faith would likely include it, but I can't tell you right now that it would require a warrant or not. Not clear.

Mr. SMITH. We will now go to a vote on the amendment. All in favor——

Mr. FEENEY. Mr. Chairman?

Mr. SMITH. Who wishes to be recognized?

Mr. FEENEY. Mr. Chairman, I understood that there was a unanimous consent request, and if it is timely, I would like to object to that.

Mr. SMITH. There was a unanimous consent request and no one was recognized in an objection.

Mr. FEENEY. I thought we were still on questions and discussion about the unanimous consent request.

Mr. Chairman, I will, given the confusion, withdraw the objection.

Mr. SMITH. Okay, without objection the gentleman can withdraw his objection. We will now proceed to a vote on the amendment.

All in favor, say aye? All opposed, say nay?

The nays appear to have it. The amendment is not agreed to.

Mr. CONYERS. Could I get a record vote?

Mr. SMITH. And a record vote has been requested. The clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

[No response.]

The CLERK. Mr. Lungren?

[No response.]

The CLERK. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
[No response.]
The CLERK. Mr. Feeney?
Mr. FEENEY. No.
Mr. KING. No.
The CLERK. Mr. Feeney, no. Mr. King, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.

Mr. SMITH. Are there any other members who wish to vote or change their vote? The gentleman from North Carolina, Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. SMITH. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. SMITH. The gentleman from California, Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no.

Mr. SMITH. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no.

Mr. SMITH. The gentleman from Florida, Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Mr. SMITH. Any other member who wishes to vote or change their vote? If not, the clerk will——

The gentleman from Massachusetts?

Mr. DELAHUNT. Aye.

The CLERK. Mr. Delahunt, aye.

Mr. SMITH. The gentleman from California, Mr. Berman?

Mr. BERMAN. Aye.

The CLERK. Mr. Berman, aye.

Mr. SMITH. Any other members? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 14 ayes and 23 noes.

Mr. SMITH. The amendment is not agreed to.

Are there any other——

Mr. NADLER. Mr. Chairman?

Mr. SMITH. The gentleman from New York, Mr. Nadler, is recognized.

Mr. NADLER. Thank you, Mr. Chairman. I have an amendment at the desk. This is labeled "Gag Order."

Mr. SMITH. Does the clerk have the amendment?

Mr. NADLER. It says, "Sec. _____. Gag Order."

The CLERK. Mr. Chairman, I don't have that amendment at the desk.

Mr. SMITH. While we are getting that amendment——

Mr. NADLER. Well, there it comes.

The CLERK. Amendment to H.R. 3199, offered by Mr. Nadler of New York. Insert at the appropriate place——

Mr. CHABOT. Mr. Chairman, reserving a point of order.

Mr. SMITH. The gentleman from Ohio reserves a point of order. The clerk will proceed.

The CLERK. —insert at the appropriate place in the bill the following:

Sec. _____. Gag Order.

(a) In General. Section 2709(c) of title 18, United States Code, is amended to read as follows:

"(c) Prohibition of Certain Disclosure."

"(1) In General. No wire or electronic communications service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section for 90 days—"

Mr. SMITH. Without objection, the amendment will be considered as read.

[The amendment of Mr. Nadler follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. NADLER OF NEW YORK

Insert at the appropriate place in the bill, the following:

SEC. ___. GAG ORDER.

(a) IN GENERAL.—Section 2709(c) of title 18, United States Code, is amended to read as follows:

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—

"(1) IN GENERAL.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section for 90 days after receipt of such request from the Bureau.

"(2) EXCEPTION.—A wire or electronic communication service provider, or officer, employee, or agent thereof, who receives an order under this subsection may disclose that the Federal Bureau of Investigation has sought or obtained access to information or records under this section to—

"(A) those persons to whom disclosure is necessary in order to comply with an order under this section; or

"(B) an attorney in order to obtain legal advice regarding such order.

"(3) EXTENSION.—The Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director, may apply for an order prohibiting disclosure that the Federal Bureau of Investigation has sought or obtained access to information or records under this section for an additional 180 days.

"(4) JURISDICTION.—An application for an order pursuant to this subsection shall be filed in the district court of the United States in any district within which the authorized investigation that is the basis for a request pursuant to this section is being conducted.

"(5) APPLICATION CONTENTS.—An application for an order pursuant to this subsection must state specific and articulable facts giving the applicant reason to believe that disclosure that the Federal Bureau of Investigation has sought or obtained ac-

cess to information or records under this section will result in—

"(A) endangering the life or physical safety of any person;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target.

"(6) STANDARD.—The court may issue an ex parte order pursuant to this subsection if the court determines there is reason to believe that disclosure that the Federal Bureau of Investigation has sought or obtained access to information or records under this section will result in—

"(A) endangering the life or physical safety of any person;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target.

"(7) RENEWAL.—An order under this subsection may be renewed for additional periods of up to 180 days upon another application meeting the requirements of paragraph (5) and a determination by the court that the circumstances described in paragraph (6) continue to exist.".

(b) FINANCIAL INSTITUTIONS.—Section 1114(a)(5)(D) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(D)) is amended to read as follows:

"(D) NONDISCLOSURE.—

"(i) IN GENERAL.—No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph for 90 days after receipt of such request from the Bureau.

"(ii) EXCEPTION.—A financial institution, or officer, employee, or agent of such institution, who receives an order under this subparagraph may disclose that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records to—

"(I) those persons to whom disclosure is necessary in order to comply with a request under this subparagraph; or

"(II) an attorney in order to obtain legal advice regarding such request.

"(iii) EXTENSION.—The Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director, may apply for an order prohibiting disclosure that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records

under this paragraph for an additional 180 days.

"(iv) JURISDICTION.—An application for an order pursuant to this subsection shall be filed in the district court of the United States in any district within which the authorized investigation that is the basis for a request pursuant to this paragraph is being conducted.

"(v) APPLICATION CONTENTS.—An application for an order pursuant to this subparagraph must state specific and articulable facts giving the applicant reason to believe that disclosure that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph will result in—

"(I) endangering the life or physical safety of any person;

"(II) flight from prosecution;

"(III) destruction of or tampering with evidence;

"(IV) intimidation of potential witnesses; or

"(V) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target.

"(vi) STANDARD.—The court may issue an ex parte order pursuant to this subparagraph if the court determines there is reason to believe that disclosure that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph will result in—

"(I) endangering the life or physical safety of any person;

"(II) flight from prosecution;

"(III) destruction of or tampering with evidence;

"(IV) intimidation of potential witnesses; or

"(V) otherwise seriously endangering the national security of the United States by alerting a target, a

target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target.

"(vii) RENEWAL.—An order under this subparagraph may be renewed for additional periods of up to 180 days upon another application meeting the requirements of clause (v) and a determination by the court that the circumstances described in clause (vi) of this subparagraph continue to exist.".

(c) CONSUMER REPORTING AGENCIES.—Section 626(d) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d)) is amended to read as follows:

"(d) CONFIDENTIALITY.—

"(1) IN GENERAL.—No consumer reporting agency, or officer, employee, or agent of a consumer reporting agency, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c) for 90 days after receipt of a request or order under this section, and no consumer reporting agency, or officer, employee, or

agent of a consumer reporting agency, shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report.

"(2) EXCEPTION.—A consumer reporting agency or officer, employee, or agent of a consumer reporting agency who receives an order under this subsection may disclose that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer to—

"(A) those officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section; or

"(B) an attorney in order to obtain legal advice regarding such requirement.

"(3) EXTENSION.—The Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director, may apply for an order prohibiting disclo-

sure that the Federal Bureau of Investigation has sought or obtained access to information or records under subsection (a), (b), or (c) for an additional 180 days.

"(4) JURISDICTION.—An application for an order pursuant to this subsection shall be filed in the district court of the United States in any district within which the authorized investigation that is the basis for a request or order pursuant to this section is being conducted.

"(5) APPLICATION CONTENTS.—An application for an order pursuant to this subsection must state specific and articulable facts giving the applicant reason to believe that disclosure that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c) will result in—

"(A) endangering the life or physical safety of any person;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target.

"(6) STANDARD.—The court may issue an ex parte order pursuant to this subsection if the court determines there is reason to believe that disclosure that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c) will result in—

"(A) endangering the life or physical safety of any person;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target.

"(7) RENEWAL.—An order under this subsection may be renewed for additional periods of up

to 180 days upon another application meeting the requirements of paragraph (5) and a determination by the court that the circumstances described in paragraph (6) continue to exist.''.

(d) CONSUMER REPORTING AGENCIES REPORTING TO GOVERNMENTAL AGENCIES.—Section 627(c) of the Fair Credit Reporting Act (15 U.S.C. 1681v(c)) is amended to read as follows:

''(c) CONFIDENTIALITY.—

''(1) IN GENERAL.—No consumer reporting agency, or officer, employee, or agent of a consumer reporting agency, shall disclose to any person or specify in any credit report that a government agency has sought or obtained access to information under subsection (a) for 90 days after receipt of the request for such information.

''(2) EXCEPTION.—A consumer reporting agency, or officer, employee, or agent of a consumer reporting agency, may disclose that a government agency has sought or obtained access to information under subsection (a) to—

''(A) those officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the

Federal Bureau of Investigation under this section; or

"(B) an attorney in order to obtain legal advice regarding such requirement.

"(3) EXTENSION.—The supervisory official or officer who signs a certification under subsection (b) may apply in any district court of the United States for an order prohibiting disclosure that a government agency has sought or obtained access to information under subsection (a) for an additional 180 days.

"(4) APPLICATION CONTENTS.—An application for an order pursuant to this subsection must state specific and articulable facts giving the applicant reason to believe that disclosure that a government agency has sought or obtained access to information under subsection (a) will result in—

"(A) endangering the life or physical safety of any person;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously endangering the national security of the United States by alert-

ing a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target.

"(5) STANDARD.—The court may issue an ex parte order pursuant to this subsection if the court determines there is reason to believe that disclosure that a government agency has sought or obtained access to information under subsection (a) will result in—

"(A) endangering the life or physical safety of any person;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target.

"(6) RENEWAL.—An order under this subsection may be renewed for additional periods of up to 180 days upon another application meeting the requirements of paragraph (4) and a determination

1 by the court that the circumstances described in
2 paragraph (5) continue to exist.''.

Mr. SMITH. The gentleman from New York is recognized for 5 minutes to explain his amendment.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, Section 505 of the PATRIOT Act authorizes field office—now, we have been talking at some length at different times today and on the floor of the House about Section 215 of the PATRIOT Act, which enables a FISA court to grant orders for certain collections of personal information. Section 505 of the PATRIOT Act authorizes FBI field office directors to collect in secret, without any court consideration, almost limitless sensitive personal information from entities that are not themselves under investigation—that is, bookstores, travel agents, Internet service providers, and so forth—but have customers whose records the Government wants, by simply issuing a National Security Letter carrying the weight of law and the FBI's own assertion that the request is relevant to a national security investigation.

These National Security Letters, or NSLs, empower the FBI to amass personal documents without a judge signing off on a search warrant, without any other external check, such as a grand jury or even a FISA court. The target of the NSL will never know of its existence, partly because the recipient of the NSL is gagged from disclosing the demand, again as in Section 215.

This secret search power has been the subject of a court challenge in Federal court in New York. In *Doe v. Ashcroft,* the Federal court judge in the Southern District of New York ruled that this provision, that the National Security Letters provision of the PATRIOT Act is unconstitutional. The court held that the absence of judicial review—and when I say "judicial review" here, I don't mean review of the order, the fact that you can give this out without any judge ever seeing it—violates the Fourth Amendment right to be free from unreasonable searches and seizures, and the statutory prohibition against disclosing the FBI request to any person violates the First Amendment right to freedom of speech. And that means—"any person" means any person, including your counsel. So you can't even tell your lawyer so you can move to quash.

The current language continues the unconstitutional permanent secrecy order contained in the existing FISA business records provision. To be constitutional, case law establishes that a secrecy order amounting to a prior restraint on speech, as this is, must be imposed by a court, not unilaterally by a Government, must be imposed on the basis of a meaningful standard that amounts to a compelling Government interest, must be temporary, and must allow for objectors to explain why the prior restraint is unjustified.

What this amendment does is seek to make the gag order provision of the Section 505 National Security Letters comply with the Constitution. And it does that by saying, in essence, two things. It says that to get the gag order, you have to ask a court for it, and that the court can grant it upon a showing of various standards, that failure to keep it secret would endanger the life or physical safety of someone, would raise the danger of a flight from prosecution, would result or could result in the destruction or tampering with evidence, intimidation of potential witnesses, or otherwise seriously endanger the national security of the U.S., et cetera, et cetera—the catchall clause that some of us objected to in Section

215. The court could order this for 90 days and could order 180-day renewals indefinitely.

So what this does, essentially, is make the gag order provision constitutional by saying you have to ask a court for it, the court can grant it for 90 days, and you can get 180-day extensions upon these showings. Let me just say that these showings are the same showings that are in Section 215. Although we wanted to take out the catchall provision, in this amendment we haven't taken out the catchall provision. So it is the same showings that we have in Section 215, which everybody here has agreed to, except some of us who think it is too broad.

So I would urge adoption of this amendment so that the gag order provision of Section 505 will be constitutional and so that it is a better thing to do, even if the Constitution didn't require it.

Mr. SMITH. And the gentleman yields back his time.

Mr. NADLER. I yield back.

Mr. SMITH. Does the gentleman from Ohio insist on his point of order?

Mr. CHABOT. No, Mr. Chairman, I withdraw my point of order.

Mr. SMITH. If not, the point is withdrawn.

The gentleman from Florida, Mr. Feeney, is recognized.

Mr. FEENEY. Move to strike the last word.

Mr. SMITH. The gentleman is recognized for 5 minutes.

Mr. FEENEY. I have the same objection to this reversal of the burden and putting it back on the Justice Department to maintain some secrecy in their investigation as I had on the previous amendment that dealt with 215.

The nature of these investigations is such that 180 days is an awfully unreasonably short period of time. These investigations typically take not months, but years. In addition to that, this type of disclosure would require Federal investigators to tip off potential suspects, friends, associates of suspects, giving them a chance to go into hiding, to flee, to move up their potential terrorist attack—in other words, adjust themselves because we are once again putting all of our cards on the table in a very dangerous business.

In *The Center for National Security Studies v. The U.S. Department of Justice*, a D.C. Circuit case in 2003, the court said that these types of disclosures would inform terrorists about the substantive and geographic focus of the investigation, would inform terrorists which of their members were compromised by the investigation and which were not, could allow terrorists to better evade the ongoing investigation and more easily formulate or revise counter-efforts.

I think for all those reasons, these artificial deadlines and changing the burden of proof back to the Government as they fight terrorists is a bad idea——

Mr. NADLER. Would the gentleman yield.

Mr. FEENEY. I will yield.

Mr. NADLER. Thank you. Well, first of all, we are not changing the burden of proof. The standard in the amendment, as you will see, is if the court determines there is reason to believe—"reason to believe" is a very low standard. That is not the burden of proof. It is not a preponderance of evidence, it is not proof, you know, by anything. There is reason to believe. And there is reason to believe

what? Reason to believe any of the things that the gentleman from Florida said might happen.

Yes, I agree with you, sir. In very many cases disclosure would result in unfortunate things such as you mentioned. All you have to show to the court is that there is reason to believe that the disclosure in this case would result in any of those, in any——

Mr. SMITH. The gentleman's time has expired.

Mr. NADLER. I ask for unanimous consent to an additional 2 minutes?

Mr. SMITH. Without objection, the gentleman from Florida is given an additional minute.

Mr. FEENEY. I request an additional minute, 30 seconds of which I will yield to the gentleman from New York.

Mr. NADLER. Thank you. If we don't do this, the courts have held that a gag order, especially on something which no court has seen, is unconstitutional unless you have given some reason to a court to agree to the gag order. You have to do that; otherwise, it is going to be flatly unconstitutional.

All we are saying here, it is not a burden of proof. We are not giving the burden of proof to anybody. You have to convince the court there is reason to believe that any of these negative things would happen—not that definitely would, not even that it probably would.

Mr. FEENEY. Well, reclaiming my time. At a minimum, this would put the burden back on the Government for every single investigation that is ongoing out there, where there is a NSA letter out there, with respect to every one of the third-party entities, to go back into court every 6 months. It would be an enormous paperwork burden, unnecessary. And to the extent that there may be some things that we can do probably with a much longer time period to ultimately comply with whatever concerns the court has, there may be a chance to remedy that in the future. But 180 days is clearly too short.

With that, I yield back to the Chairman.

Mr. SMITH. The gentleman yields back his time.

Any other members who wish to be heard?

The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. I move to strike the last word.

Mr. SMITH. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. We did receive some information on how often this has been used, and it is not an astonishingly large number of times. So to think that there would be, assuming that the Department of Justice is being truthful to us—and I am not suggesting otherwise—this would not create a very substantial burden on the Department, number one.

Number two, the historical record is that this has not been used very often. Well, it is not going to be used at all in the future because it is unconstitutional. And so, actually, Mr. Nadler is—I support the amendment with some reservations because this amendment would actually revive this section of the act and possibly make it constitutional. And with standards.

And, you know, I guess the Republicans can reject it and have nothing, or they can have some standards that meet constitutional muster and have something. The choice is really yours. I think that, as I say, I support the amendment with just some reserva-

tions because I think the court ruling of unconstitutionality may actually be a preferable result. But that is on its way up, and there is some doubt as to what the Supreme Court will ultimately do.

Mr. NADLER. Would the gentlelady yield?

Ms. LOFGREN. I would be happy to yield to the gentleman.

Mr. NADLER. Thank you. I appreciate the gentlelady's remarks.

And I would again say this has been held unconstitutional on two grounds. This amendment would cure one of those grounds. I am going to have a different amendment to cure the other ground. The other ground says that it is unconstitutional to issue—to have this search in the first place without at least a—without a court agreeing to it. Even in Section 215, you have a FISA court agreeing to it. Here, you have nobody except an FBI field office director directing it.

But what this amendment deals with is the gag order. You can't have a prior restraint on speech such as a gag order without a court agreeing to it for some good reason. That is elementary constitutional law. The court in New York said that. It is prior case law. If we don't take this amendment, it is just going to be unenforceable.

Now, when you say the burden of proof, this is a very minor burden. Some reason to believe. Some reason to believe; we have the catchall provision: otherwise seriously endangering the national security of the U.S. by alerting a target, a target's associates, or a foreign power of which the target is an agent of the Government's interest in the target.

If the Government can't convince a judge that there is some reason to believe that this should be held secret, then it probably shouldn't be held secret. And if we value any kind of liberty, we will have this burden to go to courts. That is the whole point of the Fourth Amendment and the Bill of Rights.

Ms. LOFGREN. Reclaiming my time.

Mr. NADLER. I appreciate your yielding.

Ms. LOFGREN. I would just note—I mean, having worked on the original PATRIOT Act, it is hard not to contrast how this process is working here today with how the process worked after 9/11. After 9/11, members on both sides of the aisle worked in good faith together to come up with an act that would, we hoped, make us safer. Mr. Nadler has offered this amendment in, really, that 9/11 spirit. At that other time, this amendment would have been seen for what it is, an amendment that actually cures a defect in the bill that has rendered a section unenforceable. And because these votes are not on a party-line basis, there has been no real meeting of the minds, no deliberation, no discussion, the majority is going to reject an amendment that actually serves the interest of curing the defect that the court has found.

Mr. CONYERS. Would the gentlelady——

Ms. LOFGREN. I would yield to the Ranking Member.

Mr. CONYERS. I just want to point out that Mr. Nadler's proposal here is uncharacteristically cooperative. I mean, he is saving a part of the PATRIOT Act and it is almost going unnoticed. Thanks to the gentlelady from California for pointing out that, without this, the continued unconstitutionality is going to likely continue on.

And there is a sort of attitude that the Department of Justice has here that should be noted, that when they finally had to com-

ply with the Freedom of Information Act, they blacked out the six-page list of National Security Letters so that nobody could figure out anything about anything.

Ms. LOFGREN. Reclaiming my time, though, we do have access on a confidential basis to that information. And without saying any numbers, we can assert honestly that it is not an undue burden. And I do so assert.

So I think the majority is being foolish in this case, but welcome to it.

I yield back.

Mr. SMITH. The gentlewoman yields back her time.

The question is on the amendment. All in favor, say aye? All opposed, nay?

The nays have it.

A recorded vote has been requested. The clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?

[No response.]

The CLERK. Mr. Hostettler?

[No response.]

The CLERK. Mr. Green?

[No response.]

The CLERK. Mr. Keller?

[No response.]

The CLERK. Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Feeney?

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Mr. SMITH. Are there any members who wish to vote or change their votes? The gentleman from Florida, Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. SMITH. The gentleman from Tennessee, Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Mr. SMITH. The gentleman from North Carolina, Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Mr. SMITH. The gentleman from California, Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Mr. SMITH. The gentleman from within, Mr. Green?

Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. SMITH. The gentleman from Indiana, Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. SMITH. The gentleman from Florida, Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Mr. SMITH. The gentleman from South Carolina, Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no.
Mr. SMITH. The gentleman from California, Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.
Mr. SMITH. The other gentleman from California, Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no.
Mr. SMITH. The gentleman from Massachusetts, Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye.
Mr. SMITH. The gentleman from California, Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. SMITH. And the clerk will report.
The CLERK. Mr. Chairman, there are 14 ayes and 23 noes.
Mr. SMITH. The amendment is not agreed to.

Are there any other amendments? The gentleman from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I have an amendment at the desk, number 87.

Mr. SMITH. The clerk will report the amendment. Does the clerk have the amendment?

The CLERK. I do now, sir.

Mr. SMITH. Okay.

The CLERK. Amendment to H.R. 3199, offered by Mr. Schiff of California. Add at the appropriate place the following: Section _____. Naturalization Benefits for Victims of September 11——

Mr. CHABOT. Mr. Chairman, reserving the right to object.

Mr. SMITH. The gentleman from Ohio reserves the right to object.

Mr. CHABOT. Point of order.

Mr. SMITH. Raises a point of order.

The CLERK. Subtitle C of Title 4 of the US PATRIOT Act as amended by inserting after Section 421——

Mr. SMITH. Without objection, the amendment will be considered as read.

[The amendment of Mr. Schiff follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. SCHIFF OF CALIFORNIA

Add at the appropriate place the following:

SEC. _____. NATURALIZATION BENEFITS FOR VICTIMS OF SEPTEMBER 11 TERRORISM.

Subtitle C of title IV of the USA PATRIOT ACT is amended by inserting after section 421 the following:

"SEC. 421A. DECEASED ALIEN VICTIMS OF TERRORIST ATTACKS DEEMED TO BE UNITED STATES CITIZENS.

"Notwithstanding title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), and except as provided in section 421C, each alien who died as a result of a September 11, 2001, terrorist attack against the United States, shall, as of that date, be considered to be an honorary citizen of the United States if the alien held lawful status under the immigration laws of the United States as of that date.

"SEC. 421B. CITIZENSHIP ACCORDED TO ALIEN SPOUSES AND CHILDREN OF CERTAIN VICTIMS OF TERRORIST ATTACKS.

"Notwithstanding title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), and except as

provided in section 421C, an alien spouse or child of an individual who was lawfully present in the United States and who died as a result of a September 11, 2001, terrorist attack against the United States shall be entitled to naturalization as a citizen of the United States upon being administered the oath of renunciation and allegiance in an appropriate ceremony pursuant to section 337 of the Immigration and Nationality Act, without regard to the current status of the alien spouse or child under the immigration laws of the United States, if the spouse or child applies to the Secretary of Homeland Security for naturalization not later than two years after the date of enactment of this section. The Secretary of Homeland Security shall record the date of naturalization of any person granted naturalization under this section as being September 10, 2001.

"SEC. 421C. EXCEPTIONS.

"Notwithstanding any other provision of this subtitle, an alien may not be naturalized as a citizen of the United States, or afforded honorary citizenship, under section 421A or 421B if the alien is—

"(1) inadmissible under paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act, or deportable under paragraph (2) or (4) of section 237(a) of that Act, including any terrorist per-

1 petrator of a September 11, 2001, terrorist attack
2 against the United States; or
3 "(2) a member of the family of a person de-
4 scribed in paragraph (1).".

Mr. SMITH. The gentleman from California is recognized for 5 minutes to explain his amendment.

Mr. SCHIFF. Thank you, Mr. Chairman. This amendment would grant citizenship to the spouses and children of legal immigrants who were killed on September 11th as well as grant honorary citizenship to those legal immigrants who were killed in the attacks. When American citizens, foreign nationals, and immigrants perished on September 11th, the immigration status of hundreds of families was thrown into turmoil. Hundreds of temporary workers and immigrants died shoulder to shoulder with thousands of Americans.

My amendment is based on legislation by Representative Maloney and Senator Corzine, and it would bestow honorary citizenship on legal immigrants and non-immigrants who died in the disaster. Perhaps more important, the bill would offer citizenship to surviving spouses and children subject to a background investigation by the FBI.

This is germane because the PATRIOT bill provided for exactly this relief, but there was a deadline in the PATRIOT bill that a number of people missed for filing for status. In the spirit of fairness and unity, it's appropriate as we reauthorize the PATRIOT bill to extend this deadline, a short extension, to provide the privilege of citizenship to the families who lost so much because of this attack on the United States.

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

Mr. SMITH. Does the gentleman from Ohio insist on his point of order?

Mr. CHABOT. Yes, I do.

Mr. SMITH. The gentleman is recognized to explain his point of order.

Mr. CHABOT. Thank you, Mr. Chairman. I make a point of order that the amendment is not germane under House Rules. H.R. 3199 reauthorizes certain provisions of the PATRIOT Act and the Intelligence Reform and Terrorism Prevention Act. House Rule XVI-7 precludes amendments on a subject different from that under consideration. This amendment is outside the subject matter of the legislation we are considering at today's markup.

In addition, the fundamental purpose of this amendment is inconsistent with the primary purpose of the bill under consideration and, thus, non-germane under House Rule XVI-7.

I yield back the balance of my time.

Mr. SMITH. Does the gentleman from California wish to be heard on the point of order?

Mr. SCHIFF. I do, Mr. Chairman.

Mr. SMITH. The gentleman is recognized.

Mr. SCHIFF. And I understand that the concept of germaneness in this hearing has been somewhat malleable, but whereas the PATRIOT bill provided this grant of citizenship to the families of those who were lost on 9/11, and this merely extends the date in which you can apply for that citizenship, it's pretty directly related to the PATRIOT bill and changes that were made specifically in the PATRIOT bill. It's hard to imagine if it's not germane to the reauthorization of the PATRIOT bill what it would be germane to. So I would urge the Chair to reject the point of order.

Mr. WEINER. Mr. Chairman?

Mr. SCHIFF. And I'd yield the balance of my time to the gentleman from New York.

Mr. WEINER. I'd just like to be heard on the point of order. Previously, Mr. Hostettler offered an amendment dealing with immigration matters that were not within the purview of the bill. Since he was recognized before it could be deemed to be out of order, although he withdrew the amendment, it was considered by this Committee. I would deem that the door has now been open for similar amendments that deal with immigration matters, which is something that I think whether we open it or not, we certainly have an opportunity here to rectify an inequity and perhaps, you know, move the—further kick the can down the field on whether or not this is germane. But certainly the Hostettler amendment considered an immigration matter that was not in the Sensenbrenner bill.

And I would just reiterate something else. You know, the notice on this hearing said we were reauthorizing the PATRIOT Act. The bill that we're considering is called the PATRIOT Act Reauthorization Act. The memo that accompanied this debate is called the reauthorization of the PATRIOT—refers to it as the reauthorization of the PATRIOT Act. So I would argue that it is germane because the PATRIOT Act spoke to this.

Mr. SMITH. The Chair is prepared to rule. First of all——

Ms. JACKSON LEE. Mr. Chairman, I'd like to speak to the point of order.

Mr. SMITH. Does the gentleman from California wish to yield to the gentlewoman from Texas?

Ms. JACKSON LEE. I can strike the last word.

Mr. SCHIFF. Yes, Mr. Chairman, I'd be happy to yield.

Ms. JACKSON LEE. I thank the distinguished gentleman from California, and I rise to support his amendment and to make a point to the point of order, Mr. Chairman. In particular, might I say forthrightly that a point of order, that the—it can be waived, and I would argue that Mr. Schiff's point that this is not so much an immigration amendment as it is a procedural, that it asks for an extension, the good will that can generate from providing for children who suffered the tragic loss on 9/11 and, therefore, were given citizenship or were to be given citizenship, as were citizenship given to adult spouses, and now that they have not been able to fall under that time frame it is merely procedural. And I think that this Committee could yield to the procedural point and not consider this an immigration point. It is necessary, I think, if we are to be, one, a country of laws and immigrants or immigration, a country of laws and liberty, that we make good on our promise. And this amendment makes good on our promise, and I would argue that Mr. Schiff's amendment be made in order because it is a procedural amendment, it is not an immigration amendment.

And I yield back my time.

Mr. SMITH. The Chair is prepared to rule. For two reasons, this particular amendment is not germane. First of all, when an amendment is offered and withdrawn, that does not open the door to similar amendments. Second of all, when an amendment deals with a subject that is not under consideration, it's in violation of House Rule XVI, and that is how I see it. The amendment is not germane, and are there any other amendments?

Are there any other amendments? The gentleman from Virginia, Mr. Scott, is recognized.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, Scott 029, additional requirements for multi-point electronic surveillance under FISA.

Mr. SMITH. The clerk will read the amendment.

The CLERK. Amendment to H.R. 3199, offered by Mr. Scott of Virginia. Add at the end the following: Section 9. Additional requirement for multi-point electronic surveillance under FISA. Section 105(c) of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. 1805(c), is amended, before the semicolon at the end of paragraph (1)(e) the following: :, and, in circumstances where the nature and location of each of the facilities or places at which the surveillance will be directed is unknown when the order is issued, that surveillance may be directed at a place or a facility only for such time as the applicant believes that such facility or place is being used or is about to be used by the target of the surveillance.

[The amendment of Mr. Scott follows:]

AMENDMENT TO

OFFERED BY MR. SCOTT OF VIRGINIA

Add at the end the following:

SEC. 9. ADDITIONAL REQUIREMENTS FOR MULTI-POINT ELECTRONIC SURVEILLANCE UNDER FISA.

Section 105(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)) is amended before the semicolon at the end of paragraph (1)(E) the following: ", and, in circumstances where the nature and location of each of the facilities or places at which the surveillance will be directed is unknown when the order is issued, that surveillance may be directed at a place or facility only for such time as the applicant believes that such facility or place is being used, or is about to be used, by the target of the surveillance".

Mr. SMITH. The gentleman from Virginia is recognized for 5 minutes to explain his amendment.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, this is the ascertainment requirement for a roving wiretap. When you get a roving wiretap, you get a wiretap against the person, and you can place the bug wherever that person may be using the phone. This amendment requires that in a FISA wiretap—and remember, under FISA you don't need probable cause of a crime. You just need probable cause that the person is an agent of a foreign government and you might get some—any kind of foreign intelligence which could be a trade deal or anything else. No crime involved.

This amendment requires that in a FISA wiretap, the Government has to have good faith that the target of the wiretap is actually using the phone or computer during the time it's being surveyed. When the target leaves the building, you got to stop listening.

Now, this is similar to the ascertainment requirement of roving wiretaps in criminal cases because when the phone or computer surveilled could be that of an innocent person, next-door neighbor, acquaintance, or anybody else, it could be the pay phone on the corner, it could be the phone at the country club. All this amendment requires is that it be ascertained that the target is actually there before you start listening. And if the target leaves, you stop listening.

This requirement would not only protect the privacy of innocent, non-involved third parties who may be U.S. citizens, but would also discourage the misuse of the authority to bypass traditional law enforcement procedures by using the FISA wiretap to place a bug somewhere where you actually want to listen to somebody else. This says if you're going to listen to somebody on a roving wiretap that the person you listen to is actually the target of the—of the wiretap. And I would hope that we would adopt the amendment.

Mr. SMITH. The gentleman from California, Mr. Issa, is recognized.

Mr. ISSA. Thank you, Mr. Chairman. And I guess this is a little bit of deja vu all over again. One of the reasons that it is so important to remain as it is is that this roving wiretap was envisioned more than any other single area to deal with the disposable cellular phone wiretap situation. Now, just because you stop using one of 5, 10, 15, 20 cellular phones doesn't mean you won't use it again the next minute. So every single time a cellular phone in which the agents have no idea where that cellular phone is until it turns on and they have no idea who's on it until they hear that it's being talked on, they're not in a position to say we're not going to.

Now, as a practical matter, we are, in fact, looking after just 10 days of a movement to another phone. So when they go from phone A to phone B, even if they may go back to phone A, they're still in front of a judge within 10 days. So there is a review process envisioned here. There's no question that I appreciate the gentleman's concern. But I think that his amendment would clearly undo exactly what we need to maintain.

Now, having said that, our review of the actual use has found no abuses, but I think that it's very clear here that the intent of the legislation 4 years ago, the intent of the reauthorization today re-

quires that you be able to figure out who's on cell phone number 2, 3, 4, 5, 6, 7, and 8. Even though that person may not have been on them in 30 days, there is no reason to believe, particularly if you don't know where it is until it turns on, that it's not your suspect again.

With that, I would yield back.

Mr. SCOTT. Would the gentleman yield?

Mr. ISSA. I would certainly yield.

Mr. SCOTT. Should the FBI listen if they actually do not believe that the phone is going to be used by the target?

Mr. ISSA. You know, I think, reclaiming my time, as the gentleman knows, that when a tap detects something and they're out—you know, just like on the television, when they're out there in the truck and they're digitally recording this, and they discover it's not their suspect, they tune out, they're done. That is pretty standard. And there has—there is review of any material that would be captured in which it was clear that for some period of time they listened beyond knowing that it wasn't their suspect. So that's well protected within the law, certainly well protected by the 10-day judicial review of moving on wiretaps.

But, yes, as a practical matter, if you've got cell phone number 6 and it hasn't been used in 4 days and it gets turned back on, you do have to find out who's speaking on it, and you can't do that by saying, well, I can't do it until I know that it's our suspect. It's just the opposite. You can't stop listening until you know it's not your suspect.

And with that I'd yield back.

Mr. CONYERS. Mr. Chairman?

Mr. SMITH. Any other members who wish to be heard? The gentleman from Michigan, Mr. Conyers, is recognized.

Mr. CONYERS. Mr. Chairman, the gentleman from California's point is in no way in conflict with the amendment of the gentleman from Virginia. If you have a good faith—if a phone goes off for a while, it doesn't mean that you can't continue to tap it when it goes back on. You know it either is or isn't. And that is part of a good-faith belief that the target is actually using the phone during the time it's being surveilled.

So the dramatic example pointed out by my friend from California in no way contradicts the requirement of having a good-faith belief, which is provided in the amendment of the gentleman from California.

Mr. SCOTT. Would the gentleman yield?

Mr. CONYERS. Of course.

Mr. SCOTT. Thank you, and I thank the gentleman for yielding. This is the same thing they do in Title 3 wiretaps. They have to ascertain that the person is actually using the phone. Otherwise, they have to stop listening.

These phones—this is particularly egregious because you start this thing out without any probable cause of a crime. You can place these roving wiretaps wherever.

Mr. ISSA. If the gentleman would yield, I would respectfully disagree. These are similar but not the same as Title 3. In fact, the PATRIOT Act did not modify these. What you're seeking to do here is to modify language that was not created by the PATRIOT Act. The truth is that what we're relying on is a standard that existed

prior to the PATRIOT Act when it came to how you would monitor. We did go to multiple and roving, but we didn't change the underlying requirement for minimization.

Mr. SMITH. The gentleman from Michigan has the time.

Mr. SCOTT. Would the gentleman from Michigan yield?

Mr. CONYERS. Certainly.

Mr. SCOTT. Was there—my understanding was that there was no minimization requirement in the PATRIOT Act. We created a roving wiretap, and all this is is a minimization requirement to ascertain that the person that you're trying to surveill is the only actually using the phone. Otherwise, without this amendment, when the person leaves the premises, you keep listening in. And, you know, if that's your point, then just say so. You're using it to listen in to anybody that may use the pay phone on the corner.

Mr. ISSA. If the gentleman from Michigan would yield?

Ms. LOFGREN. Would the gentleman yield?

Mr. CONYERS. Just a moment. Mr. Scott said that if you didn't have a good-faith belief, you couldn't do it. But if you do have a good-faith belief, which is all he's asking, that's about as low a threshold as you can get that it's appropriate. If the phone's been cut off for a while and it goes back on and you're listening, and it turns out that it's the same person that was being surveilled, then you're home free. But good faith—I don't know—I don't know how we could be talking about something other than good faith.

I yield to the gentleman from Virginia.

Mr. SCOTT. Again, I'd just say if you do not believe that the person is—the target is using the phone, you ought to stop listening. This says if the applicant believes that the facility or place is being used or about to be used by the target of surveillance, that you believe that you're listening to the target.

Mr. ISSA. If the gentleman from Michigan would yield.

Mr. SCOTT. If you don't believe——

Ms. LOFGREN. Could the gentleman yield——

Mr. SCOTT. If you're listening to everybody, just say so.

Mr. CONYERS. The gentlelady from California first, sir, and——

Ms. LOFGREN. I think my colleague from California has indicated that magically the minimization rules in criminal law have been transported without language to that effect, as far as I can recall, into the PATRIOT Act. And I think, you know, it's possible—I don't know—that the Justice Department has, in fact, applied the minimization rules to these FISA taps. But if that's true—that would be good—we ought to put that into statute and not allow regulatory schemes that could change depending on who is running the Justice Department to govern it. And it seems to me that, you know, this—that's what this amendment would do. We could probably change the words to some extent if we wanted to, but I think basically that's the intent of this, and it's an important thing to do.

Mr. ISSA. If the gentleman would yield briefly.

Ms. LOFGREN. And I would yield back to——

Mr. CONYERS. Of course, I yield to my friend from California.

Mr. ISSA. I would say that I'd be happy to readdress this after the gentleman views the classified minimization that already exists under FISA so that you can have the comfort that, prior to the PATRIOT Act, under the existing statute for FISA we already have its own minimization language and that we should rely on that,

and I would ask us to vote against this. But I certainly, after you've reviewed that, would be happy to——

Mr. SMITH. The gentleman's time has expired. The question occurs on the amendment. All in favor say aye? All opposed, nay?

The nays have it. The amendment is not agreed to. Are there——

Mr. SCOTT. A recorded vote.

Mr. SMITH. A recorded vote has been requested. The clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

[No response.]

The CLERK. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Feeney?

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no. Mr. Franks?

Mr. FRANKS. No.

The CLERK. Mr. Franks, no. Mr. Gohmert?

Mr. GOHMERT. No.

The CLERK. Mr. Gohmert, no. Mr. Conyers?

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye. Mr. Berman?

Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren? Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. [Presiding.] Members in the chamber who wish to cast or change their votes? The gentleman from North Carolina, Mr. Coble.
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon.
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte.
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Chairman SENSENBRENNER. Further members who wish to cast or change their vote? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 13 ayes and 23 noes.
Chairman SENSENBRENNER. The amendment is not agreed to.
Are there further amendments?
Mr. SCHIFF. Mr. Chairman?
Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.

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

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. America to H.R. 3199, offered by Mr. Schiff of California. At the end add the following: Section. Oversight of National Security Letters. (a) Title 18, United States Code, Section 2709(e) of Title 18, United States Code is amended by striking——

Mr. SCHIFF. Mr. Chairman, I request that the amendment be deemed as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment of Mr. Schiff follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. SCHIFF OF CALIFORNIA

At the end, add the following:

SECTION ___. OVERSIGHT OF NATIONAL SECURITY LETTERS.

(a) TITLE 18, UNITED STATE CODE.—Section 2709(e) of title 18, United States Code, is amended by striking ''Requirement that certain congressional bodies be informed'' and inserting ''REPORTING.—(1)'', and by inserting at the end the following:

''(2) In April of each year, the Attorney General shall issue a public report setting forth with respect to the preceding calendar year—

''(A) the aggregate number of requests made under subsection (b) of this section;

''(B) the aggregate number of requests that were complied with;

''(C) the aggregate number of U.S. persons with regard to whom information or records were requested under subsection (b) of this section;

''(D) for each individual request made under subsection (b) of this section;

"(i) the approximate number of persons or entities with regard to whom information or records were requested; and

"(ii) the approximate number of records implicated by each request; and

"(E) the aggregate number of times that information or records obtained under subsection (b) of this section or any information derived therefrom were offered in a criminal proceeding.".

SEC. ___. OVERSIGHT OF AUTHORITY TO DELAY NOTICE OF SEARCH WARRANTS.

(a) TITLE 18, UNITED STATE CODE.—Section 3103a of title 18, United States Code, is amended by adding at the end the following:

"(c) REPORTS.—

"(1) IN GENERAL.—Every 6 months, the Attorney General shall submit a report to Congress summarizing, with respect to warrants under subsection (b), the requests made by the Department of Justice for delays of notice and extensions of delays of notice during the previous 6-month period.

"(2) CONTENTS.—Each report submitted under paragraph (1) shall include, for the preceding 6-month period—

"(A) the number of requests for delays of notice with respect to warrants under subsection (b), categorized as granted, denied, or pending; and

"(B) for each request for delayed notice that was granted, the number of requests for extensions of the delay of notice, categorized as granted, denied, or pending.

"(3) PUBLIC AVAILABILITY.—The Attorney General shall make the report submitted under paragraph (1) available to the public.".

SEC. ___. OVERSIGHT OF FISA PHYSICAL SEARCHES.

Section 306 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1826) is amended to read as follows:

"CONGRESSIONAL OVERSIGHT

"SEC. 306. (a) On a semiannual basis, the Attorney General shall, with respect to all physical searches conducted pursuant to this title, fully inform—

"(1) the Select Committee on Intelligence of the Senate;

"(2) the Committee on the Judiciary of the Senate;

"(3) the Permanent Select Committee on Intelligence of the House of Representatives; and

"(4) the Committee on the Judiciary of the House of Representatives.

"(b) On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding six-month period—

"(1) the total number of applications made for orders approving physical searches under this title;

"(2) the total number of such orders either granted, modified, or denied;

"(3) the number of physical searches which involved searches of the residences, offices, or personal property of United States persons, and the number of occasions, if any, where the Attorney General provided notice pursuant to section 305(b);

"(4) the total number of such orders that are related to an investigation of—

"(A) terrorism-related offenses;

"(B) drug-related offenses; and

"(C) regulatory violations;

"(5) the total number of such orders that were involved in a—

"(A) terrorism prosecution; and

"(B) other criminal prosecution; and

"(6) the total number of such orders that are involved in ongoing criminal investigations.

"(c) PUBLIC AVAILABILITY.—(1) The Attorney General shall make the information submitted under subsection (b)(5) available to the public.

"(2) The Attorney General shall declassify and provide information to the public regarding cases that have resulted in criminal prosecutions or have otherwise been discontinued five years after the surveillance concludes. The presumption of release may be rebutted upon a particularized showing to the Foreign Intelligence Surveillance Court that this particular surveillance should not be made public because similar surveillance on the same target is continuing or that release of the information would compromise sources and methods. The Foreign Intelligence Surveillance Court may release all of the surveillance, release redacted portions, or keep the existence of the surveillance secret.".

SEC. ___. PUBLIC REPORT.

Section 3126 of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking "law enforcement agencies of the Department of Justice" and inserting "attorneys for the Government";

(2) in paragraph (4), by striking ''and'' at the end;

(3) in paragraph (5), by striking the period and inserting ''; and'';

(4) in the matter preceding paragraph (1), by striking ''The Attorney General'' and inserting the following: ''(a) REPORT TO CONGRESS.—The Attorney General''; and

(5) by adding at the end the following:

''(6) whether the application for the order and the applications for any extensions were granted as applied for, modified, or denied;

''(7) the specific types of dialing, routing, addressing, or signaling information sought in the application and obtained with the order; and

''(8) a summary of any litigation to which the Government is or was a party regarding the interpretation of the provisions of this chapter.

''(b) PUBLIC REPORT.—The Attorney General shall annually make public a full and complete report concerning the number of applications for pen register orders and orders for trap and trace devices applied for pursuant to this chapter and the number of such orders and extensions of such orders granted or denied pursuant to this chapter during the preceding calendar year. Such report

shall include a summary and analysis of the data required to be reported to Congress under subsection (a).''.

SEC. ___. OVERSIGHT OF ACCESS TO BUSINESS RECORDS.

Section 502 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1862) is amended to read as follows:

''CONGRESSIONAL OVERSIGHT

''SEC. 502. (a) On a semiannual basis, the Attorney General shall, with respect to all requests for the production of tangible things under section 501, fully inform—

''(1) the Select Committee on Intelligence of the Senate;

''(2) the Committee on the Judiciary of the Senate;

''(3) the Permanent Select Committee on Intelligence of the House of Representatives; and

''(4) the Committee on the Judiciary of the House of Representatives.

''(b) On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding six-month period—

''(1) the total number of applications made for orders approving requests for the production of tangible things under section 501;

"(2) the total number of such orders either granted, modified or denied;

"(3) the total number of such orders sought from—

"(A) travel-related entities;

"(B) medical-related entities;

"(C) firearms-related entities; and

"(D) library or bookseller entities;

"(4) the total number of such orders that are related to an investigation of—

"(A) terrorism-related offenses;

"(B) drug-related offenses; and

"(C) regulatory violations;

"(5) the total number of such orders that were involved in a—

"(A) terrorism prosecution; and

"(B) other criminal prosecution;

"(6) the total number of such orders that are involved in ongoing criminal investigations; and

"(7) the aggregate number of United States persons with regard to whom information was obtained using such orders.

"(c) PUBLIC AVAILABILITY.—(1) The Attorney General shall make the information submitted under subsection (b)(5) available to the public.

"(2) The Attorney General shall declassify and provide information to the public regarding cases that have resulted in criminal prosecutions or have otherwise been discontinued five years after the surveillance concludes. The presumption of release may be rebutted upon a particularized showing to the Foreign Intelligence Surveillance Court that this particular surveillance should not be made public because similar surveillance on the same target is continuing or that release of the information would compromise sources and methods. The Foreign Intelligence Surveillance Court may release all of the surveillance, redacted portions, or keep the existence of the surveillance secret.".

Chairman SENSENBRENNER. The gentleman from California is recognized for 5 minutes.

Mr. SCHIFF. Mr. Chairman, I view this amendment as a counterpart of the 10-year sunset, and that is, because we have approved such a long sunset, this would impose more substantial reporting from the Department of Justice to the Committee and to the public about the frequency in which certain of these PATRIOT Act provisions are being utilized, like the national security letters, like the delayed notification of search warrants, the 215 section items. And most of what is requested in this additional reporting are things akin to what the Chair requested of the Department, but this would routinize the supplying of this information to the Committee and, where possible, to the public. In most places what we ask for are simply the aggregate number of the requests, which doesn't reveal much about the Department of Justice's investigations. But it does give the public a sense of how often these tools are being used. And I think that's important.

I think when the Attorney General, for example, decided to let the public know that the library provision had never been used, he did so for good reason: to assuage concerns that willy-nilly the government was looking for library records.

Similarly, I think this amendment gives us greater accountability in provisions that will not sunset for 10 years, or not sunset at all, about how often they're being used should pose no concern in terms of the nature of the investigation, doesn't require any revelation of any of the details of an investigation, but should institutionalize more frequent reporting. As the Chairman observed in the early part of the last Attorney General's reign, it was difficult to get information from the Department of Justice. I found in my dealings with the current Attorney General a much improved situation. But given that Attorney Generals change and our current one may be elevated to the Supreme Court, it would be wise, I think to institutionalize this kind of reporting requirement, and I would urge my colleagues to join me in support this amendment.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. SCHIFF. Yes, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Feeney.

Mr. FEENEY. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FEENEY. Mr. Chairman, once again I raise the same objections. What we are doing is basically a blanket requirement in this case that the Federal counterintelligence agencies during intelligence and spy investigations be forced to release to Congress as a whole and at times to the public information about very sensitive investigations.

Now, by the way, Congress has an oversight role here to play. Every 6 months the Justice Department has got to release a comprehensive report of every one of these national security letters. They're available to the oversight Committee with charge of this, which is the Intelligence Committee.

I can guarantee you that every one of our enemies, both foreign countries and foreign organizations that would like to do us harm, will be very sophisticated in reviewing any information that we're

forced to provide. Yes, Attorney General Gonzales believed that it was appropriate and safe to release information about the use of library searches. But there may be times when it simply is not safe. This blanket requirement I think would endanger the need to protect the level and the amount and the details of national security investigations, and for the same reasons as I opposed the former disclosure requirements, I would suggest that we vote down this amendment as well.

I yield back my time.

Ms. SÁNCHEZ. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Sánchez.

Ms. SÁNCHEZ. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. SÁNCHEZ. Thank you, Mr. Chairman. I would yield to my colleague from California, Mr. Schiff.

Mr. SCHIFF. I thank the gentlewoman for yielding.

I was with the Justice Department for 6 years, and that doesn't make me an authority on the Justice Department, but I guess we have a lot of non-authorities on this Committee and I fit right in.

Yes, there is some conceivable interest in quarters around the world about how our Justice Department operates. But, you know, there's a lot of interest in it right here at home among ordinary, law-abiding Americans, who would like to know how often our Government is using these extraordinary tools and be assured that they're not being overutilized.

Much of the information we're requesting is, frankly, far less detail than the Chairman has requested upon occasion from the Department. And I don't know what my colleague's experience has been far on the other side of this particular aisle, but over the last 4 years, particularly in the early couple years, when I tried to get information from DOD or DOJ, it was often excruciatingly difficult. And I think there is a strong national interest in knowing how often these sections are utilized. And, again, we're talking about in most cases the aggregate number of requests, not who they're being made of or the nature of the investigation, but this is information that I think we in Congress ought to have and that we generally don't have. It's information, I think, that the American people ought to have to assure them that these authorities are not being overutilized. And I would certainly like to see us not put our head in the sand and not say, you know, Justice Department, take these authorities, do with them what you will, we don't really want to know. We don't want to know.

And that I think is effectively what we're saying here right now. I'd like to know, I think a lot of us would like to know, and I think we can know and the American people can know without any sacrifice to the nature of these investigations. Frankly, if I were still in the Department, I would err on the side of letting the public know when it poses no obstacle to investigations. I think there's a valuable public purpose in letting the American people know we're safeguarding the very purpose for which we're fighting this war on terrorism, which is to preserve our way of life and our freedoms.

With that, Mr. Chairman, I would yield back to my colleague.

Mr. ISSA. Would the gentlelady yield?

Ms. SÁNCHEZ. I will.

Mr. ISSA. I thank the gentlelady.

I truly appreciate the gentleman's concern. It should be noted, though, that the Permanent Select Committee on Intelligence of the House of Representatives gets every bit of the information that you're now seeking. So with all due respect, what we're really dealing with is whether we're going to downgrade it from the Select Intelligence Committee to the House as a whole, to the people and the enemy at large. And in fairness, the release from the Attorney General that they had never used the library provision I hope is the last time that's ever released to the public. I do not want and I think we all do not want to have a confident built up by the bad guys that we, in fact, will allow them to do exactly what they did in preparation for 9/11 and use libraries without any risk of being observed.

Ms. SÁNCHEZ. Reclaiming my time, I'd like to yield back to the gentleman from California.

Mr. SCHIFF. I thank the gentlewoman for yielding. I guess I disagree with my colleague who thinks it was poor judgment of the prior Attorney General to let the American people know this section had not been used and, in fact, would be very rarely used. The fact of the matter is, if you're a bad guy, you ought to know that there are grand jury subpoenas that can be used to get these records, and you can't be assured that they won't be sought.

But in terms of whether the Congress should know, we didn't know how often that provision had been used. I would have liked to have known that before the Attorney General made the decision to notify the public. And, indeed, much of the time when we seek in classified form—this has been my experience. When I've sought classified hearings on the way certain authorities have been used, I've gotten less information than was later disclosed publicly by the Justice Department. And that's excruciatingly frustrating.

So this would give simply a little greater detail to some of the reporting requirements that are already in the PATRIOT bill. We're simply expanding some of the notice provisions about how often the authorities are being used, and really not going beyond that, and I thank the gentlewoman for yield and yield back the balance of my time.

Mr. NADLER. Mr. Chairman?

Ms. SÁNCHEZ. And I yield back.

Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. Strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, I'm not going to take 5 minutes. I just want to say I certainly agree and commend the gentleman—the amendment offered by the gentleman from California, and I commend him for offering it, and it's very simple. The United States is a free country. Every action of Government is taken in the name of the people of the United States. We ought to know various things that are being done. The amendment the gentleman offers is simple: Report to Congress and to the American people.

The idea that terrorists could profit from this information is quite far-fetched. To simply say the number of—the number of na-

tional security letters, the number of 215 orders, no terrorists are going to benefit from that. But this Congress may benefit from it, the American people may benefit from it. We ought to know about this increasingly secret Government of ours. And I urge the adoption of the amendment.

Mr. SCHIFF. Would the gentleman yield?

Mr. NADLER. Sure.

Mr. SCHIFF. Mr. Chairman, I'm going to resort to the most powerful argument I can now make in favor of this amendment, indeed the most powerful argument I've made in favor of any amendment today, and that is, if adopted, this will be my last amendment. [Laughter.]

I can't be more persuasive than that, Mr. Chairman, and I would be happy to yield back the balance of my time.

Chairman SENSENBRENNER. Does the gentleman from New York yield back?

Mr. NADLER. I will yield to the gentleman from California.

Mr. ISSA. Thank you for yielding. I will give you most of it right here because, as I read further through the actual criminal procedure, after it says that the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives, it then says and the Select Intelligence Committee of the Senate and the Committee of the Judiciary of the House of Representatives and its counterpart in the Senate.

So, believe it or not, we haven't gotten to the public, but it is, in fact, a requirement to come to this Committee, and we do have that information, so hopefully that will give you an opportunity to look at it in a fully—full compliance that you may not have been aware you had.

Mr. SCHIFF. Will the gentleman yield further?

Mr. NADLER. Yes, I'll be happy to yield.

Mr. SCHIFF. There's no rebuttal to my most persuasive point. If you accede, this is the last request.

Mr. NADLER. Reclaiming my time, the unstated sentence, of course—and I do not attribute this to the gentleman; I just assume he means it—is that if this amendment doesn't pass, he may have six more amendments.

I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from California, Mr. Schiff. Those in favor will say aye? Opposed, no?

The noes appear to have it.

Mr. SCHIFF. Mr. Chairman, I request a recorded vote.

Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of the Schiff amendment will as your names are called answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]

The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their votes? The gentleman from Utah, Mr. Cannon.
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostettler.
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Chairman SENSENBRENNER. The gentleman from Alabama, Mr. Bachus.
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. Further members who wish to cast or change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 15 ayes and 21 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
Ms. JACKSON LEE. Mr. Chairman?
Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee.
Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk, 132.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to H.R. 3199, offered by Ms. Jackson Lee of Texas. At the end of Section 8, page 9, line 11, add the following new subsection: (e) Exclusion of Medical Records. Section 501(a)(1) of the Foreign Intelligence——
Ms. JACKSON LEE. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. The gentleman from North Carolina reserves a point of order, and subject to his reservation, without objection, the further reading is dispense with.

[The amendment of Ms. Jackson Lee follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MS. JACKSON-LEE OF TEXAS

At the end of section 8 (Page 9, line 11), add the following new subsection:

(e) EXCLUSION OF MEDICAL RECORDS.—Section 501(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(a)(1)) is amended by inserting after ''other items'' the following: ''but excluding medical records''.

Chairman SENSENBRENNER. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I know a few moments ago, maybe minutes or hours ago, one of my colleagues wanted to ask the question whether or not any provisions of the PATRIOT Act could be considered unconstitutional. We've had a number of debates on the floor of the House that seemingly have drawn the support of Republicans and Democrats, and I would hope that this amendment would reflect the same kind of concern for the privacy of Americans.

We certainly know that one provision allows the seizure of records or any tangible thing, and we have seen America's libraries and librarians raise their voices in opposition. We've also seen the work of a collective group of individuals who respect the privacy of Americans alongside of our obligation of homeland security.

Our friend and colleague, Congressman Sanders, has taken this issue of library invasion of privacy and has received the recognition that it is a problem that should be fixed. In fact, as it relates to libraries, there have been over 200 formal and informal requests for materials, including 49 requests from Federal offices.

This amendment deals specifically with an aspect of America's privacy that most Americans hold very dear, and that is medical records. And the definition of this section makes it clear that these records or any tangible thing can be, if you will, seized. It provides that the FBI intelligence investigators with a virtual blank check to seize medical records with effectively no public accountability.

Section 215 has been known, as I've said, as dealing with library records. Part of Section 215 gives the FBI the ability to obtain a court order for any tangible things, including medical records, in an intelligence or terrorism investigation. Physicians and other medical professionals who receive 215 court orders are barred from telling patients or anyone else anything about the court order. What an absurdity. Your own personal private medical records, and the physician cannot tell you that your records are being seized.

Furthermore, Section 215 court orders are not limited to a particular suspect. These requests for records need only be relevant to an investigation, meaning that patients who are not even the targets of an investigation will also have their information vacuumed up by the FBI.

Mr. Chairman, so many of us have had to deal with our elder relatives in hospitals and nursing homes. You're not even allowed to call on behalf of your relative because of the new laws that are governing hospitals governed or receiving Federal funds all over America unless you are so designated. Even these institutions cannot give you the status of your relative's health condition, your child's health condition, unless you have been so identified. But yet we're allowing innocent persons to have their records seized.

Let me give you an example and let me cite for you—the American Medical Association Board of Trustees in May 2005 shows us the impact. Even without hard data, it can be assumed the PATRIOT Act will cause some patients to avoid seeking care or to be less than forthcoming in a physician's office. Quality of care may suffer. Unable to protest or even publicly acknowledge a disclosure, medical professionals stand to lose the trust and confidence of their patients and undermine the patient-physician relationship.

What I am speaking about is the broad breadth of seizure, not a court-ordered seizure, not a probable cause seizure. I'm talking about random calling up saying I think I want to get this doctor's records.

For example, two physicians in Houston—this is an example, hypothetical—in Houston are competing for the same pool of patients. One calls the FBI and falsely tells the Bureau that his rival helped treat one of the 9/11 hijackers that had a throat infection. The FBI, which is still investigating 9/11 attacks, obtains a secret court order under 215 and gets the innocent doctor's patients' records. Has nothing to do with anything. But because of the reach of Section 215 isn't limited to a particular suspect, the order applies to all of the doctor's records. They come in, they cull all the records, they get every single patient's record, launching separate investigations against every single patient who happens to be a patient of this doctor who may, for example, be from one of the so-called communities. Dozens of agents work the case. They go after many foolish leads, and it comes up with nothing.

Mr. Chairman, my colleagues, this is a very narrow amendment that protects the privacy. It does not eliminate the opportunity under a more detailed, a more explanatory——

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. JACKSON LEE. It does not stop that. I ask my colleagues to support this amendment.

Chairman SENSENBRENNER. Does the gentleman from North Carolina insist upon his point of order?

Mr. COBLE. Mr. Chairman, I withdraw my point of order.

Chairman SENSENBRENNER. Okay. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Mr. Chairman, for the reasons already cited when we had another amendment that went to medical records and other things to be excluded from the reach of Section 215, I rise in opposition to this amendment. Once again we've talked about medical records, how they might be applicable in a particular situation. We've talked about anthrax. We've talked about other things. I don't know if we need to belabor the point here. I think everybody knows what we're talking about.

Once again, remember the reach of 215. It's a FISA court. You have to be investigating something that deals with foreign intelligence. That's what we're talking about. If anybody thinks that the Government is interested in rummaging through your medical records for no reason at all, I've never seen one example of it. We're talking about something where people are trying to find something that is relevant to the investigation in a terrorism case.

And, once again, we're here because of terrorism. We're here because of 9/11. We're here because we need those investigative tools before the fact, not after the fact. Can we remember that as we look at these amendments? The difference between going in and doing a criminal investigation after the fact so that you can go and prosecute people versus trying to deter terrorist attacks, that's what we're talking about. London was a tremendous example of what we're facing. And to somehow believe that we have the foresight to understand all circumstances where medical records would

be irrelevant to these investigations is assuming an amount of hubris that I just don't think we ought to.

Once again, I will repeat, the 9/11 Commission criticized the Congress and the executive branch for a lack of foresight. They said a lack of creativity, not thinking outside the box. And here what we're trying to do is get us back in the box saying the way that things were before 9/11 are the way that will allow us to be able to fight terrorism. It didn't happen. It ain't going to happen. And, frankly, there has been no proof whatsoever of abuse. Why we would take this potential investigative technique to be used to fight terrorism is beyond me.

And with that, I would ask for a no vote and yield back the balance of my time.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Yes, Mr. Chairman, my colleague from California is using the same arguments he used earlier. They don't sound any better now than they did then, and I'd yield the balance of my time to the gentlelady from Texas.

Ms. JACKSON LEE. I thank the distinguished gentlelady, and I appreciate her amendment offered in the same spirit as this amendment. It seems that clarity still is not apparent even at this late hour. But I would just say to my distinguished colleague, it just overwhelms me to make such a broad statement. I love my country. I really do. I believe dearly in the Bill of Rights, and I believe dearly in our responsibility now in security and intelligence and homeland security.

I might commend to him the 9/11 Commission in its broadness that clearly asked as we proceed to be precise in working towards laws that we also understand our commitment to liberty and justice and to limit the broadness of our reach that would undermine—undermine—our very efforts of securing intelligence. They talked about not intimidating different segments of the population, not stigmatizing religion.

Obviously this is an effort to suggest that we narrow the efforts that we need to make in order to get the kind of right intelligence. And for my good friend to suggest that he's never seen an abuse by this Government gives me a great deal of confusion. I'm completely baffled. I certainly read about it in the history books when Senator McCarthy held these kinds of hearings where everybody in America was claimed to be a communist. So I——

Mr. LUNGREN. Would the gentlelady yield on that point?

Ms. JACKSON LEE. I really don't understand—we do overreach in many instances, and it does not generate into anything. I will join my colleague at any moment to ensure that our law enforcement has the right tools. I only offer this amendment to my colleagues as my colleague has done—colleagues have done earlier in the day to simply say to narrow it. This provision in law is overbroad, this particular section. It has the potential to cause major violations of private rights guaranteed under the Fourth Amendment. It gives the Government far more authority to gather information about innocent Americans while reducing the ability of Americans to learn what their Government is doing.

The Congress provided these sunsets in order to allow this body to give a fresh look at the contentious portions thereof so that adequate fixes can be made. My hypothetical is a possibility. It is a possibility. False statements can be made about patients. FBI can seize patient records and broadly seize all of a doctor's records, every single patient. And it can lead to dead ends and, of course, no results. And why not have medical records excluded under this particular provision? It does not bar the agent or the investigation from securing records. If they prove themselves in an open court setting or some other setting, it does not bar them. These are a secret process. It violates the privacy and overtakes, if you will, existing law that has been written to protect the rights of Americans.

Mr. LUNGREN. Would the gentlelady yield?

Ms. JACKSON LEE. I would argue that—I don't have the time to yield. I'd ask my colleagues to support this amendment in its narrow, narrow exclusion of medical records and the allowance of these records to be excluded, but yet the investigation to go forward.

Ms. WATERS. Reclaiming my time, and I will yield to the gentleman from California.

Mr. LUNGREN. I thank the gentlelady for yielding. The mischaracterization of my statement I'd like to respond to. I never said that the United States Government has never abused its powers. I said with the investigations of this Committee during the course of our many hearings, we have yet to find any evidence of abuse of the act that is before us that we are acting on right now, and that was the point that I solely made. And the gentlelady from Texas talked about the generalization, and I would just suggest that in our arguments we might bring them a little more focused into what we have said and the provisions that are before us. But I thank the gentlelady for yielding.

Ms. JACKSON LEE. May I just have 1 minute, if there is any——

Ms. WATERS. I yield to the gentlelady from Texas.

Ms. JACKSON LEE. Let me thank the gentleman for clarifying. My example was as it was to just generally highlight episodes in our Government's life and that we should try at this time to be able to narrow our overreach in the PATRIOT Act. But I will say this to you: I've heard from many librarians who have indicated their intimidation by this process and the overreach of that intimidation.

So I think that we have to look closely, we have to scrutinize this particular legislation, and the Ranking Member made it very clear as he started out this morning. We had a bipartisan bill 2 years or so ago, but it turned out not to be a bipartisan bill. I hope that now that we can do so. I look forward to working with the distinguished gentleman from California, but reaching for medical records without narrowing it I think is——

Chairman SENSENBRENNER. The time of the gentlewoman has expired. The question is on the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor will say aye? Opposed, no?

Ms. JACKSON LEE. rollcall.

Chairman SENSENBRENNER. The noes appear to have it—rollcall will be ordered. Those in favor of the Jackson Lee amendment will as your names are called answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
[No response.]
The CLERK. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Pass.
The CLERK. Mr. Berman, pass. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?

Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there further members in the chamber who wish to cast or change their vote? The gentleman from Florida, Mr. Feeney.
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon.
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Chairman SENSENBRENNER. The gentleman from California, Mr. Gallegly.
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Chairman SENSENBRENNER. Further members who wish to cast or change their vote? If not, the clerk will report.
The gentlewoman from California, Ms. Waters.
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Chairman SENSENBRENNER. The clerk will report.
The CLERK. Mr. Chairman, there are 12 ayes and 24 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments? The gentleman from Maryland, Mr. Van Hollen.
Mr. VAN HOLLEN. Thank you, Mr. Chairman. I know the hour is later, and I'll try and be brief.
Chairman SENSENBRENNER. Does the gentleman have an amendment at the desk?
Mr. VAN HOLLEN. I do, Mr. Chairman.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3199, offered by Mr. Van Hollen of Maryland. Add at the end of the following: Sec. _____. Terrorist Lists. Section 1001 of the US PATRIOT Act, P.L. 107-56, is amended——

Mr. VAN HOLLEN. Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. GALLEGLY. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California.

Mr. GALLEGLY. Raise a point of order.

Chairman SENSENBRENNER. The gentleman reserves a point of order. Subject to the reservation, the further reading of the amendment is dispensed with and the gentleman from Maryland, Mr. Van Hollen, is recognized for 5 minutes.

[The amendment of Mr. Van Hollen follows:]

Amendment to H.R. 3199
Offered by Mr. Van Hollen of Maryland

Add at the end of the following:

Sec. _____ Terrorist Lists.

Sec. 1001 of the USA PATRIOT Act, P.L. 107-56, is amended by adding the following:

Insert (A) after "shall" and before "designate" and insert the following after subsection (3):

(B) Not later than 90 days after the enactment of this Act, report to the U.S. House of Representatives Committee on the Judiciary and the Senate Committee on the Judiciary on the progress of the development of procedures established by the Terrorist Screening Center for the removal of misidentified individuals from the Terrorist Screening Database.

Chairman SENSENBRENNER. Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. This is an amendment to the existing statute, PATRIOT Act statute, Section 1001, regarding certain requirements placed on the Inspector General of the Department of Justice. And what this does simply is deal with the terrorist watchlist.

Earlier I offered an amendment that would impose responsibilities on those individuals who knowingly sold firearms to individuals on the watchlist, and Mr. Lungren and others raised the issue about the reliability of those watchlists and whether or not everyone who was listed on those lists was properly there. And when we had the Attorney General testifying on this bill before this Committee, I asked him about what mechanism was in place for a citizen who had been mistakenly placed on the watchlist to get him or herself off that watchlist, and the Attorney General said he's like to work with us to make sure we did that.

Well, they've been working on that, but the work has been going rather slowly. Just last month, the Inspector General at the Department of Justice issued a report regarding the Terrorist Screening Center. It's a report entitled "Review of the Terrorist Screening Center." One of the recommendations they make in that report is to strengthen the procedures for handling misidentifications and articulate in a formal written document the protocol supporting such procedures. And they make other recommendations.

What this amendment does very simply is say within 90 days of the enactment of this act, let's ask the Inspector General to report to this Committee on what progress has been made by the Department in implementing the recommendations by the Inspector General with respect to having a protocol and having some set procedure for people who are misplaced, whose names should not be placed on that list, how they get off the list. I think we've all heard stories about people who find themselves on the list, and there's no clear mechanism for how they get off. And this simply asks for a report on what follow-through has been made on recommendations by the Inspector General at the Justice Department.

I would urge members on both sides of the aisle to adopt the amendment.

Chairman SENSENBRENNER. Does the gentleman from California insist upon his point of order?

Mr. GALLEGLY. Yes.

Chairman SENSENBRENNER. The gentleman will state his point of order.

Mr. GALLEGLY. Mr. Chairman, I make a point of order that the amendment is not germane under House Rules. H.R. 3199 reauthorizes certain provisions of the PATRIOT Act and the Intelligence Reform and Terrorism Prevention Act. House Rule XVI-7 precludes amendments on a subject different from that under consideration. This amendment is outside the subject matter of the legislation we're considering at today's markup.

In addition, the fundamental purpose of this amendment is inconsistent with the primary purpose of the bill under consideration and, thus, non-germane under rule—House Rule XVI-7.

Chairman SENSENBRENNER. Does the gentleman from Maryland wish to speak on the point of order?

Mr. VAN HOLLEN. Yes, Mr. Chairman, I do.

Chairman SENSENBRENNER. The gentleman from Maryland.

Mr. VAN HOLLEN. I would just remind my colleague that earlier today there was an amendment offered by Ms. Lofgren of California to exactly this same section, which was adopted, I believe unanimously, on a recorded vote by this Committee. And my understanding is—and I would press this issue, which is that the Committee having taken that action with respect to amending this section in the regard that we did, and I think you'll find it was on an issue of similar nature, not the exact same point, that that issue has already been addressed by this Committee.

So I would ask that we consider this amendment, having, you know, looked at what the Committee already done—did today and address it on its merits and make a decision.

Chairman SENSENBRENNER. The Chair is prepared to rule. Because this is an amendment to the material witness part of the PATRIOT Act, the Chair feels that it is germane and overrules the point of order, and the question is on adoption of the Van Hollen amendment.

Mr. KING. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Iowa, Mr. King.

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. The Van Hollen amendment is brought before us, and we need to recognize that we have procedures now for removal of the names from the list. And we could name some of the fairly high-profile people who have been in the news here recently who have had their name removed from the list. But if we go forward with this amendment, then we'll end up with a public report, and the public report will be a scorecard to the world as to how we're doing with this particular list, and it might very well add to a lot of speculation and cause us greater problems than any of us on either side of the aisle would like to see on this issue.

So I would point out to the gentleman from Maryland that there is a GAO study. It's ongoing now, and it was requested approximately last March. It should be concluded sometime in November or December, at which time it would come back to us, classified. We'd have access to that report to review it in a classified setting. I'd be happy to go and review that—in fact, I think it would be an obligation on my part—and invite the gentleman from Maryland to do so. If you'd like another kind of a report to come, a member letter could be submitted to Justice, and one could achieve this information without being so public with it.

So that would be the list of my objections to this amendment, and I'd urge a no vote and yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Van Hollen amendment. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further——

Mr. VAN HOLLEN. Mr. Chairman, I would ask for a rollcall on that.

Chairman SENSENBRENNER. A rollcall will be ordered. Those in favor of the Van Hollen amendment will as your names are called answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

[No response.]

The CLERK. Mr. Lungren?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Feeney?

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no. Mr. Franks?

Mr. FRANKS. No.

The CLERK. Mr. Franks, no. Mr. Gohmert?

Mr. GOHMERT. No.

The CLERK. Mr. Gohmert, no. Mr. Conyers?

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye. Mr. Berman?

Mr. BERMAN. Aye.

The CLERK. Mr. Boucher?

[No response.]

The CLERK. Mr. Nadler?

Mr. NADLER. Aye.

The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, no. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Further members who wish to cast or change their vote? The gentleman from Tennessee, Mr. Jenkins.
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no.
Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. Further members who wish to cash or change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 15 ayes and 23 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments? The gentleman from New York, Mr. Nadler.
Mr. NADLER. Thank you, Mr. Chairman. This is my next to last amendment that's designated A at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.r. 3199 offered by Mr. Nadler of New York.

Insert in the appropriate place in the bill the following:

Section _____. Right to Counsel

(1) In General—Section 2709 of Title 18, United States Code, is amended by inserting——

(a) Authority to Disclose to Qualified Persons

(1) Any person to whom an order is directed——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentleman from New York is recognized for 5 minutes.

[The amendment of Mr. Nadler follows:]

A

Amendment to H.R. ___

Offered by Mr. Nadler of New York

Insert in the appropriate place in the bill the following:

SEC. __. RIGHT TO COUNSEL

(1) In General—Section 2709 of title 18, United States Code, is amended by inserting--

"(a) Authority to Disclose to Qualified Persons-
(1) Any person to whom an order is directed under this section may disclose that he or she has received a national security letter under this section to a qualified person;
(2) A qualified person shall be subject to any nondisclosure requirement applicable to a person to whom an order is directed under this section in the same manner as such person.

`(b) In this subsection, the term `qualified person' means--
(A) any person necessary to produce the documents pursuant to the received national security letter; or
(B) an attorney to obtain legal advice in response to a national security letter request for information under this section.

(2) In General—Section 2709 1114(a)(5) of the Right tot Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)) is amended by inserting--

"(a) Authority to Disclose to Qualified Persons-
(1) Any person to whom an order is directed under this section may disclose that he or she has received a national security letter under this section to a qualified person;
(2) A qualified person shall be subject to any nondisclosure requirement applicable to a person to whom an order is directed under this section in the same manner as such person.

`(b) In this subsection, the term `qualified person' means--
(A) any person necessary to produce the documents pursuant to the received national security letter; or
(B) an attorney to obtain legal advice in response to a national security letter request for information under this section.

(3) In General—Section 626 Of the Fair Credit Reporting Act (15 U.S.C. 1681u) is amended by inserting--

"(a) Authority to Disclose to Qualified Persons-

(1) Any person to whom an order is directed under this section may disclose that he or she has received a national security letter under this section to a qualified person;

(2) A qualified person shall be subject to any nondisclosure requirement applicable to a person to whom an order is directed under this section in the same manner as such person.

`(b) In this subsection, the term `qualified person' means--

(A) any person necessary to produce the documents pursuant to the received national security letter; or

(B) an attorney to obtain legal advice in response to a national security letter request for information under this section.".

(4) In General—Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) is amended by inserting--

"(a) Authority to Disclose to Qualified Persons-

(1) Any person to whom an order is directed under this section may disclose that he or she has received a national security letter under this section to a qualified person;

(2) A qualified person shall be subject to any nondisclosure requirement applicable to a person to whom an order is directed under this section in the same manner as such person.

`(b) In this subsection, the term `qualified person' means--

(A) any person necessary to produce the documents pursuant to the received national security letter; or

(B) an attorney to obtain legal advice in response to a national security letter request for information under this section.

Mr. NADLER. Thank you. Mr. Chairman, I'll be very brief. This amendment amends Section 505 dealing with national security letters, and essentially puts into that section the same language the Chairman put into the Section 215 in the main bill.

It does two things. It says that when you have Section 505, a national security letter with respect to the non-disclosure of the gag order, you can disclose it to your attorney and you can disclose it to someone else in your company to whom disclosure is necessary in order to comply with the order.

The language is essentially taken from the language that is in the bill in Section 215, and the thought is the same reason the bill puts this into Section 215, it ought to put it into Section 505. You should be able to disclose the contents of the national security letter to whoever it's necessary to disclose it to in order to get the letter complied with if it's someone else in your company; and two, to your attorney so that they can give you legal advice. And anyone you disclose it to is bound by the same gag order.

So it's the same reasoning and the same language as in Section 215, the same purpose, and I would hope it would be accepted, and I yield back.

Mr. FLAKE. Would the gentleman yield?

Mr. NADLER. Yes, I will.

Chairman SENSENBRENNER. The gentleman from Arizona, Mr. Flake.

Mr. NADLER. Did you want me to yield before I yield back?

Mr. FLAKE. Yes.

Mr. NADLER. I'll yield to the gentleman.

Mr. FLAKE. This won't take long. I don't have the language drafted. We have some of the same concerns. We worked on some of the same concerns, so it's not surprising. But I am working on a floor amendment that would address the same concerns that you're looking at here. I can't give you specific on it. I won't offer it here, but I'd be glad to work with you on one for the floor.

Mr. NADLER. Reclaiming my time, assuming this amendment—well, whether or not this amendment doesn't pass, I'll be happy to work with you as we go to the floor.

But I would hope this amendment would be accepted. The language is taken verbatim, just about verbatim from Section 215 in the bill. And obviously, it is necessary, and 215 is necessary here.

Mr. FLAKE. If the gentleman will yield, I'm still working on language. I'm not prepared to support this, but I would be glad to work with the gentleman on the amendment I'm working on for the floor.

Chairman SENSENBRENNER. Gentleman yield back?

Mr. NADLER. I yield back.

Chairman SENSENBRENNER. Question is on the Nadler amendment. Those in favor will say aye.

Opposed no.

The noes appear to have it.

Mr. NADLER. I ask for the yeas and nays.

Chairman SENSENBRENNER. rollcall will be ordered. Those in favor of the Nadler amendment will, as your names are called, answer aye; those opposed, no; and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
[No response.]
The CLERK. Mr. Lungren?
[No response.]
The CLERK. Mr. Jenkins?
[No response.]
The CLERK. Mr. Cannon?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
[No response.]
The CLERK. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?

Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their votes? Gentleman from California, Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no.
Chairman SENSENBRENNER. Gentleman from California, Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Chairman SENSENBRENNER. Gentleman from Texas, Mr. Smith?
Mr. SMITH. Mr. Chairman, I vote no.
The CLERK. Mr. Smith, no.
Chairman SENSENBRENNER. The gentleman from Tennessee, Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. Gentleman from Wisconsin, mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Chairman SENSENBRENNER. Gentlewoman from California, Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Chairman SENSENBRENNER. Gentleman from California, Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.

Chairman SENSENBRENNER. Further members who wish—gentleman from Utah, Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Chairman SENSENBRENNER. Gentleman from Alabama, Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Chairman SENSENBRENNER. Further members who wish to cast or change their votes?

Ms. JACKSON LEE. Mr. Chairman, how am I recorded?

Chairman SENSENBRENNER. How is the gentlewoman from Texas recorded?

The CLERK. Mr. Chairman, Ms. Jackson Lee is recorded as an aye.

Ms. JACKSON LEE. Thank you.

Chairman SENSENBRENNER. The clerk will report.

Gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Chairman SENSENBRENNER. The clerk will report.

The CLERK. Mr. Chairman, there are 16 ayes and 23 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, Humanitarian Assistance.

The CLERK. Amendment to H.R. 3199 offered by Mr. Scott of Virginia.

Add at the end the following:

Section _____. Humanitarian assistance under the material support statute.

Section 18 USC Subsection 2339A is amended by striking "or religious materials" in section (b) and inserting——

Chairman SENSENBRENNER. By unanimous consent, the amendment will be considered as read, and the gentleman from Virginia will be recognized for 5 minutes.

[The amendment of Mr. Scott follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. SCOTT OF VIRGINIA

#6

Add at the end the following:

Sec. ____ Humanitarian assistance under the material support statute.

Section 18 U.S.C. §2339A is amended by striking "or religious materials" in section (b) and inserting ", religious materials, medical services, drinking water, food, children's clothing, educational supplies or services and other humanitarian materials and services that could not be diverted to military ends."

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, this is under the material support prohibition, that you can't give material support to terrorist organizations. This would allow normal humanitarian assistance during times of a natural disaster or other humanitarian situations to people in countries or territories that may be controlled by individuals or groups on watch lists or other designations which would constitute or at least raise the possibility of a violation of material support prohibition.

There's no logical reason that you could provide medicines but not medical services or drinking water or food to people when those services or materials could not be diverted to military ends.

I would hope it would be the pleasure of the Committee to adopt the amendment.

Mr. KING. Mr. Chairman?

Chairman SENSENBRENNER. Gentleman from Iowa, Mr. King.

Mr. KING. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. I thank the Chairman.

The gentleman from Virginia's amendment goes—does a number of things here that I don't know that this Committee can support, and one of them is it simply gives legitimacy to the terrorist organizations, and by opening up the door to send more money and more relief and funnel it through the terrorist organizations—and we're talking about terrorist organizations like Abu Nidal, Ansar al-Islam, Al-Aqsa Martyrs Brigade, the Armed Islamic Group, the—it gets worse—Hamas, Hezbollah, Islamic Jihad, al-Jihad, al Qaeda, and the al Qaeda organization in Iraq, all part of the 41 terrorist organizations. And to give them this form of legitimacy and open this door up, where it's fairly closed right now, I mean to add to this, to add to the religious materials and medical supplies, services, drinking water, food, children's clothing.

But the problem with this is the catch-all, the services and other humanitarian materials and services that could not be diverted to

military ends. That's everything but guns and bullets by that definition.

And if you recall, our President, shortly after September 11th, made the statement that if you harbor terrorists you are a terrorist, if you fund terrorists you are a terrorist. And these are terrorist organizations. This is funding that goes to terrorist organizations. We would be funding terrorist organizations with this amendment. It's not just the Republican side of the aisle that makes those kind of statements, but the President's is—I would just simply quote. "International terrorist networks make frequent use of charitable or humanitarian organizations to obtain clandestine financial and other support for their activities." This could be a loophole through which support could be provided to individuals or groups involved with terrorism.

Concurring with the President's view would be Senator Dianne Feinstein, who said, in part, "I simply do not accept that so-called humanitarian works by terrorist groups can be kept separate from their other operations. I think the money will ultimately go to bombs and bullets, rather than babies, or because money is fungible, it will free up other funds to be used on terrorist activities."

For that reason and many others, I urge the defeat of this amendment, and I would yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment——

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. Gentleman from New York.

Mr. NADLER. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, I believe this is a very interesting amendment, and I yield to the gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. I would say that what we're doing is amending an existing statute which allows religious materials and medicines to be given to all of those groups that have been indicated. That's present law. What we're doing is just extending what you can give in disaster situations or otherwise, medical services, drinking water, children's clothing and other humanitarian services.

I mean if you can give religious materials and medicines, you ought to be able to give water to the same groups that you've listed. That's the present law. And in a disaster, you know, some people may not want to give water or other humanitarian assistance because they may be committing a crime, and I can't believe that that's our intent. I'd hope we'd adopt the amendment so we can provide some humanitarian aid in disasters to people in need.

Mr. LUNGREN. Will the gentleman yield?

Mr. NADLER. Reclaiming my time, I'll yield to the gentleman from California.

Mr. LUNGREN. I would just ask the gentleman from Virginia whether or not he accepts the argument of fungibility of funds? That is, being able to use——

Mr. NADLER. I yield to the gentleman from Virginia.

Mr. SCOTT. If the gentleman would yield, I would say that you've got medicines, religious materials and other things already under the law. And yeah, I guess, instead of—if people are dying of thirst

and you provided some water, maybe that would be fungible, but I think under the circumstances, just humanitarian circumstances, you ought to be able to provide humanitarian aid without being charged with a crime.

Mr. NADLER. Reclaiming my time, I'd like to ask the gentleman, to whom are you supplying this under this amendment? I'll yield.

Mr. SCOTT. I'd say to the gentleman, the same people you are under Section 18 USC 2339A, whoever you're—with the exceptions there of religious materials, medicines and things like that. We're just adding to the things that you can give under that same section. We're just having a few more exceptions like water and children's clothing and humanitarian aid.

Mr. NADLER. I thank the gentleman. I yield back.

Chairman SENSENBRENNER. Gentleman from Wisconsin.

Mr. GREEN. Move to strike the last word.

Chairman SENSENBRENNER. Gentleman's recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I rise in opposition to this amendment as well, and for many of the same reasons that my friend and colleague from Iowa has laid out.

First off, it's far too broadly drafted. It is a catch-all. For example, the use of educational supplies, well, we were particularly trying to get at with the material support statutes the provision of intellectual support and educational material that could in fact be of assistance to terrorists. Also, when you make reference to other humanitarian materials and services, that is a large catch-all. All of these materials are fungible. But there's another important point here. We don't want to add legitimacy or credibility to these organizations, and I think we do that if we start broadening what it is that can be supplied to them under the statute.

I think it's a tremendous mistake. I think we should keep it narrow as it is. I'm not aware of there being any problems have been identified. If the gentleman can name circumstances where these organizations or individuals were in need and we were not able to help them under the previous statute, I'd certainly be willing to listen. Beyond that, I just think this amendment is opening up a dangerous door. It's far too broad, and I think it would be a step in the wrong direction.

With that I yield back.

Chairman SENSENBRENNER. The question is on the Scott amendment. Those in favor will say aye. Opposed no.

The noes appear to have it. The noes——

Mr. SCOTT. Recorded vote, please?

Chairman SENSENBRENNER. Recorded vote will be ordered. All those in favor of the Scott amendment will, as your names are called, answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?

Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no. Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no. Mr. Schiff?
[No response.]
Ms. JACKSON LEE. How am I recorded? Are they in the middle of the vote?
The CLERK. Mr. Chairman, Ms. Jackson Lee is not recorded.
Ms. JACKSON LEE. Aye, please.
The CLERK. Ms. Jackson Lee, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. No.
The CLERK. Mr. Van Hollen, no. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. No.
The CLERK. Ms. Wasserman Schultz, no. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members in the chamber who wish to cast or change their vote? Gentleman from Arizona, Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Chairman SENSENBRENNER. Gentleman from California, Mr. Berman?
Mr. BERMAN. No.
The CLERK. Mr. Berman, no.
Chairman SENSENBRENNER. Gentleman from California, Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Chairman SENSENBRENNER. Gentlewoman from California, Ms. Sánchez?
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no.
Chairman SENSENBRENNER. Further members who wish to cast or change their vote?
[No response.]
Chairman SENSENBRENNER. If not, the clerk will report.
The CLERK. Mr. Chairman, there are 7 ayes and 31 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments? The gentlewoman from Texas, Ms. Jackson Lee.
Ms. JACKSON LEE. Thank you very much, Mr. Chairman.
Let me say that I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Mr. Chairman, I have two amendments from Ms. Jackson Lee.
Ms. JACKSON LEE. Enhanced review.
The CLERK. Amendment to H.R. 3199 offered by Ms. Jackson Lee.

At the end of the bill, add the following section:

Section _____. Enhanced Review of Profiling and Data Collection.

Section 1001 of the USA PATRIOT Act is amended by:

(1) adding after "(1)" the following: "(a)"; and

(2) adding after "Department of Justice" the following:

Ms. JACKSON LEE. I ask the amendment to be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment of Ms. Jackson Lee follows:]

AMENDMENT TO H.R. 3199

OFFERED BY [redacted] Ms. Jackson-Lee

At the end of the bill, add the following section:

SECTION __. ENHANCED REVIEW OF PROFILING AND DATA COLLECTION .

Section 1001 of the USA PATRIOT ACT is amended by -

(1) adding after "(1)" the following: "(a)"; and

(2) adding after "Department of Justice;" the following:

" (a) review of the use of any investigative authority under the 'Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations' beyond those approved by Attorney General Dick Thornburg for the Department of Justice on March 21, 1989."

Ms. JACKSON LEE. Colleagues, I'll be very brief. I just want——

Chairman SENSENBRENNER. The gentlewoman's recognized for 5 minutes.

Ms. JACKSON LEE. —refer you to an informational piece that this amendment would allow us to operate under the guidelines, under the Attorney General's guidelines on general crimes, racketeering enterprise and domestic security terrorism, dated March 21, 1989.

I would think under the 9/11 Commission Report, one of the things that it included in its report was to sensitize Americans and sensitize our need to understand diverse cultures. We cannot understand diverse cultures as they believe that our attempt to be secure racially profiles their communities.

In 1989 Attorney General Dick Thornburgh approved new guidelines for how the FBI would pursue domestic security and terrorism. Those guidelines recognized investigations into domestic activities as something necessary——

Chairman SENSENBRENNER. The gentlewoman will suspend. The Committee is not in order. If we can quiet things down and listen to the eloquence of the gentlewoman from Texas, maybe we can get done quicker.

The gentlewoman will proceed.

Ms. JACKSON LEE. I thank the Chairman.

But it said that limits—but that limits and protections were needed to ensure the constitutional rights of average Americans. However, in 2002, Attorney General Ashcroft extended these guidelines in a way that clearly intruded on Americans' First Amendment Right to speak and peacefully assemble and other constitutional protections.

Most importantly, the 2002 guidelines now allow the FBI to monitor even peaceful rallies, protests and meetings of religious, political and social without any suspicion of wrongdoing.

My amendment is simple. It would like to ensure that we follow the guidelines, that even as we seek to provide homeland security or security and intelligence by securing information, that we not recklessly invade the concept, or overlook the concept of racial profiling. It asks for a review of the use of any investigative authority on the Attorney General's guidelines, and in so doing, it helps us to protect innocent individuals who happen to be of a particular faith or racial background.

Since 2002 these new powers have been used by the FBI to spy on mosques, and to try to infiltrate Muslim and Arab groups in ways that clearly implicate the First Amendment.

I believe that as 9/11 Commission Report indicated, we can be safe but also protect civil liberties.

Mr. Chairman, I was also going to offer an amendment that would investigate the results of FISA authorizations as to the number of convictions or deportations that occurred. I will not offer that amendment. I will hope to work with Committee staff to try and refine that. It's an investigatory tool that classified information can come back to the Congress to see how effective FISA has been in terms of criminal proceedings or removal proceedings. But I go back to this amendment, and simply ask my colleagues to support it.

And I commend to them an article in the Washington Times, knowing that our British friends have gone through a very serious

tragedy over the last couple of days, but out of that tragedy the article says, Britons favor tracking Muslim activities. We know that danger and terrorist activities generate a focus on particular religious groups and particular ethnic groups. This amendment gives us the investigatory tool to ensure that if there is racial profiling, we are finding a way to thwart it. And so I hope my colleagues would support this amendment.

Mr. KING. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Iowa, Mr. King.

Mr. KING. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. Consistent with the sentiment of the gentlelady from Texas's amendment, and also consistent with the due diligence oversight that's being led by this Committee, by the Chairman and the Ranking Member, the Inspector General is doing a larger investigation which includes this amendment. It's a larger investigation, but inclusive of the gentlelady from Texas's amendment, which is before us.

They've testified here in this Committee, and that report is due here in about a month. So it would be my opinion that we're better off to wait a month and get the report that's on the way, than pass an amendment that would simply confuse the issue, and so I'd urge a no vote on the gentlelady's amendment——

Ms. JACKSON LEE. Will the gentleman yield?

Mr. KING. I would yield. I would yield.

Ms. JACKSON LEE. I thank the distinguished gentleman.

Chairman, the room is not in order.

Chairman SENSENBRENNER. The Committee will be in order. The gentlewoman is recognized.

Ms. JACKSON LEE. I thank the tone of the distinguished gentleman's remarks, and I was made aware that there was a Inspector General's Report on its way to Congress. My interest is that by including it in this legislation, this language, it allows us to have a continuing report and a continuing monitoring in a classified manner.

Respect the gentleman's acknowledgement that a report may be forthcoming, but I would suggest to him that as we pass the PATRIOT Act, it is going to be part of the fabric of our society. There will be ongoing opportunities for individuals to be targeted, and/or for racial profiling or religious profiling to go on.

We can be secure without such profiling. I think it's appropriate to remind the Attorney General and others engaged in this process to follow those guidelines ongoing. So I'd ask my colleagues——

Mr. KING. Reclaiming my time.

Ms. JACKSON LEE. I yield back.

Mr. KING. I thank the gentlelady from Texas.

You know, we have a report that's coming before us that we have without the requirement of legislation to get that report, and I suggest we receive the report in about a month, review the report, make a decision at that time as to whether we need some permanent fixture in statute, and I'd urge a no vote on the amendment.

Yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentlewomen from Texas, Ms. Jackson Lee. Those in favor will say aye. Opposed, no.

Noes appear to have it.

Ms. JACKSON LEE. rollcall.

Chairman SENSENBRENNER. rollcall will be ordered. Those in favor of the Jackson Lee amendment will, as your names are called, answer aye; those opposed no; and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Feeney?

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no. Mr. Franks?

Mr. FRANKS. No.

The CLERK. Mr. Franks, no. Mr. Gohmert?

Mr. GOHMERT. No.

The CLERK. Mr. Gohmert, no. Mr. Conyers?

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. No.
The CLERK. Mr. Berman, no. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. No.
The CLERK. Mr. Delahunt, no. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Pass.
The CLERK. Mr. Weiner, pass. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
Ms. SÁNCHEZ. Pass.
The CLERK. Ms. Sánchez, pass. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their votes? Gentlewoman from California, Mrs. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Chairman SENSENBRENNER. Gentleman from New York, Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Chairman SENSENBRENNER. Gentlewoman from California, Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye.
Chairman SENSENBRENNER. Further members who wish to cast or change their votes?
[No response.]
Chairman SENSENBRENNER. If not, the clerk will report.
Gentlewoman from Florida, Ms. Wasserman Schultz?
The CLERK. Mr. Chairman, I don't have Ms. Wasserman Schultz.
Ms. WASSERMAN SCHULTZ. If I could be recorded as aye, please.
The CLERK. Ms. Wasserman Schultz, aye.

Chairman SENSENBRENNER. Clerk will report.

The CLERK. Mr. Chairman, there are 13 ayes and 25 noes.

Chairman SENSENBRENNER. The amendment is not agreed to. Are there further amendments?

Mr. CONYERS. Mr. Chairman, I ask unanimous consent to speak out of order?

Chairman SENSENBRENNER. The gentleman strikes the last word, is recognized for 5 minutes.

Mr. CONYERS. Mr. Chairman, we've been here nearly 12 hours. I am going to announce my intention after the next amendment to call for the previous question, because most of the members here who have additional amendments have agreed to hold them in abeyance so that we can move on tomorrow, having disposed of this measure. And I propose further that all of us who do have amendments, including myself, will be able to put them in the record collectively, indicating how—why they're important and how we would have voted on them. And I ask that cooperation of my colleagues, so that we may complete another very full round of hearings in the morning.

Thank you.

Chairman SENSENBRENNER. Are there further amendments?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler?

Mr. NADLER. Mr. Chairman, I have an amendment at the desk. Mr. Scott has an amendment at the desk. I ask unanimous consent they be considered together.

Chairman SENSENBRENNER. The clerk will report the amendments first.

The CLERK. Mr. Chairman, I have two Nadler amendments, and——

Mr. NADLER. The one he's going to hand you.

The CLERK. Amendment to H.R. 3199——

Mr. NADLER. 19—99, I'm sorry. You're right. You're right.

The CLERK. Offered by Mr. Nadler of New York. Insert at the appropriate place in the bill the following: Section _____. Judicial Review. (a) In general. Section 2709 of title 18, United States Code, is amended by—(1) redesignating subsection (e) as subsection (g); and (2) inserting after subsection (d) the following: (e) Judicial Review. (1) Request. Not later than 20 days after any person receives a request pursuant to subsection (b), or at any time before the return date specified in the request, whichever period is shorter, such person may file, in the district court of the United States——

Mr. NADLER. Mr. Chairman, I ask unanimous consent to waive the reading of this amendment.

Chairman SENSENBRENNER. The gentleman from North Carolina reserves a point of order. Without objection, the amendment is considered as read.

[The amendment of Mr. Nadler follows:]

AMENDMENT TO H.R. 3119

OFFERED BY MR. NADLER OF NEW YORK

Insert at the appropriate place in the bill, the following:

1 SEC. ___. JUDICIAL REVIEW.

2 (a) IN GENERAL.—Section 2709 of title 18, United
3 States Code, is amended by—

4 (1) redesignating subsection (e) as subsection
5 (g); and

6 (2) inserting after subsection (d) the following:

7 "(e) JUDICIAL REVIEW.—

8 "(1) REQUEST.—Not later than 20 days after
9 any person receives a request pursuant to subsection
10 (b), or at any time before the return date specified
11 in the request, whichever period is shorter, such per-
12 son may file, in the district court of the United
13 States for the judicial district within which such per-
14 son resides, is found, or transacts business, a peti-
15 tion for such court to modify or set aside such re-
16 quest. The time allowed for compliance with the re-
17 quest in whole or in part as deemed proper and or-
18 dered by the court shall not run during the pendency
19 of such petition in the court. Such petition shall

1 specify each ground upon which the petitioner relies
2 in seeking relief, and may be based upon any failure
3 of such request to comply with the provisions of this
4 section or upon any constitutional or other legal
5 right or privilege of such person.

14 "(3) DISCLOSURE.—In making determinations
15 under this subsection, the court shall disclose to the
16 petitioner, the counsel of the petitioner, or both,
17 under the procedures and standards provided in the
18 Classified Information Procedures Act (18 U.S.C.
19 App.), portions of the application, order, or other re-
20 lated materials unless the court finds that such dis-
21 closure would not assist in determining any legal or
22 factual issue pertinent to the case.".
23 (b) FINANCIAL RECORD REQUESTS.—Section
24 1114(a)(5) of the Right to Financial Privacy Act of 1978
25 (12 U.S.C. 3414(a)(5)) is amended by inserting after sub-

1 paragraph (D) (as amended by subsection (c)(2) of this
2 section) the following new subparagraph:
3 "(E) JUDICIAL REVIEW.—
4 "(i) IN GENERAL.—Not later than 20
5 days after any person receives a request
6 pursuant to subparagraph (A), or at any
7 time before the return date specified in the
8 request, whichever period is shorter, such
9 person may file, in the district court of the
10 United States for the judicial district with-
11 in which such person resides, is found, or
12 transacts business, a petition for the court
13 to modify or set aside the request. The
14 time allowed for compliance with the re-
15 quest in whole or in part as deemed proper
16 and ordered by the court shall not run dur-
17 ing the pendency of the petition in the
18 court. The petition shall specify each
19 ground upon which the petitioner relies in
20 seeking relief, and may be based upon any
21 failure of the request to comply with the
22 provisions of this paragraph or upon any
23 constitutional or other legal right or privi-
24 lege of the petitioner.
25 "(ii) [redacted]

14 "(ii) DISCLOSURE.—In making deter-
15 minations under this subparagraph, the
16 court shall disclose to the petitioner, the
17 counsel of the petitioner, or both, under
18 the procedures and standards provided in
19 the Classified Information Procedures Act
20 (18 U.S.C. App.), portions of the applica-
21 tion, order, or other related materials ~~or~~
22 ~~less~~ the court finds ~~that such disclosure~~ necessary
23 ~~would not~~ to assist in determining any legal
24 or factual issue pertinent to the case.".

1 (c) CONSUMER REPORT REQUESTS.—Section 626 of
2 the Fair Credit Reporting Act (15 U.S.C. 1681u) is
3 amended by after subsection (n) (as added by subsection
4 (b)(3) of this section) the following new subsection:
5 "(o) JUDICIAL REVIEW.—
6 "(1) IN GENERAL.—Not later than 20 days
7 after any person receives a request or order pursu-
8 ant to subsection (a), (b), or (c), or at any time be-
9 fore the return date specified in the request or
10 order, whichever period is shorter, such person may
11 file, in the district court of the United States for the
12 judicial district within which such person resides, is
13 found, or transacts business, a petition for the court
14 to modify or set aside the request or order. The time
15 allowed for compliance with the request or order in
16 whole or in part as deemed proper and ordered by
17 the court shall not run during the pendency of the
18 petition in the court. The petition shall specify each
19 ground upon which the petitioner relies in seeking
20 the relief, and may be based upon any failure of the
21 request or order to comply with the provisions of
22 this section or upon any constitutional or other legal
23 right or privilege of the petitioner.
24 "(2) [illegible]

7 "(2) DISCLOSURE.—In making determinations
8 under this subsection, the court shall disclose to the
9 petitioner, the counsel of the petitioner, or both,
10 under the procedures and standards provided in the
11 Classified Information Procedures Act (18 U.S.C.
12 App.), portions of the application, order, or other re-
13 lated materials [redacted] the court finds [redacted] necessary
14 [redacted] to [redacted] assist in determining any legal or
15 factual issue pertinent to the case.".
16 (d) CONSUMER REPORT REQUESTS BY GOVERN-
17 MENTAL AGENCIES.—Section 627 of the Fair Credit Re-
18 porting Act (15 U.S.C. 1681v) is amended by adding at
19 the end the following new subsection:
20 "(f) JUDICIAL REVIEW.—
21 "(1) IN GENERAL.—Not later than 20 days
22 after any person receives a request pursuant to sub-
23 section (a), or at any time before the return date
24 specified in the request, whichever period is shorter,
25 such person may file, in the district court of the

1 United States for the judicial district within which
2 such person resides, is found, or transacts business,
3 a petition for the court to modify or set aside the
4 request. The time allowed for compliance with the
5 request in whole or in part as deemed proper and or-
6 dered by the court shall not run during the pendency
7 of the petition in the court. The petition shall speci-
8 fy each ground upon which the petitioner relies in
9 seeking the relief, and may be based upon any fail-
10 ure of the request to comply with the provisions of
11 this section or upon any constitutional or other legal
12 right or privilege of the petitioner.

21 "(2) DISCLOSURE.—In making determinations
22 under this subsection, the court shall disclose to the
23 petitioner, the counsel of the petitioner, or both,
24 under the procedures and standards provided in the
25 Classified Information Procedures Act (18 U.S.C.
1 App.), portions of the application, order, or other re-
2 lated materials ~~unless~~ the court finds ~~that such dis-~~ necessary
3 ~~closure would not~~ to assist in determining any legal or
4 factual issue pertinent to the case.".

Chairman SENSENBRENNER. Is there a second amendment that the gentleman wishes to consider en bloc?

Mr. NADLER. The second amendment is by Mr. Scott.

Chairman SENSENBRENNER. The clerk will report the second amendment. Without objection—well, the clerk will report the second amendment.

The CLERK. Amendment to H.R. 3199, offered by Mr. Scott of Virginia. Add at the end the following: Section 9. Factual basis for pen register and trap and trade authority under Section 214 of the USA PATRIOT Act. (a) Application. Subsection——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment of Mr. Scott follows:]

AMENDMENT TO H.R. 3199

OFFERED BY MR. SCOTT OF VIRGINIA

Add at the end the following:

SEC. 9. FACTUAL BASIS FOR PEN REGISTER AND TRAP AND TRACE AUTHORITY UNDER SECTION 214 OF THE USA PATRIOT ACT.

(a) APPLICATION.—Subsection (c)(2) of section 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842) is amended by striking ''a certification by the applicant that'' and inserting ''a statement of the facts relied upon by the applicant to justify his belief that''.

(b) ORDER.—Subsection (d)(1) of such section is amended by striking ''if the judge finds that'' and all that follows and inserting ''if the judge finds that the application includes sufficient facts to justify the belief that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation of international terrorism or clandestine intelligence activities and otherwise satisfies the requirements of this section.''.

Chairman SENSENBRENNER. Without objection, the amendments are considered en bloc. The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. I won't take 5 minutes. I will talk about the first amendment.

Mr. Chairman, I mentioned on an earlier amendment that under a Federal court decision under applicable Federal case law, Section 505 of the PATRIOT Act is unconstitutional on two grounds: one, which the earlier amendment attempted to deal with, was that the gag order had to be approved by a judge; otherwise, it was a violation of the First Amendment; second of all, that an order for a national security letter has to be subject to judicial review, or else it would be unconstitutional under the Fourth Amendment search and seizure provision.

What this amendment does is say that the recipient of a national security letter from the FBI can go to Federal district court and move to quash it and the court has to rule on that. In other words, it provides for judicial—for the possibility of judicial review of a national security letter. That's all it does, and without this amendment, frankly, I think the courts will, in fact, hold this half of Section 505 unconstitutional. So I urge the adoption of this amendment.

I yield back.

Chairman SENSENBRENNER. The gentleman from Arizona, Mr.—does the gentleman from North Carolina insist on his point of order.

Mr. COBLE. I'll withdraw my point of order, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Mr. Chairman, I have the same issue that I had with the last amendment. I'm working on a more comprehensive amendment here on the national security letter, and I share the gentleman's concerns, but I object for the same reasons. I'm working on something more comprehensive.

I yield back.

Mr. NADLER. The question is on the amendment——

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, on the second half of this en bloc amendment, I'd like to make a comment. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, in fact, this section deals with pen register and trap and trace authority. The present law requires a judge to issue the order upon the certification of the applicant that the information is relevant to an investigation. This would require the applicant to make a statement of facts relied upon by the applicant to justify his belief that it's relevant and requires the judge to find sufficient facts to justify that belief that information likely to be obtained as foreign intelligence information not concerning a United States person and is relevant to the ongoing investigation of international terrorism or clandestine intelligence activities.

Mr. Chairman, when you talk about trap and trace authority and pen register authority, you're talking about a situation without probable cause, but you do require articulable suspicion. In 2000, this Committee voted overwhelmingly to raise the standard for pen register and trap and trace devices from a mere claim of relevance to a showing of specific and articulable facts. This amendment does that. And when we're talking about the information you get with the traditional pen registers, you get just phone numbers. When you expand this to electronic and e-mail type situations, you get a lot more information.

For example, if you get the header from an e-mail, you can get an entire organization's electronic mailing list. You can get the Web page that someone reads. You can find out what they searched for. You can find out what pages they read or what information was on that Web page. All of that without probable cause of a crime being committed.

I would hope, Mr. Chairman, that we would require at least the articulable facts on which you are relying so that this information, which could be information of an innocent party relevant to somebody else's investigation, your personal information is being discovered, I would hope you'd do that at least on some articulable facts, not just on a representation. And so, Mr. Chairman, I would hope we'd adopt the amendment and do what we did in 2000 to require those articulable facts to be articulated.

I yield back.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman.

In response, I do rise in opposition to this amendment. First of all, the judge always has discretion when it comes to credibility of the witness before him, so the certification in this situation should be adequate, especially since we're talking about a pen register and trap and trace, and as the fine gentleman pointed out, we're talking about phone numbers, numbers that have emanated—calls that have emanated from those numbers and are going to those numbers. There's no conversation involved. The Supreme Court, the very Supreme Court that has been able to read in privacy rights to the Constitution that I can turn it every which way and have trouble finding, nonetheless has found there is no privacy right or interest in and to the content of the pen register or the trap and trace information. Accordingly, there is a lesser standard there.

And I appreciate the gentleman's wishing to insert that the judge must find sufficient facts to justify the belief. The rest of the language after that is redundant. But, nonetheless, since there is no privacy right and interest in and to that information, we believe that it's adequate.

What can be done once they find those numbers, if calls are coming to or from known terrorists, then that may give rise to probable cause, and then certainly we need probable cause to go forward and get warrants and things of that nature. But that is why I would urge my colleagues to vote against the amendment?

Mr. SCOTT. Would the gentleman yield?

Mr. GOHMERT. I yield back.

Chairman SENSENBRENNER. The gentleman yields back. The question is on—the question is on the amendment——

Mr. SCHIFF. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. I won't take 5 minutes, Mr. Chairman, and actually I know we're going to call the question, so I want to speak very briefly on final passage. We've made some very modest changes to the bill today. I'd like to see more done. It strikes a stronger balance in both giving law enforcement the capability of investigating and prosecuting terrorism, but also provides greater civil liberties protections which do not in any way inhibit the Government's ability to go after terrorists. I'm hoping the bill will be improved on the floor and in subsequent legislation. I intend to pass on final passage out of the Committee in the hopes that we have additional improvements on the floor as this bill moves forward, and I thank the——

Mr. BERMAN. Would the gentleman yield? Would the gentleman yield?

Mr. SCHIFF. I'd be happy to yield to my colleague from California.

Mr. BERMAN. Yeah, I want to—I have very much the same thoughts about this as the gentleman from California. Maybe that's why we're both from California, except there are others who have different thoughts. But there are just two—one specific—there are a couple of specific things I just wanted to mention for taking the same view as Mr. Schiff. One is one part of this bill that makes an improvement over existing law is the incorporation of a relevance standard in 215, as well as some of the procedural things, although they could be in my view better.

But I do hope between now and the floor, I believe there is something between the relevance standard and—but far more expansive than linking these—the subpoena for business records with just specific facts dealing with an agent of a foreign power; that is, there are people associated with these agents of a foreign power and people we believe—we have reason to believe are agents of a foreign power that should be included, but is less broad and all-encompassing than a relevance standard. And I am hoping that between now and the floor there can be effort, a real effort, a bipartisan effort to find an appropriate standard that lets law enforcement do what they need to do in conducting an investigation, gathering the records to prevent and deter terrorist acts, and at the same time not allow an open-ended, perhaps relevant but very unrelated to the purposes of a legitimate investigation, sweep-up of those records. And I must prefer changing that standard than carving out exemptions for libraries or exemptions for bookstores or exemptions for medical records, which in some cases may have information very directly related to an agent for a foreign power.

So I'm hoping that between now and the floor there are some more things that can be done, as well as tomorrow in the other legislation we're marking up, and I agree with the gentleman from California.

Ms. LOFGREN. Would the gentleman yield?

Mr. SCHIFF. I'd be happy to yield.

Ms. LOFGREN. I would just like to encourage the gentleman from California, Mr. Berman, in his efforts to change the relevance standard. I think it's extremely important. I'm not, certainly, prepared to support this measure until that is addressed, and hopefully you will succeed in your effort. And if there's anything I can do to assist, I would be happy to do so.

However, I also believe that there are some carve-outs in addition to the change of the relevance statute that we should look at, especially since the—there is a chilling effect on First Amendment exercise today, whether or not the—and the Justice Department says they have never used it for a library. I have no reason to disbelieve that. But Americans believe that they have, and it chills the exercise of First Amendment. And I think that is ample reason to pay attention since there is another way to get information. And I thank the gentleman for yielding and look forward to working with you between now and the floor.

Mr. SCHIFF. I yield quickly to the gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. Thank you. And I just wanted to comment on the gentleman from Texas, who pointed out the phone numbers. But this is more than just phone numbers. This is e-mail addresses where you can get—if you get the e-mail, you can get all the addresses on it. You can really get somebody's entire mailing list. And if you get the Web page somebody's looking at, you can find out what they were searching for, what they read, what page they read. I mean, you're getting some mighty good content when you get the Web page, the total address of the Web page.

You need more than just a little certification of relevance, and it's not just the terrorist information. Anything relevant to the investigation. That could be some innocent people's information. You ought to need more than just——

Chairman SENSENBRENNER. The time of the gentleman from California has expired.

The question is on agreeing to the amendments en bloc offered by the gentleman from New York, Mr. Nadler. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it, and the amendments are not agreed to.

Are there further amendments?

[No response.]

Chairman SENSENBRENNER. If there are no further amendments, the question occurs on the motion to report the bill H.R. 3199 favorably as amended. A reporting quorum is present. All in favor will say aye? Opposed, no?

Mr. CONYERS. Mr. Chairman, I request a recorded vote.

Chairman SENSENBRENNER. The ayes appear to have it. A recorded vote is ordered. Those in favor of the motion to report the bill favorably as amended will as your names are called answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. Aye.
The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye. Mr. Chabot?
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye. Mr. Lungren?
Mr. LUNGREN. Aye.
The CLERK. Mr. Lungren, aye. Mr. Jenkins?
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye. Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye. Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye. Mr. Inglis?
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis, aye. Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye. Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye. Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye. Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye. Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye. Mr. Pence?
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye. Mr. Forbes?
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Berman?
Mr. BERMAN. Pass.
The CLERK. Mr. Berman, pass. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no. Ms. Jackson Lee?
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no. Ms. Waters?
Ms. WATERS. No.

The CLERK. Ms. Waters, no. Mr. Meehan?
Mr. MEEHAN. No.
The CLERK. Mr. Meehan, no. Mr. Delahunt?
Mr. DELAHUNT. No.
The CLERK. Mr. Delahunt, no. Mr. Wexler?
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no. Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no. Mr. Schiff?
Mr. SCHIFF. Pass.
The CLERK. Mr. Schiff, pass. Ms. Sánchez?
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no. Mr. Van Hollen?
Mr. VAN HOLLEN. No.
The CLERK. Mr. Van Hollen, no. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. No.
The CLERK. Ms. Wasserman Schultz, no. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Are there further members who wish to cast or change their vote? The gentleman from Texas, Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Smith, aye.
Chairman SENSENBRENNER. Further members—the gentleman from Texas, Mr. Gohmert.
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye.
Chairman SENSENBRENNER. Further members who wish to cast or change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 23 ayes, 14 noes, and two pass.
Chairman SENSENBRENNER. And the motion to report favorably is agreed to.
Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute——
Mr. SCOTT. Mr. Chairman, reserving the right to object, and I'd ask under the reservation whether or not we can put information into the record at this point.
Chairman SENSENBRENNER. If the gentleman will allow me to request permission for members to include additional, dissenting, or minority views, that's the way you do it.
Mr. SCOTT. Unanimous consent to enter into the record a document.
Chairman SENSENBRENNER. There is a unanimous consent presently pending. Does the gentleman withdraw his reservation?
Mr. SCOTT. I withdraw.
Chairman SENSENBRENNER. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today.
Without objection, the staff is directed to make any technical and conforming changes, and all members will be give 2 days as pro-

vided by the House Rules in which to submit additional, dissenting, supplemental, or minority views.

For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Mr. Chairman, I ask unanimous consent for a document outlining some problems with the PATRIOT Act prepared by the Democratic Staff.

Chairman SENSENBRENNER. Without objection, the document will be included in the record at this point.

[The information follows:]

ABUSES OF THE USA PATRIOT ACT
Prepared by the House Judiciary Democratic Staff

While some have suggested that no abuses have occurred under the USA PATRIOT Act, the simple truth is that it appears that abuses have indeed occurred. The following are examples:

SECTION 215, Seizure of Records or "Any Tangible Thing"

- Since 9/11, the American Library Association found that libraries have received over 200 formal and informal requests for materials, including 49 requests from federal officers

SECTION 218, Coordinating Criminal and Intelligence Investigations

- Abuse in the Brandon Mayfield case: The FBI used Section 218 to secretly break into his house, download the contents of four computer drives, take DNA evidence and take 355 digital photographs. Though the FBI admits Mr. Mayfield is innocent, they still will not divulge the secret court order to him, or allow him to defend himself in court. It is unclear how the search was for any reason but to find evidence incriminating Mr. Mayfield.

SECTION 805, Material Support for Terrorism

- Section 805 has been found UNCONSTITUTIONAL by three separate courts. The 9th Circuit found the provision prohibiting "personnel" and "training" was overly vague. The Central California District Court found the provisions prohibiting "expert advice and assistance" was overly vague. A New York District Court found the provisions prohibiting "personnel" and acting as a "quasi-employee" overly vague. In each instance, the courts found COMPLETELY LEGAL ACTIVITIES would violate Section 805.
- Abuse in Lynne Stewart case: A District Court threw out charges of materials support against Lynne Stewart, holding that the law makes ANY action by a lawyer in support of an alleged foreign terrorist client illegal, including providing legal advice.
- Abuse in Sami Al-Hussayen case: A federal jury in Idaho acquitted University of Idaho graduate student Al-Hussayen on all charges of providing material support for a terrorist organization by running a website for the Islamic Assembly of North America. Importantly, this group is NOT on the list of foreign terrorist organizations, and the links posted by Al-Hussayen were available on the GOVERNMENT'S own website.

SECTION 213, "Sneak and Peek" Searches

- In a July 5, 2005 letter to Rep. Bobby Scott, DOJ said Section 213 had been used 153 times as of 1/31/2005; ONLY EIGHTEEN(11.8%) uses involved terrorism investigations. Thus, ALMOST 90% of "sneak and peek" warrants were used in ordinary criminal investigations: 97 warrants were used in drug investigations and 38 were used in other criminal investigations.
- Abuse of delays: In April 2005, DOJ said 90-day delays are common, and that delays in notification have lasted for as long as 180 days. In May 2003, DOJ said its longest delay was 90 days.
- Abuse of delays for "unspecified times": Delays may be sought for an unspecified

duration, including until the end of the investigation. In one such case, the delay lasted 406 DAYS.

- Abuse of delay extensions: In May 2003, DOJ reported it had asked for 248 delay notification extensions, including multiple extension requests for a single warrant, and that the courts had granted EVERY SINGLE REQUEST.
- Abuse of "catch-all provision": In an April 4, 2005 letter to Chairman Sensenbrenner, DOJ reports 92 out of 108 (85%) sneak and peek warrants were justified because notification would "seriously jeopardize the investigation" and in 28 instances that was the sole ground for delaying notice.

SECTION 505, National Security Letters

- Section 505 has been found UNCONSTITUTIONAL. The Southern District of New York held Section 505 violated the 1st and 4th Amendments. Section 505 places a prior restraint on free speech with its gag order, and it prevents due process by barring the recipient's access to the courts. Specifically, an Internet Service Provider was unconstitutionally coerced to divulge information about email activity and web surfing on its system, and the ISP was then gagged from disclosing this abuse to the public.

SECTION 411, Revocation of Visas

- Abuse in Tariq Ramadan case: Professor Ramadan's visa to teach at Notre Dame was revoked upon charges that he supported terrorism; Notre Dame, Scotland Yard, and Swiss intelligence all agree the charges were groundless.
- Abuse in Dora Maria Tellez case: Nicaraguan Professor Tellez was denied her visa to teach at Harvard due to her association with the Sandinistas in the 1980s, where she helped to overthrow a brutal dictator whom the U.S. supported.

PROTECTION MASS TRANSIT

- Oddly, New York law enforcement has begun using the provision of the PATRIOT Act that protects against attacks on mass transit to forcefully kick homeless persons out of the New York train stations.

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Chairman SENSENBRENNER. Pursuant to the authority granted the Chair earlier today, the Committee stands in recess until 9:30 tomorrow.

[Whereupon, at 9:45 p.m., the Committee recessed, to reconvene at 9:30 a.m., Thursday, July 14, 2005.]

DISSENTING VIEWS TO H.R. 3199, THE "USA PATRIOT AND INTELLIGENCE REFORM REAUTHORIZATION ACT OF 2005"

We dissent from the passage of H.R. 3199 in its present form.

We oppose this legislation for several reasons. First, we never have been given the facts necessary to fully evaluate the operation of the PATRIOT Act. Second, there are numerous provisions in both the expiring and other sections of the PATRIOT Act that have little to do with combating terrorism, intrude on our privacy and civil liberties, and have been subject to repeated abuse and misuse by the Justice Department. Third, the legislation does nothing to address the many unilateral civil rights and civil liberties abuses by the Administration since the September 11 attacks. Finally, the bill does not provide law enforcement with any additional real and meaningful tools necessary to help our nation prevail in the war against terrorism. Since 2002, 389 communities and seven states have passed resolutions opposing parts of the PATRIOT Act, representing over 62 million people.[1] Additionally, numerous groups ranging the political spectrum have come forward to oppose certain sections of the PATRIOT Act and to demand that Congress conduct more oversight on its use, including the American Civil Liberties Union, American Conservative Union, American Immigration Lawyers Association, American Library Association, Center for Constitutional Rights, Center for Democracy and Technology, Common Cause, Free Congress Foundation, Gun Owners of America, Lawyers' Committee for Civil Rights, National Association for the Advancement of Colored People (NAACP), National Association of Criminal Defense Lawyers, People for the American Way, and numerous groups concerned about immigrants' rights.[2]

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[1] A Complete List of Communities That Have Passed Resolutions, is available at *http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=11294&c=207* (last checked July 18, 2005). Colorado, Montana, Idaho, Maine, Vermont, Alaska, and Hawaii have all passed statewide resolutions. Resolutions have also been passed in such communities as Lincoln, Nebraska; Des Moines, Iowa; Savannah, GA; Pittsburgh, PA; Dallas, TX; New York, New York; Atlanta, GA; Portland, Oregon; Philadelphia, PA; Dillion, Montana; and Detroit, Michigan.

[2] Other groups opposing the PATRIOT Act include the American-Arab Anti-Discrimination Committee, American Association of Law Libraries, American Baptist Churches USA, American Humanist Association, American Policy Center, Americans for Tax Reform, Arab American Institute, Asian Americans for Equality, Asian American Legal Defense & Education Fund, Association of American Physicians and Surgeons, Association of Research Libraries, Bill of Rights Defense Committee, Center for Human Rights and Constitutional Law, Center for Justice and Accountability, Center for National Security Studies, Chicago Committee to Defend the Bill of Rights, Commission on Social Action of Reform Judaism, Consumer Action, Doctors for Disaster Preparedness, Electronic Privacy Information Center, First Amendment Foundation, F.I.R.S.T. Project, Inc., Friends Committee on National Legislation, Hate Free Zone Campaign of Washington, Immigrant Defense Project of the New York State Defenders Association, Immigrant Legal Resource Center, International Institute of Boston, Japanese American Citizens League, Korean Resource Center, Latin American Integration Center, Lawyers Committee for Human Rights, League of United Latin American Citizens, Mennonite Central Committee U.S., Washington Office, Mexican American Legal Defense and Educational Fund (MALDEF), Multiracial Activist, National Asian Pacific American Legal Consortium, National Coalition Against Repressive Legislation, National Council of La Raza, National Employment Law Project, National Immigration Law Center, National Lawyers Guild, New York Immigration Coalition, Northwest Immigrant Rights Project, OMB Watch, Organization of Chinese Americans, Police Accountability Project, Presbyterian Church USA, Washington Office, Special Libraries Association,

While the PATRIOT Act may not deserve all of the ridicule that is heaped against it, there is little doubt that the legislation has been repeatedly and seriously misused by the Justice Department. Consider the following:

- It has been used more than 150 times to secretly search an individual's home, with nearly 90% of those cases having had nothing to do with terrorism.
- It was used against Brandon Mayfield, an innocent Muslim American, to tap his phones, seize his property, copy his computer files, spy on his children, and take his DNA, all without his knowledge.
- It has been used to deny, on account of his political beliefs, the admission to the United States of a Swiss citizen and prominent Muslim Scholar to teach at Notre Dame University.
- It has been used to unconstitutionally coerce an Internet Service Provider to divulge information about e-mail activity and web surfing on its system, and then to gag that Provider from even disclosing the abuse to the public.
- Because of gag restrictions, we will never know how many times it has been used to obtain reading records from library and bookstores, but we do know that libraries have been solicited by the Department of Justice—voluntarily or under threat of the PATRIOT Act—for reader information on more than 200 occasions since September 11.
- It has been used to charge, detain and prosecute a Muslim student in Idaho for posting Internet website links to objectionable materials, even though the same links were available on the U.S. Government's web site.

Even worse than the PATRIOT Act has been the abuse of unilateral powers by the Administration. Since September 11, our government has detained and verbally and physically abused thousands of immigrants without time limit, for unknown and unspecified reasons, and targeted tens of thousands of Arab-Americans for intensive interrogations and immigration screenings. All this serves to accomplish is to alienate Muslim and Arab Americans—the key groups to fighting terrorism in our own county—who see a Justice Department that has institutionalized racial and ethnic profiling, without the benefit of a single terrorism conviction.

Nor is it helpful when our government condones the torture of prisoners at home and abroad, authorizes the monitoring of mosques and religious sites without any indication of criminal activity, and detains scores of individuals as material witnesses because it does not have evidence to indict them. This makes our citizens less safe not more safe, and undermines our role as a beacon of democracy and freedom.

While the Majority asserts it is not the duty of this Committee to respond to these abuses, we believe that ignoring these and

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Square One Media Network, Unitarian Universalist Association of Congregations, United Electrical, Radio and Machine Workers of America, Washington Defenders Immigration Project, Women Against War Young Korean-American Service & Education Center (YKASEC). In addition, a new coalition of conservative and liberal groups have come together to urge increasing checks and balances on the powers the government already has: Association of American Physicians and Surgeons, American Civil Liberties Union, American Conservative Union, Americans for Tax Reform, American Policy Center, Citizens Committee for the Right to Keep and Bear Arms, Eagle Forum, Free Congress Foundation, Libertarian Party, Gun Owners of America, Second Amendment Foundation.

other cases of abuse by our own government constitutes an abdication of our responsibility as legislators, and should be addressed by this legislation.

The following is a brief background and description of the PATRIOT Act and the proposed reauthorization legislation, followed by a listing of our various concerns with the legislation.

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I. Background and Description of Legislation

The PATRIOT Act was passed into law on October 26, 2001. A major concern with this legislation is the process by which it was enacted into law. Within days of the September 11 attacks, then-Attorney General John Ashcroft publicly announced that the Justice Department was drafting a new bill that Congress should pass within one week because the new powers were needed to fight terrorism. An initial draft of the legislation was leaked to the media soon after; it is believed that Republican Members and staff of the Committee were provided actual copies of the bill. A few days after the draft was leaked, the Department sent a new, official draft to Congress that consisted of its wish list of new law enforcement, immigration, and intelligence authorities. The hearing was so rushed that then-Attorney General Ashcroft would not even submit himself to a full round of questions by the members.

The U.S. House Judiciary Committee worked out a bipartisan compromise with the Administration. The Committee passed the compromise legislation in the form of H.R. 2975 on an unprece-

dented 36–0 vote.[3] While H.R. 2975 was being prepared for floor consideration, however, the Administration reneged on the deal and Chairman Sensenbrenner introduced a new and more aggressive terrorism bill, H.R. 3108, on the morning of October 12, 2001. That same day, the Rules Committee issued the rule for H.R. 2975 and provided that H.R. 3108 would be the adopted substitute amendment to H.R. 2975. The very same day, the House passed the new legislation by a vote of 337–79 under a closed rule.

While the House was moving forward on new legislation, the Attorney General turned his attention to the Senate, which had yet to pass a new terrorism bill. The Attorney General publicly indicated that Senate Democrats questioning the scope of the Department's new bill would be responsible for future terrorist attacks if a new terrorism law was not passed in time.[4]

Compromise discussions proceeded and eventually broke down. Based in part on these discussions, Chairman Sensenbrenner introduced the new legislation as H.R. 3162 on October 23, 2001. H.R. 3162 was brought straight to the floor under suspension of the rules and passed the House the next day by a vote of 357–66. The Senate passed the bill on October 25, 2001, by a vote of 98–1.[5]

Although it was originally hoped that the legislation would simply give the Justice Department a set of specific tools to help it fight terrorism, the legislation ended up being a broad expansion of law enforcement powers that the Department had been seeking for years, but had been unable to convince Congress to enact.

As enacted into law, the PATRIOT Act included more than 160 separate sections (Appendix A provides a section by section description of those provisions). In addition, due in part to the concern by many Members with the rushed nature and broad scope of the PATRIOT Act, it was determined that 16 of the sections authorizing new surveillance powers should sunset on December 31, 2005 (Appendix B contains a more detailed section by section description of those 16 expiring provisions).

H.R. 3199 would make permanent all of the sunset provisions of the PATRIOT Act, save Section 206, concerning John Doe Roving Wiretaps, and Section 215, concerning foreign intelligence orders for any tangible thing, which are renewed for 10 years each. It also makes permanent the material support and lone wolf authorities created in the intelligence reform bill last fall.[6]

The bill makes several changes to current law. First, H.R. 3199 allows a Section 215 recipient to challenge his order in writing before a three-judge panel of the Foreign Intelligence Surveillance Court (FISC) in Washington, DC, and assert that FISA, as written was wrongly applied to his order. Arguably, it also provides that a person may discuss his 215 order with his attorney.

Second, H.R. 3199 creates a "return" on Section 206 John Doe Roving Wiretap orders. It simply provides that after a roving wire-

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[3] H.R. Rep. No. 236, 107th Cong., 2d Sess. (2001).

[4] See David G. Savage & Eric Lichtblau, Ashcorft Deals with Daunting Responsibilities, L.A. Times, Oct. 28, 2001, at A10 ("When the Attorney General's imposed deadline [for passage of new terrorism legislation] passed, Ashcroft suggested that if a second terrorist attack occurred, the recalcitrant lawmakers would deserve the blame.").

[5] Senator Russ Feingold (D–WI) voted "No" and Senator Mary Landrieu (D–LA) did not vote.

[6] Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458, Sections 6603 and 6001, respectively.

tap is issued, the Justice Department return to the FISA court and certify what facilities were ultimately tapped within 10 days.

Third, the legislation amends Section 203(b) of the PATRIOT Act. Section 203(b) allows federal agencies to share information it gathers from electronic, oral and wire intercepts with other departments and agencies. This bill would require the government to notify the court that approved the original surveillance of the sharing.

Fourth, H.R. 3199 alters Section 207 of the PATRIOT Act pertaining to the length of FISA orders. It limits the new extended durations to non-U.S. persons, and extended pen register and trap and trace orders to one year.

Fifth, during the markup, a Lungren amendment was accepted that created an annual reporting requirement on Section 212, which immunizes private companies for their voluntary disclosures of electronic information to law enforcement in emergency situations.

Sixth, during markup, a Schiff amendment was accepted which would add to the list of activities which, if done willfully, will result in violating the statute which prohibits the planning of terrorist attacks on mass transportation (18 USC 1993(a)(3)).

Seventh, during markup, a Lofgren amendment was accepted which amends Section 1001 of the PATRIOT Act to require the Inspector General of the Department of Justice to also report on the detentions of persons by the United States, including information about the length of detention, the offense, and the conditions and frequency of their access to counsel.

Eighth, during markup, a Schiff amendment was accepted which (a) adds to the list of predicate offenses which are considered "federal crimes of terrorism"; (b) allows for the forfeiture of property involved in the trafficking of weapons of mass destruction; and (c) adds numerous crimes related to terrorism to the list of offenses for which oral and wire communications may be intercepted under 18 U.S.C. 2516.

Finally, during the markup, Mr. Nadler and Mr. Flake offered a bipartisan amendment to address the notification delay period relating to the Section 213 "sneak and peek" provision. Under their amendment, the initial period of delayed notification of secret searches may not be for more than 180 days, and extensions may be given for not more than 90 days at a time.

It is important to note that the 9/11 Commission recommended that to retain any new authorities, "The burden of proof for retaining a particular government power should be on the executive to explain (a) that the power materially enhances security and (b) that there is adequate supervision of the executive's use of those powers to ensure protection of civil liberties."[7] We have never been given the facts necessary to properly evaluate its operation; however, based upon the information we have been able to glean our review indicates that this burden has not been met. For these and the reasons set forth herein, we oppose H.R. 3199

[7] The 9/11 Commission Report, National Commission on Terrorist Attacks Upon the United States, at 395.

II. We Have Never Been Given the Necessary Facts To Properly Evaluate the PATRIOT Act

Neither the original USA PATRIOT Act nor this reauthorization legislation were subject to proper oversight. Since the enactment of the PATRIOT Act, the Department has failed to account for its use. In addition, the pending legislation was deprived of any deliberative consideration prior to the full Committee markup.

First, the Department has thwarted efforts on the part of Democratic Members to learn how the PATRIOT Act has been enforced. While the Department has responded to Committee inquiries pertaining to the Act, in many instances it states that it does not keep track of how certain authorities are used or qualifies the answers it does give. For instance, in its most recent submission to the Committee, the Department states it does not know how many times Foreign Intelligence Surveillance Act authorities have been used to investigate terrorism crimes versus other offenses.[8]

On April 1, 2003, the Committee sent the Department an exhaustive series of questions on the Act. In response to a question about how many mosques have been contacted for membership lists, the Department merely states that it has conducted demographic surveys of mosques; it simply ignores the question.[9] It further states it does not keep racial or ethnic characteristic information on material witness detainees and, as such, is unable to answer a question about that matter.[10] When it chooses to answer a question, the Department often includes a qualifier, making the answer meaningless. For example, when replying to a question about material witness detainees since September 11, 2001, having access to legal counsel, the Department says that "every single person detained as a material witness as part of the September 11 investigation has been represented by counsel."[11] The answer left open the possibility that a material witness as part of a non-September 11 terrorism investigation was denied access to counsel.

In addition, the Department prohibits public review of its activities by sending some information about the PATRIOT Act under classified cover. Interestingly, in at least two instances, the Department has declassified relevant information only when it was politically expedient. In the summer of 2003, there was significant criticism of section 215 of the Act from the media, civil liberties groups, and libraries and bookstores based on the belief that the provision gave unconstitutionally broad power to seize documents and things about anybody, including patrons' library and bookstore records in violation of the First Amendment.[12] Attempting to quell such rising

[8] Letter from the Honorable Alberto Gonzales, Attorney General of the United States, to the Honorable F. James Sensenbrenner, Jr., Chairman, U.S. House Comm. on the Judiciary 3–4 (July 12, 2003).

[9] Letter from the Honorable Jamie E. Brown, Acting Ass't Attorney General, U.S. Dep't of Justice, to the Honorable F. James Sensenbrenner, Jr., Chairman, U.S. House Comm. on the Judiciary 56 (May 13, 2003).

[10] Id. at 50.

[11] Id. at 48.

[12] Warren Richey & Linda Feldmann, Has Post-9/11 Dragnet Gone too Far?, Christian Science Monitor, Sept, 12, 2003, at 1; Howard Troxler, New Powers? Not Unless the Feds Get Old Ones Right, St. Petersburg Times, Sept. 10, 2003, at 1B; Jack Torry, Opinions Clash on Terrorism-Fighting Patriot Act, Columbus Dispatch, Sept. 7, 2003, at 1C; Peter Schworm, Librarians Fight Search Law, Boston Globe, Aug. 21, 2003 at 1; Nat Hentoff, Ashcroft Moves to Encroach further on our Liberties, Chicago Sun-Times, Aug. 24, 2003, at 30 (op-ed); James Bovard, America

Continued

criticism, on September 18, 2003, the Attorney General declassified a memorandum he had written to FBI Director Robert Mueller showing that section 215 had never been used as of that date.[13] In addition, then-Attorney General John Ashcroft declassified a memo written by 9/11 Commissioner Jamie Gorelick concerning the "wall" between criminal and intelligence investigations as a way to turn attention away from his failure to appropriately focus on counterterrorism.[14]

The Department's lack of accountability is even more troubling considering that it was derelict in its duties to Congress just prior to the markup. On May 19, 2005, over one month after the Committee's April 6, 2005 hearing with the Attorney General, Chairman Sensenbrenner transmitted to the Department a series of questions about the Act for himself,[15] Ranking Member John Conyers, Rep. Zoe Lofgren, and Rep. Martin Meehan (D–MA).[16] While the Department answered the Chairman's questions on June 10, 2005,[17] the answers to the questions submitted by the three Democratic Members were answered only on the morning of the full Committee markup over one month later, and most of the answers were incomplete and unresponsiive.[18]

Similarly, Rep. Zoe Lofgren attempted to exercise her oversight authority and requested to see applications for search and seizure orders obtained under Section 214 (pen register and trap-and-trace orders) and Section 215 (business records) of the USA PATRIOT Act. A letter was sent on behalf of Ms. Lofgren and the other Members of the Committee who wished to review these order applications on July 7, 2005.[19] The letter asked that they be allowed to review these orders on either Monday or Tuesday, July 11 or July 12, as the Committee was set to markup H.R. 3199 on Wednesday. On Monday, July 11, two days before the Committee was set to meet, DOJ responded that usually only redacted copies are provided to the Intelligence Committees; DOJ was asked to determine if our members could also review these orders. Finally, at 5:50 on Tuesday, July 12, 2005, approximately 16 hours before the Committee markup was to begin, the DOJ responded that Committee members could review a sample of FISA applications at the Senate

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Fights for Freedom to Read, Balt. Sun, Aug. 18, 2003, at 15A; Congress Should Reform Dangerous Patriot Act, Det. News, Aug. 1, 2003 at 10A (editorial); Ellen Goodman, It's Time for Congress to Take Away Ashcroft's Fishing License, Balt. Sun, at July 24, 2003, at 17A (editorial); Lillian Thomas, Rights Groups Rally Opposition to National Anti-Terrorism Law, Pittsburgh Post-Gazette, July 17, 2003, at B5; Don Behm, Bookstores Balk at Record-Seizure Law, Milwaukee Journal-Sentinel, June 23, 2003, at 2A; Wayne Woodlief, Ashcroft's Act Borders on Unpatriotic, Boston Herald, June 8, 2003, at 25 (op-ed).

[13] Memorandum from the Honorable John D. Ashcroft, Attorney General of the United States, to the Honorable Robert S. Mueller, Director, FBI (Sept. 18, 2003).

[14] Jason Zengerle, "Critiquing Ashcroft's 9/11 Show," The New Republic, April 15, 2004.

[15] Letter from the Honorable F. James Sensenbrenner, Jr., Chairman, U.S. House Comm. on the Judiciary, to the Honorable Alberto Gonzales, Attorney General of the United States (May 19, 2005) (transmitting questions on behalf of himself).

[16] Letter from the Honorable F. James Sensenbrenner, Jr., Chairman, U.S. House Comm. on the Judiciary, to the Honorable Alberto Gonzales, Attorney General of the United States (May 19, 2005) (transmitting questions on behalf of Democratic Members).

[17] Letter from the Honorable Alberto Gonzales, Attorney General of the United States, to the Honorable F. James Sensenbrenner, Jr., Chairman, U.S. House Comm. on the Judiciary (June 10, 2005) (sent under classified cover).

[18] Letter from the Honorable Alberto Gonzales, Attorney General of the United States, to the Honorable F. James Sensenbrenner, Jr., Chairman, U.S. House Comm. on the Judiciary (July 12, 2005).

[19] Letter from Perry Apelbaum, Minority Chief Counsel, House Judiciary Committee, to Assistant Attorney General William E. Moschella, July 7, 2005. Letter on file with Committee.

Select Committee on Intelligence, and could not review FISA applications at main Justice.

This entire process illuminates the steps DOJ has taken to prevent the Democratic members from performing effective oversight. Second, Ms. Lofgren and the other Committee members have the authority and necessary clearance to review these orders and there was no clear reason why the Judiciary Committee members should be blocked from reviewing orders that the Intelligence Committees can review. Finally, this interchange undermines one of the main reasons the Majority uses to justify making the PATRIOT Act permanent the Majority argues that the Members can exercise oversight if they so choose, and that they have not chosen to exert this oversight. Here, the Members attempted to review the authority granted to law enforcement by the PATRIOT Act under FISA and they were deliberately delayed and thwarted in their attempt to perform their constitutional duty of oversight of the executive branch. Thus, it is not that the Members do not wish to perform oversight of the use of these authorities; rather, it is that the Administration has conducted a deliberate attempt to deny and block certain Members ability to do so.

The concerted effort to thwart any meaningful oversight and review of the Patriot Act is also evident by the manner in which the Majority chose to respond to the Minority's request for additional day of oversight hearings on the legislation. During the course of the Committee's oversight hearing with Deputy Attorney General Comey, and pursuant to House Rule XI, clause 2(j)(1), the Minority requested an additional day of oversight hearings on the reauthorization of the Patriot Act. The purpose of the additional day of hearings was to provide Members with a last chance opportunity to explore important issues within the scope of the Patriot Act which up until that point had not been adequately covered.

Unfortunately in responding of the Minority's request, the Majority decided to engage in a series of actions which frustrated the Minority's party efforts to conduct such a hearing. Namely, the Majority chose to schedule the requested day of hearings with less than forty-eight hours notice; required the Minority to provide the Majority with a list of witnesses and witness testimony in less than twenty-four hours; decided to schedule the hearing at 8:30 am on a Friday, a date in which there where no votes on the House floor; and chose to unilaterally adjourn the hearing without first obtaining or seeking either a unanimous consent request or a vote of the Committee members present. As pointed out in the resolution offered by Mr. Nadler raising a question of privilege regarding these actions, many of these aforementioned deeds were in clear violation of numerous House rules and certainly contrary to the Committee's usual custom and practices.

Finally, Members of the Committee were deprived of any meaningful review of H.R. 3199 after its introduction. The Majority distributed the legislation only on the late afternoon of Friday, July 8, 2005, just five days before it was scheduled to be considered by the Committee. In addition, this legislation was not subject to any hearing, either at the full Committee or subcommittee level, or to a subcommittee markup. Hearings and subcommittee markups are preliminary stages of review that are customary in the House for

any legislation; they permit the Members and other interested parties to consider and debate specific legislation prior to final consideration before either the full Committee or the full House.[20] The Majority, unfortunately, bypassed these important steps and immediately scheduled H.R. 3199 for a full Committee vote.

III. There are Numerous Provisions in Both the Expiring and Other Parts of the PATRIOT Act That Are Largely Unrelated to Terrorism and Unnecessarily Intrude on Privacy Rights and Other Civil Liberties

There are numerous provisions in the PATRIOT Act, that have raised concerns. The following is a description of some of the concerns and issues.

A. SPECIFIC CONCERNS WITH EXPIRING PROVISIONS

1. Sec. 206—Roving surveillance authority under the Foreign Intelligence Surveillance Act

This section allows the FBI to use roving wiretaps under FISA. This means that the FBI can obtain a single court order to tap any phone they believe a foreign agent would use, instead of getting separate court orders for each phone. Additionally, the government does not need to name the target, thus allowing so-called "John Doe" wiretaps. The impact of allowing "John Doe" roving wiretaps is that the government can legally tap almost any phone of almost any person without having to show that the person is in any way connected to espionage or terrorism, or even suspected of criminal wrongdoing. Thus, the Fourth Amendment rights of ordinary citizens against such search and seizures can be completely circumvented.

Few disagree that roving wiretaps are important. Indeed, they have been useful in criminal investigations since 1986. However, FISA roving wiretaps go far beyond criminal wiretaps. First, FISA allows for blanket tapping, such as tapping all the payphones in the target's neighborhood or all of his relatives, without showing that the target will actually use the device.[21] Second, agents seeking a roving wiretap need not even identify a specific suspect and may instead get "John Doe" warrants.[22] These add up to roving "John Doe" warrants that require so little specificity that they can be easily abused. The number of times this authority has been used and in what manner was classified[23] until April 6 2005, when the Attorney General admitted to using it 49 times since the PATRIOT Act passed.

The Justice Department argues that this authority is available in criminal cases. However, a criminal wiretap application must in-

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[20] We would note that even in the immediate aftermath of the September 11 attacks, a preliminary draft of the PATRIOT Act was subject to a legislative hearing in the Committee. Administration's Draft Anti-Terrorism Act of 2001: Hearing Before the House Comm. on the Judiciary, 107th Cong., 1st Sess. (Sept. 24, 2001).

[21] John Podesta, "USA PATRIOT Act: The Good, the Bad and the Sunset," Human Rights Magazine, Section of Individual Rights and Responsibilities, American Bar Association, Winter 2002.

[22] "Let the Sun Set on PATRIOT," Electronic Frontier Foundation, available at *www.eff.org.*

[23] Oversight answers, submitted by Daniel J. Bryant, Assistant Attorney General, July 26, 2002, on file with the House Judiciary Committee; The PATRIOT Act: Myth vs. Reality, U.S. Department of Justice, September 2003.

clude specific information about the crime, the location to be tapped and the identity of the target, if known.[24] A judge must also find probable cause that (1) the target has or will commit a crime, (2) the communications to be seized are related to that crime, and (3) the phones to be tapped will be used by the target, as well as that normal investigative procedures have failed or will fail.

This statute does allow roving wiretaps. However, a roving wiretap triggers a whole new section that requires that the application "identif[y] the person committing the offense and whose communications are to be intercepted."[25] In other words, the Justice Department must choose between a John Doe or a roving wiretap in criminal cases—it cannot have both at the same time.[26]

2. Sec. 209—Seizure of voicemail messages pursuant to warrants

Section 209 of the PATRIOT Act expands the ability of law enforcement to seize voicemails. Before the Act, voicemail messages on an answering machine in one's home could be seized pursuant to a search warrant. Voicemail messages stored with a service provider, however, required a Title III order. A Title III order actually offers higher protections than a search warrant: a Title III warrant requires more information than just a showing of probable cause and the probable cause section of a Title III order is more extensive than an affidavit for a search warrant.[27]

Some of us are concerned Section 209 may unreasonably expand the authority of law enforcement to seize the content contained in voicemail messages by amending the law to treat stored voicemails like other stored data. Section 209 may circumvent the Fourth Amendment requirements of notice and probable cause for voicemails stored by a third party, leading to a real concern about how private and personal communications should be treated in connection with criminal investigations.

Section 209 amends the law to treat stored voicemails like other stored data (such as emails). While Section 209 seemingly requires a warrant to seize voicemail messages, the law amended by this provision actually makes a key distinction between older and newer stored emails, and this distinction now applies to stored voicemails. Those voicemails that are considered "old" do not require a warrant or Title III order to be seized—which requires probable cause—but rather merely require a subpoena. Therefore, a possibly reasonable power of seizing stored voicemails has been expanded unreasonably to allow their seizure by any prosecutor at any time, thus vitiating existing privacy rights. And, merely because the voicemails are stored by a third party, rather than stored on a home answering machine, they can be seized without notice to the target. This vio-

[24] 18 U.S.C.A § 2518(1)(b) (2005).

[25] 50 U.S.C.A. 2518(11) (2005).

[26] The Justice Department will claim that it has the authority to issue similar wiretaps in criminal cases, and cites support from three circuits. Yet, the cases that found the use of roving wiretaps to be constitutional did so because of the other requirements in the Title III statute that make the warrant particular enough to meet Fourth Amendment muster. These requirements are not in FISA, however. Also, it appears that those cases were not about "John Doe" wiretaps and therefore not quite as "similar" as the Justice Department claims.

[27] A Title III search warrant or order requires what is known at "probable cause plus." Rather than showing there is probable cause to believe, for example, that a particular phone line is being used in connection with criminal activity, a Title III order must prove that the particular phone line is "clearly being used" for illegal purposes. Furthermore, in order to obtain a Title III warrant, the officer must show why normal investigative procedures have failed.

lates the longstanding constitutional principal that "the Fourth Amendment protects people, not places," expressed by the Supreme Court in Katz v. United States.[28] As a result, Section 209 allows law enforcement to seize the content contained in voicemails without any of the necessary Fourth Amendment protections. Finally, Section 209 applies to not just to terrorism investigations, but to any criminal investigation.

3. Sec. 212: Emergency disclosures of communications held by phone companies and Internet service providers

This section permits telephone companies and Internet Service Providers (ISPs) to disclose to the government, without penalty, customer communications and records if they think there is a danger of death or serious injury. This section precludes liability regardless of whether the company innocently stumbles on the information itself and approaches the government, or whether law enforcement initiates the disclosure itself. Because this section directly amended Title 18 of the U.S. Code, it can be used in any run-of-the-mill criminal investigation and has no ties to terrorism cases. In fact, all of the examples cited by the Justice Department are non-terror cases, including a bomb threat against a school, numerous kidnaping cases, and computer hacking threats.[29]

Section 225 of the Homeland Security Act (HSA) of 2002[30] made permanent the provision that allowed the disclosure of content. Only the portion of Section 212 that authorized the disclosure of records is scheduled to sunset at the end of the year. However, it is important to note that the new content disclosure rules in the HSA that prematurely reversed the PATRIOT Act sunset are even more permissive than originally passed by the PATRIOT Act. By all accounts, the new provision is far worse as it, "lower[s] the relevant standard from 'reasonable belief' of a life-threatening emergency to a 'good faith belief,' allow[s] communications providers to use the emergency exception to disclose data to any government entity, not just law enforcement, and drop[s] the requirement that the threat to life or limb be immediate."[31]

There are several concerns with the emergency disclosure provision, Section 212: First, there is absolutely no judicial oversight, including after-the-fact review by a court such as what happens under FISA.[32] The Justice Department has not addressed why a similar provision could not be put into the criminal law. Second, no notice is given to the target, even after the emergency has been resolved. Third, there is no consequence for a rogue or careless law enforcement officer who may overstate a threat in order to elicit communications without obtaining a subpoena or warrant. Under Fourth Amendment controlled searches, the government would be prohibited from using the evidence at trial, yet there appears to be no such protection for these disclosures. Finally, the Homeland Se-

[28] 389 U.S. 347, 351 (1967).
[29] See Report From the Field: The USA PATRIOT Act at Work, U.S. Department of Justice, July 2004.
[30] Pub. L. No. 107–296 (2002).
[31] Let the Sun Set on PATRIOT, Electronic Frontier Foundation, available at *www.eff.org*.
[32] The Attorney General may authorize emergency orders, but must then apply for a FISA Court warrant within 72 hours. If it is not granted, the exclusionary rule prevents the information from being used in court.

curity Act of 2002 required each entity to receive one of these disclosures to report it to the Attorney General within 90 days.[33] The Attorney General is then to report to Congress, but never has. Unfortunately, H.R. 3199 makes no effort to reign these powers in and provide even limited safeguards to ensure these authorities are not abused.

4. Sec. 214—Pen register and trap and trace authority under FISA

This section made it easier for the FBI to get a pen register or trap-and-trace under FISA.[34] The FBI needs to prove the order is needed to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities. Prior to the PATRIOT Act, the FBI needed to establish that the telephone line in question had been used or was about to be used in connection with terrorism or a crime; this requirement was deleted.

As the majority and the DOJ points out, search warrants are not required for pen register and trap and trace activities under the criminal law.[35] However, FISA pen register/trap and trace orders not only are not based on probable cause, but are not necessarily targeted at an individual based on even a lesser showing of involvement in any wrongdoing or any activities that otherwise might legitimately expose him to clandestine surveillance by the FBI. Before section 214, the government had to prove that the target was an agent of a foreign power; now, they need only prove that the information is related to a terror or intelligence investigation. This extremely broad qualification of a FISA pen register/trap and trace order has led many groups to oppose it.[36]

5. Sec. 215—Access to records and other items under the Foreign Intelligence Surveillance Act (so-called "Library" Provision)

Section 215 of the PATRIOT Act expanded the FBI's ability to obtain "any tangible thing" under the Foreign Intelligence Surveillance Act. Before the Act, the government could obtain records only from hotels/motels, storage facilities and car rental companies, and only if they pertain to "agents of a foreign power." Now, it can seek "any tangible thing" from any one at all as long as it is relevant to investigation.

Because the statute is so broad, the government could investigate consumers' reading and Internet habits and private records (such as credit card information, medical records, and employment histories). The Government will argue that it already had access to these sorts of business records in criminal investigations using grand jury subpoenas. However, the government's powers here are wholly different because there is no requirement of relevance to any criminal activity, as there is with grand jury investigations. A federal court found that section 215 implicates new constitutional problems: (1) it applies to any tangible thing, and is no longer lim-

[33] Pub. L. No. 107–296 § 225(d) (2002).

[34] A pen register is used to record the phone numbers that are dialed from a target phone. A trap-and-trace is used to record the phone numbers of the incoming calls to a target phone.

[35] Smith v. Maryland, 442 U.S. 735, 744 (1979) (using the phone involved a third party—the phone company—and therefore destroyed any expectation of privacy the target had).

[36] See, for example, Electronic Privacy Information Center "The USA PATRIOT Act," at *www.epic.org/privacy/terrorism/usapatriot/*.

ited merely to business records, and (2) it no longer requires "specific and articulable facts giving reason to believe that the person whom the records pertain is a foreign power or an agent of a foreign power," but only that "the records concerned are sought for an authorized investigation."[37] Thus, Section 215 can be used against any person even if the person is NOT suspected of wrongdoing or of any connection to a foreign power. Thus, there is virtually no limit to what these orders can get, and H.R. 3199 did nothing to improve this section.

We are concerned that these sections can be used to obtain very private information on purely innocent people. Whether it is library records, medical information or gun purchase records, the government should have access to them only when it can at clearly state why it needs them and why the person they pertain to is a terrorist or closely related to one. For example, the American Library Association has confirmed that the federal government has gone into a library and asked for a list of everyone who checked out a book on Osama bin Laden. In the wake of the horrific attack of September 11, it is obvious that many innocent people may go seeking information on why it happened. This search clearly gathered information on innocent people, who had the right to privacy in their reading habits. As a matter of fact, since 9/11, the American Library Association found that libraries have received over 200 formal and informal requests for materials, including 49 requests from federal officers, although it cannot be confirmed what authority (if any) was cited by the federal officers for obtaining this information.

Importantly, recipients of 215 orders are prohibited from disclosing that they received such an order to anyone but their attorneys. As a result, even though Section 215 allows for library reading habits to be surveilled and other private information to be seized, we have absolutely no way of knowing how often this authority has been used. And, recipients of 215 orders have no way of denouncing or challenging government overreach or abuse.

The only amendment on this issue that was accepted was one offered by Mr. Flake, though most of us feel that it is clear that this amendment does not solve the problem. Mr. Flake's amendment would allow 215 order recipients to consult their attorneys "with respect to" the order, rather than "in response to." Mr. Flake argues that this change would therefore allow a Section 215 order to consult an attorney about challenging the order. However, this small cosmetic change does not clearly give Section 215 recipients the right to challenge 215 orders. The right to consult an attorney does not directly lead to an ability to challenge the order in court, and this amendment does nothing to relieve the burden of the review mechanism created by H.R. 3199 or ensure that recipients will have enough information to successfully challenge problematic 215 orders.

In order to be meaningful, reform of section 215 must directly address its current infirmities. First, the standard for issuing a section 215 order must be reformed to require some individual suspicion that the records related to a spy, terrorist or other foreign

[37] *ACLU* v. *Dept. of Justice,* 321 F.Supp.2d 24 (D.D.C. 2004) (citing section 215 in its current form, and its original form, Pub. L. No. 105–272 (1998)).

agent, which may include the records of other (innocent) third parties where those records are clearly relevant to the activities of the subject under investigation. Second, a right to challenge must be a meaningful one. A meaningful right to challenge cannot be limited to the FISA court itself, which sits only in Washington, DC, operates in secret according to highly classified procedures, and ordinarily hears only from the government. The challenge must be based not only on whether the order is legal, but should allow for challenges on the basis that an order is unreasonable, oppressive, seeks privileged information. Finally, the hearing on the challenge should not be limited to a one-sided presentation of government attorneys based on secret evidence.

While a court has not ruled on the ultimate constitutional merits on section 215, it may well be found to violate the First Amendment because it (a) places a prior restraint on free speech and (b) monitors the free speech activities of its targets, and to violate the Fourth Amendment because it fails to provide notice to the target.[38] Minority members offered many amendments that would have protected the privacy of Americans; all were rejected on party line votes.[39]

On June 15 of this year, however, the House of Representatives voted to prevent funds from being spent on any 215 orders that would produce library circulation records, patron lists, book sales records or book costumer records.[40] The Amendment to the SCJSS 2006 Appropriations bill passed 238–187.

6. Sec. 218—Foreign intelligence information

This section says the FBI needs to aver that a "significant" purpose of a FISA order request is to gather foreign intelligence; before the Act, the FBI needed to show that obtaining foreign intelligence was the "primary purpose" of the order.

The Department has confirmed that "there was no legal impediment to introducing in a criminal prosecution evidence obtained through FISA before the USA PATRIOT Act."[41] Instead, the Department says these barriers resulted from "certain court decisions

[38] ACLU, Surveillance Under the USA PATRIOT Act, available at *www.aclu.org/Safeandfree.*

[39] The Amendments were as follows:

Mr. Nadler offered several amendments. He offered an amendment to limit 215 orders to "agents of a foreign power." Mr. Nadler also offered an amendment on the gag order contained in Section 215. His amendment would still allow gag orders, but the government would first need to show that the gag order is necessary, rather than having gag orders be automatically applied to any Section 215 recipient. For example, a gag order could be obtained if the government showed disclosure would endanger someone's life. Additionally, gag orders, if obtained, would have time limit of 180 days, with extensions available for up to 180 days. Mr. Nadler offered another amendment to the nondisclosure provision in Section 505. His amendment would allow disclosure to one's attorney or to anyone to whom disclosure is necessary to comply, thus making Section 505 have the same nondisclosure provision as Section 215. In addition, the amendment limited the nondisclosure period to 90 days. The government may request extensions of up to 180 days if they can show a clear harm would result from disclosure.

Mr. Schiff offered an amendment to require 215 orders to be made by the Director of the Federal Bureau of Investigation;

Ms. Jackson Lee offered an amendment to exempt medical records from the 215 authority.

Mr. Watt and Ms. Waters offered a compromise amendment which would provide for automatic gag orders for Section 215 order recipients but would limit the nondisclosure period to 180 days. The amendment also allowed the government to btain an extension for up to 180 days if it could show the disclosure would result in a clear harm such as endangering someone's life.

[40] Amendment 280 to H.R. 2862, the Science, the Department of State, Justice, and Commerce Appropriates Act for Fiscal Year 2006.

[41] May 13, 2003 Letter at 12 (emphasis in original).

and administrative practice by the Department."[42] Impediments to sharing information between intelligence and law enforcement investigators were, therefore, almost entirely the result of administrative barriers, rather than statutory requirements that were eased by the USA PATRIOT Act. This was confirmed by the FISC Court of Review.[43] Because the Court held that there was no legal "wall" to begin with, there is no reason to believe that letting this section sunset would reimpose the "wall."

Again, it is important to note that PATRIOT Act has already created permanent authorization for information sharing between the criminal and intelligence agencies: Section 905 requires the Attorney General to provide terror-related information that is uncovered in the process of a criminal investigation to the Director of National Intelligence, and section 504 allows FISA information to be given to the Criminal Division.[44]

The Justice Department has provided a small number of anecdotal stories of how FISA obtained evidence helped prosecute standard crimes, although it refuses to give a full accounting about how this provision has gone above and beyond sharing already allowed under the law.[45] The Department also has admitted to sending over 4,500 FISA files to the Criminal Division, although it could not account for how many of those resulted in prosecutions.[46]

The effect of letting the status quo continue is that evidence obtained from a FISA warrant under FISA's statutory "probable cause" standard can be given to non-terror criminal prosecutors who are governed by the higher standard of 4th Amendment probable cause. In fact, the lower standard FISA warrant can be sought for criminal prosecution purposes, as long as terrorism or national intelligence is some small (but "significant") part of the reason given. The long-standing policy of not letting criminal prosecutors direct intelligence investigations has been vitiated.

We are aware of at least one significant abuse of this new authority by the Department. The FBI used Section 218 to secretly break into Brandon Mayfield's home, download the contents of four computer drives, take DNA evidence and take 355 digital photographs. Though the FBI admits Mr. Mayfield is innocent, they still will not divulge the secret court order to him, or allow him to defend himself in court. Given that this search took place after the terrorist attack for which Mr. Mayfield was wrongly suspected, and not before, it is unclear how the search was for any reason but to find evidence incriminating Mr. Mayfield.

Strikingly, under Section 218, a notice is not provided to the target unless the evidence collected is used at trial. Thus, a target of a search may never learn that their house or business was searched and that evidence was seized. Furthermore, as seen in the Brandon Mayfield case, the government refuses to even let Mr.

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[42] Id. at 13.

[43] In re: Sealed Case No. 02–001, 310 F.3d 717 (F.I.S. Ct. Rev. 2002).

[44] Kate Martin, "Why Section 203 and 905 Should be Modified," American Bar Association's Patriot Debates, available at *http://www.patriotdebates.com/203–2#opening*.

[45] Oversight answers, submitted by Jamie E. Brown, Acting Assistant Attorney General, May 13, 2003, on file with the House Judiciary Committee; Oversight answers, submitted by Daniel J. Bryant, Assistant Attorney General, July 26, 2002, on file with the House Judiciary Committee.

[46] Oversight answers, submitted by Jamie E. Brown, Acting Assistant Attorney General, May 13, 2003, on file with the House Judiciary Committee.

Mayfield see the order for the search that took place under Section 218, thus preventing him from being able to defend himself.[47]

7. Sec. 220—Nationwide service of search warrants for electronic evidence

Section 220 allows a single court to issue a search warrant for electronic evidence that is valid nationally. According to the Department's May 13, 2003 letter, it has used this authority to track a fugitive and to track a hacker who stole trade secrets from a company and then extorted money from it.[48] Importantly, Section 220 deals only with ordinary criminal investigations. It is doubtful Congress meant to expand this power to even ordinary criminal investigations in its rush to pass the USA PATRIOT Act.

The biggest threat is that Section 220 allows law enforcement to "forum shop" by having a more lenient judge in a different jurisdiction that may have little or no nexus to the actual target issue a warrant. Thus, law enforcement officers can game the system to ensure they obtain the warrants they want. Furthermore, nationwide search warrants decrease the possibility of judicial review—a person served with a search warrant in New Jersey, but issued by a judge in California, is highly unlikely to travel to California to challenge even a facially unconstitutional warrant.[49]

8. "Lone Wolves" as Agents of a Foreign Power

Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 created the so-called "lone wolf" provision of FISA redefining the "agent of a foreign power" to include those who "engage in international terrorism or activities in preparation therefore." In other words, agents of a foreign power no longer need to have any connection to a foreign power and instead can be persons working alone. This is limited to non-U.S. persons.[50] The effect of this change is to allow individuals to be targeted and surveilled under the FISA powers usually reserved for those who are clearly agents of a foreign power. Importantly, the powers used under FISA significantly relax many of the protections provided those targeted in criminal investigations.

The purpose of FISA always has been espionage and terrorism surveillance against foreign governments, foreign groups, or individuals associated with such governments or groups. Section 6001 expanded FISA to include any single person who engages in a violent act that (1) transcends national boundaries and (2) is intended to coerce the government or a civilian population. The "foreign

[47] Ms. Jackson Lee introduced an amendment to provide notice of a search or surveillance under Section 218 if the target is found to be a United States person who is not an agent of a foreign power. The amendment would mandate that notification be given no later than 180 days after it is determined that a U.S. person is not an agent of a foreign power, and this amendment covered all forms of surveillance and searches allowed under Section 218. However, this reasonable amendment was rejected by the Majority.

[48] Id. at 24.

[49] Mr. Watt introduced an amendment to fix precisely this problem. Mr. Watt's amendment would allow the target of a search warrant to challenge it in the district where it is served, or, if the warrant is executed against a corporation, in any district where the corporation is incorporated. This reasonable amendment would ensure that people are able to assert their constitutional rights against unreasonable searches and seizures. However, the majority rejected this commonsense approach.

[50] Although a leaked "PATRIOT II" bill authored by the Justice Department would have expanded the lone wolf provision to cover U.S. persons as well.

agent" probably cause that the "lone wolf" provision repealed was critical to the constitutionality of FISA surveillance and this change threatened to render the FISA statute unconstitutional. Importantly, when this provision passed the House Judiciary Committee in the markup of H.R. 10, it contained a rebuttable presumption that a FISA judge could invoke to approve surveillance based on a presumption that the suspect was acting for a foreign power, even though there was no evidence the target had ties to foreign governments or an international terrorist group. This was an important modification to the "lone wolf" power that would have given more discretion to the FISA court to use this power when the circumstances suggested the suspect was acting for a foreign power, but would not have allowed surveillance when it is clear there was no foreign power at all. That provision was removed before the bill went to the floor and passed as part of the intelligence bill.

B. SPECIFIC CONCERNS WITH OTHER PROVISIONS OF PATRIOT ACT

Concerns have been expressed with several other provisions of the Act. Though a number of germane amendments were offered by Democratic Members at the markup, all were rejected by the Majority.

1. Sec. 213—Authority for delaying notice of the execution of a warrant (so-called "sneak and peek" provision)

This section permits Federal agents to search a home and indefinitely delay notification of that search to a suspect if a court finds "reasonable cause" that immediate notification could have an adverse result (also known as "sneak and peek" searches).[51] With court permission, the government also can use this authority to seize property and delay notification to the suspect of that seizure.

The majority argues that these search warrants were available in many circuits before the PATRIOT Act. But as CRS explains, section 213 breaks new ground by answering questions the courts had not yet confronted: "The Act extends the delayed notification procedure of chapter 121, which operates in an area to which the Fourth Amendment is inapplicable, to cases to which the Fourth Amendment applies, 18 U.S.C."[52] Before, delayed notice was reserved for (1) exigent circumstances and (2) when notification of a search/seizure of stored communications would interfere with an investigation, and many courts had yet to rule on the government's contention that delayed notice searches were appropriate in far broader circumstances. This latter exception was based on the courts' repeated finding that stored communications did not have Fourth Amendment protections, and therefore notice was not required. The problem with section 213 is that it extends this "investigative interference" exception to all criminal activity, where the Fourth Amendment is clearly implicated and where many court had not yet ruled on the appropriate standards.

Additionally, two other concerns have been raised: First, the 5th and final "catch-all provision" that delayed notification justification

[51] USA PATRIOT Act § 213.
[52] Charles Doyle, The PATRIOT ACT: A Legal Analysis, CRS, April 15, 2002 at 65.

is necessary because otherwise the investigation will be "seriously jeopardized" allows the government to delay notification in almost any instance; in fact, in 92 out of 108 cases, this provision was used to justify delayed notification. Second, Section 213 as currently written allows law enforcement to indefinitely delay notification.

In its May 13, 2003 letter to the Committee, the Department indicated that it has used this authority 47 times.[53] On April 5, 2005, in his testimony before the Senate, the Attorney General upped the number to 155. Delays in notification of sneak and peek have been for unspecified durations in many cases and as long as 180 days in others; in fact, the longest delay has been for 406 days.[54] The government has sought to delay notification of sneak and peeks 248 times and every single request has been granted.[55]

It is important to note that by and large, this provision is not being used in terrorism cases. In a July 5, 2005 letter to Rep. Bobby Scott, DOJ said Section 213 had been used 153 times as of January 31, 2005; only eighteen (11.8%) uses involved terrorism investigations. Thus, nearly 90% of "sneak and peek" warrants were used in ordinary criminal investigations.[56] We have learned of the following additional concerns:

- Abuse of delayed notice warrants: In April 2005, DOJ said 90-day delays are common, and that delays in notification have lasted for as long as 180 days. The DOJ is getting more strident, as in 2003, the DOJ said its longest delay was 90 days.
- Abuse of extensions: In May 2003, DOJ reported it had asked for 248 delay notification extensions, including multiple extension requests for a single warrant, and that the courts had granted EVERY SINGLE REQUEST, the longest being 406 days.
- Abuse of "catch-all provision": In an April 4, 2005 letter to Chairman Sensenbrenner, DOJ reports 92 out of 108 (85%) sneak and peek warrants were justified because notification would "seriously jeopardize the investigation" and in 28 instances that was the sole ground for delaying notice.

Significantly, this committee never approved Section 213 and its expansive invasions into a person's privacy. It was slipped into the final bill by the Rules Committee, and was never sanctioned by the Committee of jurisdiction. Concerns about this authority are widespread; in fact, Rep. Butch Otter successfully offered an amendment to the Commerce-Justice-State appropriations bill, H.R. 2799, on the House floor that would have prevented delay of notification entirely

2. Sec. 216—Extension of Trap and Trace / Pen Register Orders

Capturing internet and e-mail data is fundamentally different than capturing phone data. While the majority argues that this section does not capture "content," there is nothing in this section that describes what content is. So, for example, the statute is un-

[53] May 13, 2003 Letter at 8.
[54] April 4, 2005 Letter.
[53] May 13, 2003 Letter at 11.
[56] 97 warrants were used in drug investigations and 38 were used in other criminal investigations. Letter on file with the House Judiciary Committee.

clear whether the Justice Department can capture just *www.aclu.org*, or *www.aclu.org/newmember/registration*, the latter being more than just an address, and clearly indicating the content. There is also concern that as a technical matter, it is impossible to separate out an e-mail address from the content being sent either from it or to it.[57]

3. Section 411, Revocation of Visas

Section 411 of the PATRIOT Act allows the government to revoke visas. It expanded the reasons for inadmissibility to include association with a designated terror group, whether the person actually knew that the people or group he was associating were linked to terrorism. We are concerned that this section applies retroactively, and has been abused against peaceful alien visitors years after their so-called association with terrorists:

For example, Professor Tariq Ramadan's visa to teach at Notre Dame was revoked upon charges that he supported terrorism; Notre Dame, Scotland Yard, and Swiss intelligence all agree the charges were groundless.[58]

Similarly, Nicaraguan Professor Dora Maria Tellez was denied her visa to teach at Harvard due to her association with the Sandinistas in the 1980s, where she helped to overthrow a brutal dictator whom the U.S. supported.[59]

4. Sec. 412—Detention of Immigrants

During the Judiciary Committee's consideration of the PATRIOT Act in 2001, intense negotiations ensued on the issue of detaining non-citizens for extended periods of time. The result was Section 412 of the PATRIOT Act, which set up a system by which the Attorney General could detain any alien he certified as (1) deportable or inadmissible on grounds of terrorism, espionage, sabotage or sedition or (2) a danger to national security, as long as he initiated removal proceedings or criminal charges within 7 days of detention. After initiation of removal or charges, the certified alien could be held for up to 6 months at a time. This is a power that we have been assured verbally has never been used either by DOJ or by the Department of Homeland Security after it was transferred there by the Homeland Security Act. We cannot be certain about this, of course, because we have not received 6 out of the 7 reports required to detail how and whether Section 412 has been used.

The authority to hold someone for up to 6 months at a time on the word of the Attorney General is an extraordinary power. Congress measured this extraordinary power with the mandatory reporting requirement. However, Attorney General Ashcroft's Department of Justice was able to circumvent the spirit of the requirement—to report on how many people were being held for long periods without charge—by avoiding use of Section 412 in favor of a rule the Attorney General published on September 20, 2001, before the PATRIOT Act was enacted. Prior to September 11, 2001, the

[57] Nancy Chang, The USA PATRIOT Act: What's So Patriotic About Trampling on the Bill of Rights?, Center for Constitutional Rights, November 2001.

[58] Deborah Sontag, "Mystery of the Islamic Scholar Who was Barred by the U.S.," New York Times, October 6, 2004, A1.

[59] Associated Press, "ACLU Requests Documents on Visas," New York Times, March 17, 2005, A20.

INS was required to make charging determinations within 24 hours of arrest. The rule put in place on September 20, 2001, extended that charging period to 48 hours or "an additional reasonable period of time" in "emergency or other extraordinary circumstances." It is under this rule that the extended detentions without charge outlined in the DOJ Inspector General's report took place.

Since it has been left not only unused but intentionally circumvented, it is enticing to propose repeal of Section 412. Instead, Section 201 of the Civil Liberties Restoration Act leaves Section 412 of the PATRIOT Act in place. However, for those detained who the AG chooses not to certify, DHS would be required to serve a Notice to Appear—the charging document that begins an immigration proceeding—on every non-citizen within 48 hours of his arrest or detention. Any non-citizen held for more than 48 hours would have to be brought before an immigration judge within 72 hours of the arrest or detention. The provision recognizes an exemption for non-citizens who are "certified" by the Attorney General to have engaged in espionage or a terrorist offense, thus preserving PATRIOT Section 412.

5. Sec. 505—Miscellaneous national security authorities[60]*—"National Security Letters"*

We are concerned with section 505 of the PATRIOT Act, which grants law enforcement sweeping authority to issue national security letters (NSLs). National security letters are a form of "administrative subpoena" for personal records which compel the holder of the records to turn them over to the government. NSLs grant the Justice Department access to telephone and internet records, financial documents, and consumer records without any sort of judicial oversight. It is important to note that subsequent legislation redefined "financial institutions" subject to NSLs to include travel agencies, pawn brokers, casinos and car dealers, among other things.[61] In fact, it is hard to imagine what type of record wouldn't be covered under these new definitions.

It is speculated that DOJ has avoided using Section 215 because the NSL's represent a far more extensive section of the PATRIOT Act that is permanently at its disposal. Prior to the PATRIOT Act, NSLs could only be used to get records when there was "reason to believe" someone was an agent of a foreign power. Now they are issued on the standard of relevancy.[62]

The Justice Department has never accounted for their use. However, in response to a FOIA request, the DOJ released a six page list of NSLs delivered as of January 2003. The actual recipients

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[60] Republican Senator Pat Roberts has authored a bill which seeks to extend the PATRIOT Act, and would give the FBI new powers to issue administrative subpoenas in national security investigations. However, unlike 505 NSLs, these would be available for any type of record—it is not limited to phone, internet, credit or financial records. Instead, it has the breadth of the infamous Section 215 request for records, and the lack of judicial oversight of the National Security Letter. This new combination will give the FBI whole new unchecked authority. In fact, as written, the "records" subject to seizure are not even limited to businesses. There is nothing in the draft legislation that would prevent the FBI to request a private individual to turn over documents in his or her possession. A copy of the bill is available at <http://www.eff.org/patriot/sunset/sunset_bill_draft_20050517.pdf>.

[61] 12 U.S.C.A. § 3414(d) (2005).

[62] Administrative Subpoenas and National Security Letters in Criminal and Foreign Intelligence Investigations: Background and Proposed Adjustments, CRS, Apr. 15, 2005, at 22.

have been redacted, but it confirms that the Justice Department has used this new power hundreds of times since the PATRIOT Act was signed into law.

The Justice Department argues that they have already had the ability to summon records through (a) administrative subpoenas and (b) grand jury subpoenas. And in recent hearings, the director of the FBI actually requested more NSL authority. However, NSLs are far more intrusive than the Justice Department is representing: First, administrative subpoenas as limited to specific categories of cases. Second, grand jury subpoenas can be challenged by the judge overseeing the grand jury whereas challenges to NSLs require a whole separate action in federal court, an action that is highly unlikely as discussed below.

The Southern District of New York has already struck down the telephone and toll NSL statute because it violates the Fourth Amendment by completely barring the recipient's access to the courts. The court found that is "improbable," given the language of the NSL, that a reasonable person would think they could not comply or would know that they have a right to contest the NSL.[63] The court also found the statute violated the First Amendment by placing a prior restraint on speech through the non-disclosure provision.[64]

6. Sec. 802—Definition of domestic terrorism.

Section 802 of the USA PATRIOT Act created a category of crime called "domestic terrorism," which makes criminal any activities that "involve acts dangerous to human life that are a violation of the criminal laws of the United States" when the actor intends to "influence the policy of a government by intimidation or coercion." Previously, there was no analogous provision in statutory law. The overly broad nature of this provision is reason for concern when examined in light of its potential application to and effect on peaceful protests. The broad language of section 802 could potentially be used to punish participants of such peaceful demonstrations as a Greenpeace rally or the Million Man March, both of which fall squarely within the First Amendment, but which could also be the scene of an accidental injury and subsequent prosecution under this provision.

7. Sec. 805—Material support for terrorism

Section 805 of the Act makes it a federal crime to provide material support for terrorist activities. In general, "material support" is defined as financial resources, expert advice or assistance, assets, housing, personnel, training, or communications equipment.[65] Section 805 added the terms "expert advice and assistance" to this list. This provision raises numerous, serious concerns.

The material support statute has repeatedly been found to be unconstitutional. On December 3, 2003, the U.S. Court of Appeals for the Ninth Circuit ruled that the portions of the law prohibiting

[63] *Doe* v. *Ashcroft*, 334 F.Supp.2d 471, 501 (S.D.N.Y. 2004).

[64] Mr. Nadler offered an amendment to Section 505, including one to require regular reports on its use; one moderating the indefinite gag order on Section 505 requests; and one allowing a 505 recipient to challenge the order in court. Ms. Waters offered an amendment to exempt medical records from Section 505.

[65] 18 U.S.C. § 2339A.

"personnel" and "training" from being provided were void for vagueness.[66] This is because the term "personnel" could criminalize persons who merely write or publish pamphlets for a designated foreign terrorist organization; similarly, the term "training" could criminalize a person who instructs a foreign terrorist organization on how to petition the United Nations.

The specific amendment added by Section 805 was enjoined in a limited case by a lower court for similar reasons. In 2004, the U.S. District Court for the Central District of California held that the prohibition on providing "expert advice and assistance" was vague because it could encompass the plaintiff's provision of medical and legal advice to a terrorist organization.[67] The court enjoined the government from enforcing this provision against the plaintiffs.[68]

In July of 2003, a federal District Court judge in New York threw out charges of material support for terrorism against lawyer Lynne Stewart who was charged with funneling messages from her imprisoned client, Sheik Omar Abdel Rahman.[69] She was charged with violating the prohibition against providing communications equipment and personnel. Judge Koeltl ruled the law was unconstitutionally vague, especially the personnel provision, such that Ms. Stewart could not have known what was prohibited. Furthermore, he held "the government fails to explain how a lawyer, acting as an agent of [an alleged foreign terrorist] client. * * * could avoid being subject to criminal prosecution as a 'quasi-employee.'"[70]

Finally, in June 2004, a federal jury in Idaho acquitted University of Idaho graduate student Sami Al-Hussayen of all charges of material support. The government charged Al-Hussayen, a citizen of Saudi Arabia, of providing material support for his operating and maintaining Internet sites for the Islamic Assembly of North America and for funneling donations to the group. Importantly, this group was not on the list of terrorist groups, and the links Al-Hyssayen posted were also available on the government's own website. Significantly, in each instance, the courts found COMPLETELY LEGAL ACTIVITIES would violate Section 805.

C. GENERAL CONCERNS WITH PATRIOT ACT REAUTHORIZATION

Beyond the specific concerns outlined above, we are also concerned with the Committee's general failure to provide a general sunset provision, or to provide for any sort of additional general oversight power by the Congress with respect to the Justice Department regarding the PATRIOT Act.

1. Lack of a General Sunset

If we have learned one thing over the last four years, it is that the Justice Department feels it is above accountability to this Congress in relation to the so called "war on terror," and that we, its Committee of jurisdiction, will not get answers to our questions unless the Justice Department is compelled to come before us and jus-

[66] *Humanitarian Law Project* v. *Ashcrft,* 352 F.3d 382 (9th Cir. 2003).
[67] *Humanitarian Law Project* v. *Ashcroft*, 309F.Supp.2d 1185 (C.D. Cal. 2004).
[68] The court refused to find the prohibition to be overbroad and thus declined to enjoin its enforcement entirely.
[69] Opinion and order re: *USA* v. *Sattar, al-Sirri, Steward and Yousry* (J.G. Koeltl, 02CR00395).
[70] Id, at p. 18.

tify its use of the more dangerous provisions of the PATRIOT Act. However, our reasonable attempts to retain our oversight through periodic sunsets were thwarted completely on party-line votes:

- Mr. Scott and Mr. Nadler offered second degree amendments that would have put a four year and six year sunset on Section 206, the John Doe Roving Wiretap, and Section 215, Intelligence orders for any tangible thing, respectively They were rejected in favor of a ten-year amendment that is so far in the future, its review will be almost meaningless.
- Mr. Schiff offered an amendment to sunset the Lone Wolf provision, which was originally passed in the Intelligence Reform bill only 8 months ago. We believe making this provision permanent so soon and without any information on its use is unwise and we therefore supported Mr. Schiff's proposal to review this broad new provision in three years. This too was rejected in favor of permanency.
- Mr. Nadler and Ms. Lofgren, in the spirit of comity, offered an amendment to set all of the expiring provisions on a ten year sunset cycle. It was flatly rejected by the majority.

Considering that many of the Majority's members spoke in favor of sunsets throughout our 12 hearings, we were disappointed that they were swayed into objecting to even the most reasonable of amendments. That all of these new powers have been made largely permanent contributed to our collective decision not to support this bill.

2. Lack of General Oversight

In addition, there is a need for additional congressional oversight of the PATRIOT Act. There are numerous reporting requirements under the Electronic Communications Privacy Act, the Foreign Intelligence Surveillance Act and National Security Letters. However, many of those are classified, and therefore cannot even be publicly discussed. These classified accounts effectively protect the Administration from having to answer for the use of the authorities in any way that they can be held accountable for—and they have been exploited by the Majority to at once claim that we have oversight capabilities, yet no abuses are known.

Moreover, the Administration claims that any public accounting would put our nation at risk of further terror attacks. However, we have heard no logical arguments about why simply reporting the number of times an authority has been used puts anyone at risk. Knowing that John Doe Roving Wiretaps have been used 49 times, for example, does nothing to further terrorist causes. Knowing that nearly 90 percent of "sneak and peek" warrants were used in non-terrorist cases does not put us at risk of another attack.

Besides, this argument is completely undercut by the Administration's selective declassification of numbers and examples when it is politically convenient for it to do so. We have asked for numbers and examples for years and have been repeatedly told that the information was classified. Then, in April of this year, when it became clear that many members of this House and in the Senate would not be acquiesced by hollow reassurance, numbers and anecdotes suddenly became available.

However, anecdotes are not oversight. Non-terror examples of how a provision has been used has no bearing on whether they should be renewed, and as this bill has it, renewed as-is and without any new protections. We are sure the Justice Department can find one or two feel-good stories for each provision of the U.S. code, but that is not the point. Oversight is about deciding whether, on the whole and after examining the totality of the circumstances, a provision's usefulness outweighs the privacy and other rights it infringes upon. Regrettably, the Justice Department has not given us enough information to make that determination.

In addition, we find it hard to believe that the number of times a section of the PATRIOT Act has been used suddenly became no longer a security threat earlier this year without any change in the law or our standing in the fight against terror. Clearly, these provisions were wrongly classified from the beginning if they could be released for political reasons in the Administration's efforts to reauthorize the PATRIOT Act. This sort of bad faith on the Administration's part clearly calls for statutorily mandated reporting requirements.

H.R. 3199 also does nothing to address the myriad of concerns related to the unwarranted amount of secrecy that surrounds the original PATRIOT Act. The PATRIOT Act keeps secret, even from Congress, how many of the powers are being used, prohibits recipients of search orders from disclosing they even received such an order, including to their attorney, and allows the government to secretly search people's homes and seize their property. The Minority attempted to remedy many of these egregious secrecy provisions, but was thwarted in all of its attempts to provide reasonable measures to allow for more light to be shed on the government's actions.[71]

The PATRIOT Act allows the government to keep secret, even from Congress, how many of these authorities are being used. While there are reporting requirements the Department of Justice must adhere to, as discussed in more detail above, they have on numerous occasions either refused to provide they necessary information or have given the Congress only useless information. For example, it was only after a FOIA request by the ACLU was upheld that the DOJ released any information about its use of Section 505 National Security Letters. However, what the DOJ released was a six-page document with every single line blacked out. Thus, while we know the DOJ is using this authority often, that is all we know, and further attempts to gain information have been thwarted. Similar refusals to provide even descriptive statistics on the use of many provisions are, unfortunately, quite common.

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[71] For example, Mr. Berman offered an amendment that would have required reporting on data-mining practices, which to date, this Congress only finds out about through news reports after personal information is leaked or otherwise abused. He withdrew that amendment after it became clear it would not pass. Mr. Conyers offered an amendment that would have required reporting on the disclosure of electronic communications, a reporting requirement that was reporting on the disclosure of electronic communications, included in the Judiciary passed bill in 2001 and supported unanimously, but was later stripped by the Rules Committee without explanation. Mr. Conyers' amendment failed. Similarly, Mr. Schiff offered an amendment that would have required public reporting on the use of National Security Letters and the Sneak and Peek authority, two provisions that the Justice Department has been secretive about. That amendment failed on party lines as well.

As an additional safeguard, Ms. Lofgren introduced an amendment which would ensure that a person's right to challenge their detention is not undermined by any Act of Congress. Her amendment specified that no Act of Congress passed since 9/11, including the PATRIOT Act, shall be construed to suspend the right to apply for a writ of habeas corpus. It would simply have protected a right that was deemed so important that is was included in the U.S. Constitution. However, after initially passing on a voice vote, the Majority moved to reconsider, and the amendment was overturned on a straight party-line vote.

IV. The Legislation Does Nothing To Address the Many Unilateral Abuses of The Administration in the War Against Terror

Since we were given the ability to review the PATRIOT Act, we feel it also provided an opportunity to review all of the U.S.'s actions in the broader War on Terror as it is impossible to discuss the PATRIOT Act without referencing other administrative actions that have occurred since 9/11.

Unfortunately, the majority flatly rejected our attempts to review other actions by the United States government, including unilateral actions that were taken so as to circumvent even small protections that existed in the USA PATRIOT Act. It is clear that numerous abuses have occurred and we fear the majority's unwillingness to address them will only lead to further abuses in the years to come.

A. MATERIAL WITNESS STATUTE

An undisclosed number of the individuals detained after September 11, 2001, have been arrested on material witness warrants pursuant to the Department's authority under 18 U.S.C. § 3144. Although the Department refuses to reveal the exact number of individuals who have been held as such witnesses, a November 2002 Washington Post article identified 44 material witnesses and asserts that almost half of them never testified before a grand jury.[72] In its May 13 letter to the Committee, the Department put the number of material witnesses detained as of January 2003 in conjunction with September 11 to be fewer than 50.[73] The Justice Department has subsequently refused to update that number.

The Department has refused to provide any further information on those being held as material witnesses, claiming that it cannot do so because of the grand jury secrecy rules and sealing orders that have been entered by the courts, and has refused to release the orders themselves. Press reports, however, indicate that many individuals have been held as material witnesses for significant periods of time prior to testifying before grand juries, if they testified at all.

This implies the government is using the material witness statute not to secure testimony, but to secure the detention of individuals it cannot connect with terrorism or other crimes. It appears

[72] Steven Fainaru & Margot Williams, Material Witness Law has Many in Limbo; Nearly Half Held in War on Terror Haven't Testified, WASH POST, Nov. 24, 2002, at A1.

[73] May 13 Letter at 50.

the department is holding detainees despite the fact it could secure their testimony by deposition, which the statute provides for.[74] It also appears from news articles that at least two individuals, Mohammed El-Yacoubi and Abdulmuhssin El-Yacoubi, were held as material witnesses in connection with a grand jury investigation in which they were the targets of the investigation.[75]

The Inspector General has agree to investigate how the statute was wrongly applied to Brandon Mayfield, arrested for bombing a train in Madrid, and what role his Muslim faith played in the FBI's decision to hold him as a material witness.

The material witness statue was scheduled to be part of a bipartisan oversight plan crafted in September of 2003. After several months of effort, committee staff were unable to convince their Republican counterparts that action was necessary. While we had drafted an extensive bipartisan letter inquiring about all the policies and statistics about the use of this statute, just before delivery the majority refused to sign the letter and claimed it was no longer concerned about the statute because the warrants were signed by a judge and therefore couldn't possibly be abused.

B. TORTURE

We now know that the Justice Department led the effort to legally excuse acts of torture. The abuse of Iraqi and other prisoners was not just the work of a few rogue soldiers, but the obvious consequence of the Justice Department declaring that the President and his military are accountable to no one. A number of legal opinions generated by the Justice Department were either leaked or formally released by the President last year. They include:

- January 22, 2002 Department of Justice memorandum regarding "Application of Treaties and Laws to al Qaeda and Taliban Detainees"
- February 1, 2002 Attorney General Letter to President regarding status of Taliban detainees;
- February 7, 2002 Department of Justice memorandum regarding "Status of Taliban forces Under Article 4 of the Third Geneva Convention of 1949"
- February 26, 2002 Department of Justice memorandum regarding "Potential Legal Constraints applicable to Interrogations of Persons Captured by U.S. Armed Forces in Afghanistan"
- August 1, 2002 Department of Justice letter regarding application of Convention Against Torture and Rome Statute on the International Criminal Court
- August 1, 2002 Department of Justice memorandum regarding "Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340–2340A."

In tandem, these documents argued that (1) the Geneva Conventions and other international laws banning torture did not apply to our detainees, (2) if they did, they could be construed so narrowly that events such as those at Abu Ghraib are not legally "torture,"

[74] See, e.g., *United States* v. *Awadallah,* 2002 U.S. Dist. LEXIS 1430, 01 CR 1026 (SAS), at *96–97 (S.D.N.Y. Jan. 31, 2002).

[75] Jerry Seper, Israel Bars Entry to Men INS Cleared, WASH. TIMES, Apr. 1, 2002; Chuck Raasch, Virginia City is Newest Front in Terror War, INDIANAPOLIS STAR, Mar. 31, 2002.

and (3) even if those acts could be defined as "torture," the Administration and its military are not liable under the President's Commander-in-chief authority and other defenses. On December 30, 2004, the Justice Department released a new memo that improved upon its previous rulings: it redefined what "torture" was under the law to no longer require excruciating and agonizing pain equivalent to organ failure or death, and reversed its previous position that those committing torture could be shielded from criminal liability by good intentions.[76] It did not however, explicitly revoke the previous memos' holding that the President's Commander-in-chief authority was not bound by any American or international law.

It is within the Justice Department's discretion whether to prosecute contractors who are implicated in the scandal, and to date, has indicted one person for criminal assault for killing a detainee within his custody.[77] And while "the Justice Department has received a number of criminal referrals involving allegations of prisoner mistreatment by CIA operatives," it has not brought any charges.[78] Finally, the Justice Department does have the authority to charge members of the military for their criminal acts over seas if either (a) they are no longer in the military, or (b) committed the acts with non-military accomplices.[79] This authority may be appropriate to exercise in the instances where the military is refusing to charge its members even in contradiction with the recommendations of its own investigators. For example, 17 soldiers were recently found to be responsible for the death of three detainees, yet their commanders will not press charges; only one was discharged and one was given a letter of reprimand.[80]

C. RENDITION

Maher Arar, was detained by the INS during a layover at JFK airport in New York. After authorities were unable to obtain any intelligence from Arar or establish a connection between him and Al Qaeda, Deputy Attorney General Larry Thompson ordered him deported to Syria—despite his professed Canadian citizenship and his request to return to Canada. Arar was jailed and tortured in Syria for ten months before his release in October 2003. No one was ever able to connect him in any way to terrorism or to Al Qaeda.

Even if Arar was correctly labeled a threat to national security, he was free to request deportation to Canada, and was entitled to be sent somewhere he would not be harmed.[81] The Attorney Gen-

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[76] The new memo is available at *http://www.usdoj.gov/olc/dagmemo.pdf.*

[77] *U.S.* v. *Passaro,* No. 94–CR–211–1, (E.D.N.C.), indictment available at *http://news.findlaw.com/cnn/doc/torture/uspassargo61704ind.html.*

[78] Richard B. Schmitt, U.S. May Still Charge "Enemy Combatant, Gonzales Says, L.A. Times, Mar. 8, 2005.

[79] Military Extraterritorial Jurisdiction Act, Pub. L. No. 106–523 (Nov. 22, 2000).

[80] Douglas, Jehl, Pentagon Will Not Try 17 G.I.'s Implicated in Prisoners' Deaths, NY Times, Mar. 26, 2005.

[81] Current law allows for an expedited removal of foreign nationals on "security and related grounds," for (A) generally subversive activity, (B) terrorist activity or (C) generally threatening foreign policy (8 U.S.C. § 1182(a)(3)). On a finding of one of the above three grounds by an immigration court, the Attorney General reviews the decision. If he approves and finds that "disclosure of the information would be prejudicial to the public interest, safety or security," he can order immediate removal without hearing or inquiry (8 U.S.C. § 1225(c)). The Attorney General is empowered to disregard such a request only in narrowly defined, technical circumstances. 8 U.S.C. § 1231(b)(2)(C) provides that the Attorney General may deny an alien deportation to a designated country if he finds: (i) that the alien failed to designate a country promptly, (ii) that

eral's Office argues that removing Arar to Canada would have been prejudicial to national security, and that it was justified in returning Arar to Syria under the prevailing statute.[82] However, even if the Attorney General had found reason to deny Arar deportation to Canada, he might have sent him to any country in the world. The law provides that if all other statutorily defined options are inappropriate, the Justice Department may send an alien to any country willing to receive him.[83] There may have been a tactical advantage in turning Arar over to the Syrian government, but there was no legal requirement to do so.

Deportation to Syria when imprisonment and torture are imminent stands in violation of both U.S. and international law. The International Convention Against Torture prohibits the removal of a person to another state "where there are substantial grounds for believing that he would be in danger of being subjected to torture."[84] Federal law affirms the convention and condemns extradition to a country in which "there are substantial grounds for believing the person would be in danger of being subjected to torture."[85] The State Department recognizes the Syrian government's use of torture tactics—including electrical shock, removal of fingernails, and objects forced into the rectum.[86]

Arar's case is not unique. Estimates puts the number of renditions at over a hundred, although their secrecy prevents us from knowing the extent of their use. The Administration keeps saying it does not use torture and does not render suspects, yet lay employees admit that it was a common place activity. Until three months ago, Michael Scheuer was a senior intelligence analyst for the CIA; he has now come forward to explain that,

> They don't have the same legal system we have. But we know that going into it * * * And so the idea that we're gonna suddenly throw our hands up like Claude Raines in "Casablanca" and say, "I'm shocked that justice in Egypt isn't like it is in Milwaukee," there's a certain disingenuousness to that.[87]

A former Justice Department lawyer even admits that, "The Convention only applies when you know a suspect is more likely than not to be tortured, but what if you kind of know? That's not enough. So there are ways to get around it."[88] In fact, the Convention says nothing about a legal standard of "more likely than not"—the correct standard is "substantial grounds." The "more likely than not" standard is a highly constrained interpretation of the Convention that obviously fails to honor its spirit (and appears in-

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the designated country fails to respond to a deportation request within thirty days, (iii) that the designated country is not willing to accept the alien, or, (iv) that removal to the designated country is prejudicial to the United States.

[82] 8 U.S.C. § 1231(d)(2)(D) (If the Attorney General does not deport an alien to the country of his choice, the alien is to be returned to a nation is which he is a national or citizen, given the nation accepts).

[83] 8 U.S.C. § 1231(b)(2)(E)(vii).

[84] International Convention Against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 3.

[85] 8 C.F.R. § 235.8. See also, Pub. L. 105–277, Div. G, Title XXII, Section 2242. There are exceptions to the policy (8 U.S.C. § 1231(b)(3)(B)) but the Justice Department would have had to demonstrate reasonable grounds to believe Arar is a credible danger to national security.

[86] County Reports on Human Rights Practices, 2002, available at: *http://www.stage.gov*.

[87] CIA Flying Suspects to Torture?, CBSNews.com, Mar. 6, 2005.

[88] Jane Mayer, Outsourcing Torture, The New Yorker, Feb. 8, 2005.

tended to do just that). And a recently retired FBI agent has said, "They loved that these guys would just disappear off the books, and never be heard of again * * * They were proud of it."[89]

D. ENEMY COMBATANTS

The Justice Department is authorized to give legal advice in response to a request from the President, federal agencies, and military departments.[90] Under this authority, the Justice Department laid the legal grounds for the indefinite and illegal detention of enemy combatants by advising that al Qaeda and Taliban forces were not entitled to protection under the Geneva Conventions. The Department also determined that individuals arrested in the United States both citizens and non-citizens, were not entitled to the protection of the sixth amendment and if certified as enemy combatants, could be held by the military incommunicado without access to lawyers or the court for so long as the government deemed it necessary. Instead of meeting the procedures required under the Constitution and our international agreements, the Administration has constructed a farce of process and fairness.

Most importantly, the Office of Legal Counsel has advised that these detainees fall somewhere between civilians and soldiers and therefore are devoid of the protections that apply to either.[91] This is in clear conflict with 50 years of legal precedent that has held that a person "cannot fall outside of the law."[92] Instead of simply holding individualized hearings about whether each detainee is a prisoner of war or just a "protected person"—as required by the Geneva Conventions—and then providing the appropriate judicial procedures, the Defense Department now holds newly imagined Combatant Status Review Tribunals (CSRT) and Annual Review Board procedures that don't meet the international obligations for the treatment of either group.[93]

A federal court has recently ruled that at least one of these procedures—the CSRT—violates the detainees' Fifth Amendment rights to due process.[94] The court found particularly troubling that the detainee Another federal court has found that the military commissions are also in violation of the law, because they do not meet Geneva Convention requirements.[95] It held that until the detainees are adjudicated either POW's or protected persons, they must be afforded the rights under the Afraid that Administration will deport more of these detainees to countries where they may be tortured, attorneys have secured a preliminary injunction keeping the government from removing Guantanamo detainees without giving the detainee's attorney at least 30-day notice of its intent to release or transfer the detainee.[96] This is in light of the fact that 200 detain-

[89] *Id.*
[90] 28 U.S.C. §§ 511–513 (2004).
[91] See supra, discussion of memo advising the Administration on the laws of war.
[92] International Committee of the Red Cross, "Commentary: IV Geneva Convention Relative to the Protection of Civilian Person in Time of War," (Geneva, 1958).
[93] See letter from Congressman John Conyers, Jr. to The Honorable Gordon R. England, regarding the legality of detention of Guantanamo, November 9, 2004, on file with the House Judiciary Committee Democratic Staff.
[96] Abdah v. Bush, 2005, WL 711814 (D.D.C. Mar. 29, 2005).
[97] Abdah v. Bush, 2005, WL 589812 (D.D.C. Mar. 12, 2005).
[94] In re Guantanamo Cases, 355 F.Supp.2d 443 (D.D.C.) (finding that the deck was so stacked against the detainees that the hearings were near meaningless).

ees have already been transferred overseas, 65 of whom on the condition that they be further detained by the country of receipt.[97]

E. SELECTIVE ENFORCEMENT OF IMMIGRATION PROVISIONS/RACIAL PROFILING

The Justice Department's racial profiling guidelines exempt terrorism investigations from the general ban on the use of these tactics. While the Department widely used racial profiling—the interview program of middle eastern men who came into the country before 9/11, the interview of 50,000 Iraqis, the FBIs counting of mosques and Muslims, and the registration of over 83,000 middle eastern men under NSEERS—we have received no useful intelligence information and have prosecuted only a handful of people for terrorism related charges. In fact, the GAO found that the information gathered from such programs sits around in federal databases without any specific plans for use.[98] This has led to former Attorney General John Ashcroft to admit that racial profiling doesn't work. During a press conference, he admitted that al Qaeda is using Europeans, Africans and South Asians. In fact, they recruit from "any nationality inside target countries." However, the Department continues to profile and selectively enforce laws on the basis of race, nationality and religion.

F. EXCESSIVE COLLECTION OF PERSONAL DATA

Since the passage of the PATRIOT Act, the press has reported massive FBI collections of personal information about individuals suspected of no wrongdoing. It is unclear what precise authority the FBI relied upon to collect this data, or the extent to which investigative powers granted by the PATRIOT Act were used by the bureau to amass this information.

For example, in December 2003, the press reported that "[t]he FBI has been checking hotel and airline records against terrorist watch lists in advance of a New Year's Eve celebration expected to draw 300,000 to Las Vegas." [99] Though FBI conceded the personal records had not borne out a particular threat, a FBI spokesman was quoted as saying, "[t]he information we're getting, the names, are being run by all the different watch lists[.] People can take comfort that anything and everything that can be done is being done." [100] An article in the Las Vegas Review-Journal suggests that the information may have been collected pursuant to Section 505 of the PATRIOT Act: "[c]asino operators said they turned over the names and other guest information on an estimated 270,000 visitors after a meeting with FBI officials and after receiving national security letters requiring them to yield the information."[101]

Likewise, last spring the New York Times reported that "[i]n the days after the Sept. 11 terrorist attacks in 2001, the nation's largest airlines, including American, United and Northwest, turned

[95] *Hamdan* v. *Rumsfeld,* 355 F.Supp.2d 152 (D.D.C. 2004).

[98] Justice Department's Project to Interview Aliens After September 11, 2001, GAO, GAO–03–459, April 2003 at 6.

[99] Ken Ritter, Associated Press, In Vegas Matching Airline, Hotel Records with Terror Lists, AP Dec. 31, 2003.

[100] Id.

[101] Ron Smith, Sources: FBI Gathered Visitor Information Only In Las Vegas, Las Vegas Review-Journal, Jan. 7. 2004, at 1A.

over millions of passenger records to the Federal Bureau of Investigation[.]"[102] An FBI official told the newspaper that the agency requested the data "under the bureau's general legal authority to investigate crimes and that the requests were accompanied by subpoena, not because that was required by law or because the bureau expected resistance from the airlines, but as a 'course of business' to ensure that all proper procedures were followed."[103] The Electronic Privacy Information Center later learned through its Freedom of Information Act litigation that the FBI in fact collected 257.5 million passenger records, and has since incorporated them into its permanent investigative databases.[104] It is unclear whether authorities granted by the PATRIOT Act enabled the FBI to collect this vast amount of information, and if so, which provisions.

G. UNAUTHORIZED DETENTION OF ALIENS

Following the terrorist attacks in New York City and Washington, D.C., the Attorney General directed the FBI and other members of federal law enforcement to utilize "every available law enforcement tool" to arrest persons who "participate in, or lend support to, terrorist activities."[105] But in so doing, the FBI took advantage of our nation's immigration laws by detaining aliens for extended periods of time without any real authority and committing abuses to those same aliens during their detainment.

The "hold until cleared" policy that Department of Justice ("DOJ") officials communicated to the Immigration and Naturalization Services ("INS") and FBI applied to all of the "September 11 detainees" who the FBI categorized as either being "of interest," "of high interest," or "of undetermined interest." In a September 27, 2001 e-mail, DOJ Senior Counsel observed that while those individuals found to be legally present in the United States may only be held so long as law enforcement was pursuing criminal charges or a material witness warrant against them, any others "believed to be involved in the attacks * * * may be detained, at least temporarily, on immigration charges."[106] In all, more than 1,200 citizens and aliens nationwide were detained pursuant to this policy within two months of the attacks, and that number may even be substantially higher given that a senior official in the Department's Office of Public Affairs stopped reporting the cumulative totals based on the belief that the "statistics were becoming too confusing."[107]

What's more, during this detainment period, these individuals were not informed of the charges against them for extended periods of time; were not permitted contact with attorneys, their families and embassy officials; remained in detention despite having no involvement in terrorism; and were physically or verbally abused or

[102] John Schwartz and Micheline Maynard, Airlines Gave FBI Million of Records on Travelers After 9/11, NY Times, May 1, 2004 at A10.

[103] Id.

[104] See Hardy Declaration; Leslie Miller, FBI Keeping Records on Pre-9/11 Travelers, AP, Jan. 15, 2005.

[105] Memorandum from Attorney General John Ashcroft to United States Attorneys entitled "Anti-Terrorism Plan" (September 17, 2001).

[106] Office of the Inspector General, Department of Justice, the September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11, Attacks 34–39 (April 2003) (emphasis added).

[107] Id. at 1.

mistreated in other ways. This included officers who "slammed detainees against the wall, twisted their arms and hands in painful ways, stepped on their leg restraint chains, and punished them by keeping them restrained for long periods of time,"[108] all of which was captured on videotape. Despite being seen on videotape, these officers denied any involvement upon Inspector General inquiry.[109] Finally, even when officials permitted detainees to meet with counsel, the Office of Inspector General found that several officers illegally recorded these meetings in clear violation of the Fourth and Sixth Amendments.[110]

H. CLOSED IMMIGRATION TRIALS

Ten days after the 9/11 attack on the United States, the Attorney General implemented new procedures for handling immigration cases involving aliens linked to the government's ongoing investigation of the September 11th attacks and other terrorist activity against the United States. These immigration matters were identified as "Special Interest Cases." In conjunction with that effort, the Chief Immigration Judge instructed immigration judges and court administrators to close to the public hearings involving Special Interest Cases, and to bar access to the related administrative record and docket information. These instructions were justified as part of the effort to protect national security and public safety by preventing sophisticated terrorist organizations like Al Qaeda from learning about the government's ongoing terrorism investigation.

On May 28, 2002, the Department published an interim regulation that provided a mechanism for the government to ask an immigration judge to place a protective order over information that, while not classified, was sensitive and could damage law enforcement or national security interests if released beyond the parties to a specific immigration proceeding. If a protective order is granted, the alien, counsel, and anyone else approved by the government, are given full access to the protected information, but they are not permitted to disclose the information to others. The alien may challenge the admissibility of the evidence and may appeal the granting of the protective order as part of an appeal to the Board from the immigration judge's decision. The public may attend all portions of the alien's hearing, except those parts where the protected information is discussed. A violation of the protective order could render the alien ineligible for discretionary relief and could subject the alien's attorney to disciplinary procedures.

I. THE ATTORNEY GENERAL'S GUIDELINES ON DOMESTIC SURVEILLANCE

On May 30, 2002, Attorney General Ashcroft announced revisions to four sets of internal guidelines that govern how the FBI conducts its investigations.[111] The Attorney General undertook his

[108] Office of Inspector General, U.S. Dep't. of Justice, Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn New York 46 (Dec. 2003).
[109] Id. at 46–47.
[110] Id. at 31–33.
[111] The four sets of guidelines that were revised include:

Continued

efforts without the benefit of congressional input, citing the need to strengthen the ability of FBI agents in the field to detect and prevent future acts of terrorism. Critics of the revisions, however, believe they will do little, if anything, to improve the FBI's ability to combat terrorism. Indeed, many believe that the revisions will do nothing more than invite the FBI to engage in the type of abuses that precipitated the issuance of the guidelines in the first place.

The new guidelines give the FBI much broader authority to investigate potential terrorist enterprises. In addition to extending time parameters and devolving authority to the SACs, the guidelines allow investigations to be conducted with no annual review and when no evidence of criminal activity is present.

The most drastic changes undertaken by Attorney General Ashcroft are outlined in Section VI (see, "Counter Terrorism Activities and other Authorizations") of the new guidelines, which impact First and Fourth Amendment rights. Among other things, that section specifically authorizes activities that will detect information about terrorism and other crimes "even in the absence of checking of leads, preliminary inquiry, and full investigation." For instance, the guidelines authorize the collection and use of information from databases either public, commercial or non-profit, otherwise known as "data mining." Second, agents are authorized to "attend any place or event on the same terms and conditions as the public generally." Third, the FBI can "conduct research including online research, accessing online sites and forums, on the same terms as the public generally."[112] Finally, the guidelines explicitly declare that files kept as a result of any investigations conducted under the newly enacted guidelines, including those authorized in Section VI, are not subject to the protections of the Privacy Act.

The revisions also relax restrictions against the use of intrusive techniques in preliminary inquiries and general investigations. In addition to removing terms and phrases cautioning against the use of intrusive techniques that may invade the privacy of and reputation of subjects of preliminary inquiries, the guidelines state, "the FBI shall not hesitate to use any lawful techniques consistent with these guidelines, even if intrusive, where the intrusiveness is warranted in light of the seriousness of a crime, or the strength of the

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I. The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Investigations:

II. The Attorney General's Guidelines Regarding the Use of Confidential Informants;

III. The Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations; and

IV. The Memorandum for the Heads and Inspectors General of Executive Departments and Agencies: Procedure for Lawful, Warrantless Monitoring of Verbal Conversations.

The charges undertaken by Attorney General Ashcroft begin with the change in the guidelines title to the FBI Guidelines on General Crimes Racketeering Enterprises and Terrorism Enterprises. Moreover, the Attorney General also "reportedly" change the central role of the FBI by stating, "[t]he highest priority is to protect the security of the nation and the safety of the American people against the depredations of terrorists and foreign aggressors." He tried to emphasize this change by drafting a new introduction to the guidelines that states that there are "a number of changes designed to * * * facilitate the FBI's central mission of preventing the commission of terrorist acts against the United States and its people."

[112] In an attempt to address some civil liberties concerns, the Attorney General included language in this section that prohibited FBI agents from conducting online searches using the names of individuals, except when incidental to topical research such as authors or parties to cases. The guidelines further state that, "[t]he law enforcement activities authorized in this part do not include maintaining files on individuals solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of any other rights secured by the Constitution or laws of the United States."

information indicating its commission or potential future commission." The guidelines, also remove the requirement for supervisory approval for the use of these intrusive techniques. Many of these safeguards had been implemented as far back as 1976 with the introduction of the Levi Guidelines to address civil liberty concerns. Regrettably, Attorney General Ashcroft turned a blind eye to these concerns.

Finally, the Ashcroft guidelines considerably relax the supervisory role of FBI HQ for all criminal investigations. For example, the guidelines permit field agents to extend the duration of preliminary inquiries for up to one full year without first having to obtain approval from FBI HQ. Furthermore, as pointed out in the previous section, the guidelines permit these agents to obtain such extensions while also enabling them to utilize many of the more intrusive investigative techniques. The combination of these two changes vests field agents with excessive authority and runs counter to many initiatives announced by Director Mueller to promote increased coordination between field offices and FBI HQ.

J. MIS-CLASSIFICATION OF TERRORISM INVESTIGATIONS

We are also disappointed that the majority has refused to look into the continuing efforts by the Administration to misclassify terrorism investigations. We hope that the U.S. will find and catch those who we know to be terrorists. However, it does no one any good for the Administration to lie about how many terrorism-related cases it has brought. In June 2005, the Washington Post reported that only 39 people—not the 200 implied by President Bush—have been convicted of terrorism-related crimes since 9/11. In fact, 180 of the people charged in these "terrorism probes" had no demonstrated connection to terrorism or terrorist groups; most people were convicted of minor crimes such as making false statements. Similarly, 60 of 62 "terror prosecutions" in New Jersey in 2002 were against Middle Eastern men who paid others to take school-related English proficiency tests for them. However, the majority has refused to take any action to determine how successful our terrorism investigations and our war on terrorists actually has been, and, if these numbers are true, what steps are needed to make sure we actually are able to catch and prosecute terrorists.

K. SAFE HAVENS FOR TERRORIST ASSETS

Another concern we have with the underlying legislation is that it fails to deal with the current law problems limiting the ability of victims and their families to obtain compensation for the damages they have suffered.

While, it may seem difficult to conceive of situations where the United States prevents its citizens from seeking justice for terrorist acts, there are several examples of how the current Administration sought to barr victims from obtaining legal judgment. First, the Administration barred the Iran hostages held from 1979–1981 from satisfying their judgment against the government of Iran. In 2000, they initiated a suit against Iran under the terrorist State exception to the Foreign Sovereign Immunity Act. While a federal district court held Iran to be liable, the U.S. government intervened and argued that the case should be dismissed because Iran had not

been designated a terrorist state at the time of the hostage incident and because the Algiers Accords that led to the hostage release required the United Sates to bar the adjudication of suits based on that incident.[113] As a result, the hostages received no compensation for their suffering.

Second, American servicemen who were harmed in a Libyan sponsored bombing of the La Belle disco in Germany were obstructed from obtaining justice for the terrorist acts they suffered. While victims of the attack pursued settlement of their claims against the Libyan government, the Administration lifted sanctions against Libya without requiring as a condition the determination of all claims of American victims of terrorism. As a result of this action, Libya abandoned all talks with the claimants. Further, because Libya was no longer considered a state sponsor of terrorism, the American servicemen and women and their families were left without recourse to obtain justice. The La Belle victims received no compensation for their suffering.

In addition, a group of American prisoners who were tortured in Iraq during the Persian Gulf war were barred by the Bush Administration from collecting their judgment from the Iraqi government.[114] Although the 17 veterans won their case in the District Court of the District of Columbia, the Administration argued that the Iraqi assets should stay frozen in the U.S. bank account to aid in the reconstruction of Iraq.[115] Claiming that the judgment should be overturned, the Administration deems that rebuilding Iraq is more important than the suffering of fighter pilots who during their 12-year imprisonment suffering beatings, burns, and threats of dismemberment.

Finally, the World Trade Center victims were barred from obtaining judgment against the Iraqi government. In their claim against the Iraqi government, the victims were awarded $64 million against Iraq in connection with the September 2001 attacks. However, they were rebuffed in their efforts to attach the vested Iraqi assets. While the judgment was sound, the Second Circuit Court of Appeals affirmed the lower court's finding that the Iraqi assets, now transferred to the U.S. Treasury, were protected by U.S. sovereign immunity and were unavailable for judicial attachment.

We would hope that any final legislation would address this issue and allow U.S. victims of terrorism to obtain justice from terrorist supporting nations.

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[113] *Roeder* v. *Islamic Republic of Iran,* 195 F. Supp. 2d 140 (D.D.C. 2002), aff'd 333 F.3d 228 (D.C.Cir. 2003), cert. denied 124 S.Ct. 2836 (2004).

[114] David G. Savage, Justices Are Asked to Reject POWs' Case Against Iraq, L.A. Times, March 23, 2005.

[115] Ultimately, the Second Circuit overturned the matter stating, (1) the United States should have been allowed to intervene in the district court even post judgment because of its policy concerns; (2) we were correct that the President was not granted the authority by Congress to nullify non-sanctions/appropriations laws, including our jurisdictional statute (FSIA), in the April 2003 Emergency Wartime Supplemental Appropriations Act; but, (3) the court sua sponte ruled that because of an intervening change in law in a separate case in January 2004 (Cicippio-Puleo), the decision in Acree had to be vacated.

V. The Legislation Does Not Provide Law Enforcement with the Resources and Tools It Needs To Meaningfully Combat Terrorism

Two of the most important keys to winning the war against terrorism include providing sufficient funding and resources to law enforcement officials so that they can adequately protect the homeland and closing current loopholes in existing law which make it easier for would-be terrorists to gain access to dangerous weaponry and materials. Regrettably, H.R. 3199 does absolutely nothing to address either of these important issues.

A. PREVENTING TERRORISTS FROM BUYING GUNS

America's gun laws are wide open compared to the rest of the developed world. Foreign groups promoting various forms of armed conflict, including "jihad" have advised would-be warriors that, because of its lax gun laws, the United States is the ideal place to get guns and firearms training to prepare for armed conflict.

The overseas groups understand that, with little more than a credit card and a driver's license, terrorists can outfit themselves with military grade firepower—including .50-caliber sniper rifles, assault weapons, and exotic ammunition.

While they are not "weapons of mass destruction," any gun in the hand of a terrorist is a danger to Americans. But, shockingly, our current gun laws have an alarming loophole that allows suspected and actual members of terrorist organizations to legally purchase guns.

In fact, according to a recently released GAO report[116], over the course of a nine-month span last year, a total of fifty-six (56) firearm purchase attempts were made by individuals designated as known or suspected terrorists by the federal government.

In forty-seven (47) of those cases, state and federal authorities were forced to permit such transactions to proceed because officials were unable to find any disqualifying information (such as a prior felony conviction or court-determined 'mental defect') in the individual applicant's background.

To address this problem, during the course of the Committee's consideration of H.R. 3199, Mr. Conyers and Mr. Van Hollen offered an amendment to make the transfer of a firearm to someone the person knows is on the Justice Department's Violent Gang and Terrorist Organization File (a.k.a. the "terrorist watch list") fall under the prohibition of providing "material support" to terrorists. As the name implies, this is a list of known violent gang and terrorist organization members. It seems apparent that if the U.S. is willing to wage war in order to keep WMDs out of the hands of possible terrorists, the U.S. should keep domestic guns out of the hands of terrorists in the United States.

Unfortunately, this amendment failed by a vote of 15–22. Shockingly, a number of Republicans stated they opposed the amendment because it would harm the Second Amendment rights of known terrorists. While they are perfectly willing to intrude on Americans' free speech rights, search their houses without war-

[116] G.A.O. Rep. No. 05–127, at 3 (2005).

rants and without cause, and to lock people up indefinitely without charging them of any crime, these same Members argued that a terrorist's right to bear arms was more important than trying to stop terrorists from buying guns and potentially using them for another deadly attack on the United States.

B. PREVENTING THE SALE AND MANUFACTURE OF .50-CALIBER GUNS

While current law does regulate the transfer of certain firearms including machine guns, it does not regulate the sale of .50-caliber sniper rifles which are advertised by their manufacturers as capable of shooting down aircraft. These weapons are important for military use, but are currently also available for purchase by the general public, including terrorists. We know that in the 1980s Essam Al-Ridi purchased .50-caliber rifles in Texas and then shipped them to Osama bin Laden. Similarly, in 1989, a gunrunner named Florin Krasniqi came to the U.S. to purchase .50-caliber rifles and subsequently shipped them to the Kosovo Liberation Army.

Capable of inflicting a devastatingly accurate impact from well over a mile away, the U.S. Army handbook on urban combat states that .50-caliber sniper rifles are intended for use as anti-materiel weapons, designed to attack bulk fuel tanks and other high-value targets from a distance, using "their ability to shoot through all but the heaviest shielding material." These weapons are a serious threat for use against civil aviation, hazardous cargo transport vehicles and rail cars carrying hazardous materials such as chlorine gas. And needless to say, their ability to emit powerful projectiles accurately over long distances make .50-caliber rifles a favorite weapon of war lords, drug cartels and terrorists due to its unparalleled potential for damage.

During the course of the Committee's consideration of H.R. 3199, Ms. Lofgren introduced an amendment which would have made it a crime under the material support provision of the Patriot Act to transfer a .50-caliber sniper rifle to any person the transferor knows to be a member of Al Qaeda. Obviously, such an amendment would provide an important mechanism to help keep dangerous, high-powered weapons out of the hands of known terrorists. However, once again, the Republicans voted down this necessary and commonsense measure to help protect the United States from harm.

C. REGULATING THE SALE OF SMOKELESS AND BLACK POWDER

Alarmed by a manifesto issued by confessed Olympic bomber Eric Rudolph justifying violence to stop abortions, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is now urging clinics to evaluate and enhance their security. Yet while the ATF warns potential targets of this threat, supporters of H.R. 3199 refuse to do anything through this legislation to stop the virtually unregulated sale of the two substances most commonly used in improvised explosive devices in the United States—smokeless powder and black powder.

Smokeless powder—Rudolph's weapon of choice in the Olympic Park bombing—is used by people who like to "reload" their own ammunition. Black powder is used in muzzle-loading guns for

hunting and historical re-enactments. Because smokeless powder qualifies as "small arms ammunition and components thereof, it is exempt from the federal law regulating the manufacture and sale of explosives.

Commercially manufactured black powder in quantities of less than 50 pounds is also exempt. Rudolph reportedly bought the smokeless powder he packed into the Olympic Park bomb from a Tennessee gun dealer, one of approximately 60,000 federally licensed firearms dealers (FFLs) in America.

After the September 11th attacks, ATF became concerned that other terrorists would utilize the explosives loophole exploited by Rudolph. The agency started a campaign urging FFLs to "Be Aware for America," and in a July 2004 letter ATF reminded dealers, "Some of the products you may carry in your inventory, such as black powder and smokeless powder, could be used in acts of violence. While smokeless powder and black powder generally are exempt from the Federal explosives laws, these products are often used to make illegal or 'improvised explosives devices' and pipe bombs."

Unfortunately, thanks to the powerful gun lobby, for now this mild entreaty to gun dealers appears to be the full extent of the federal government's efforts to prevent terrorists from getting smokeless or black powder.

D. INCREASING GRANTS TO FIRST RESPONDERS

Another problem in the war on terror is that the United States has no sufficient allocated money to keep our country safe. Local and state law enforcement officers have been laid off, schools are getting more dangerous by the second, and not enough persons have been hired to perform intelligence, terrorism and homeland security duties.

In local communities across the United States, the first line of defense against terrorists and other violent crime is the local police department. More police on the streets could be useful in thwarting potential terrorist attacks and also protecting the community from the more conventional violent criminals and violent crimes.

During the 1990s, the Clinton Administration implemented the Office of Community Oriented Policing Services (COPS). The goal of the program was to put 100,000 new police officers on the streets of America's communities. A new GAO Report indicates that the COPS program did cause the level of violent crimes in America to decline. During the time that agencies were spending COPS funds, violent crime declined.[117] For example, between 1994 and 2001, the number of violent crimes declined from about 1.9 million to about 1.4 million (or about 23 percent), and the violent crime rate per 100,000 population declined from 714 to 504 (or about 29 percent).[118]

Mr. Weiner and Ms. Sánchez therefore offered an amendment to expand the grants available for such measures. Their amendment would increase funding for first responders in state and local communities, provide for retention funds to keep law enforcement in

[117] G.A.O. Rep. No. 05–699 at 2 (2005).
[118] Ibid.

depressed areas, and increase funding for school security as well as intelligence, terrorism, and homeland security programs. Unfortunately, the Republicans derailed this amendment by raising a point of order on the grounds of germaneness.

E. SECURING OUR NATION'S PORTS

The "soft underbelly" of our national security defensive against terrorism is the security of our nation's ports. This fact has been repeated in numerous studies and even cited in the documentary Fahrenheit 911 by Michael Moore. According to a report in the New York Times, an audit on spending for port security shows "far too little money appropriated; much of the appropriated money not spent; and much of the money that was spent going for the wrong things." [119] Just recently, the United States Coast Guard estimated that scanning equipment for the six million shipping containers that enter the United States every year would cost $5.4 billion over the next 10 years; however, federal port security grant programs have only allocated less than $600 million since 2002.[120]

It is only a matter of time before terrorists will exploit this weakness and possibly transport biological/chemical weapons and/or weapons of mass destruction into the United States using cargo containers. In 2002, terrorists had an 82.5 percent chance of doing this completely undetected. This is an unacceptable risk to the American government and people.

F. ELIMINATING TRADE WITH TERRORIST COUNTRIES

The United States government has successfully targeted various front organizations in the United States that send funds to terrorist causes all over the world; however, phoney Islamic charities are not the only organizations in the United States that have done business with countries that sponsor terrorism. According to a 60 Minutes report, "there are U.S. companies that are helping drive the economies of countries like Iran, Syria, and Libya, all places that have sponsored terrorism." [121] William Thompson, New York City comptroller, has identified three companies, Halliburton, Conoco-Phillips, and General Electric, that have invested in these "rouge countries." [122] Halliburton is the same company that Vice President Richard Cheney ran from 1995 to 2000, "during which time Halliburton Products and Services set up shop in Iran. Today, its sells about $40 million a year worth of oil field services to the Iranian government." [123] According to Bob Herbert, Halliburton has had a "history of ripping off the government" and made "zillions doing business in countries that sponsor terrorism, including members of the 'axis of evil' that is so despised by this president." [124]

Currently, United States law prohibits U.S. companies from doing business with nations that sponsor terrorism.[125] However, some U.S. companies have found a loophole in the law and are "de-

[119] Follow the Port Security Money, N.Y. Times, February 28, 2005.
[120] Ibid.
[121] Doing Business with the Enemy, 60 Minutes (2004), at http://www.cbsnews.com/stories/2004/01/22/60minutes/main595214.shtml.
[122] Ibid.
[123] Ibid.
[124] Bob Herbert, Dancing with the Devil, N.Y. Times, May 22, 2003.
[125] International Emergency Economic Powers Act, § 35, 50 U.S.C. § 1701 (2003).

liberately bypassing U.S. sanction laws by the use of the 'foreign subsidiary' loophole, thereby providing terrorist states with more revenue to finance terrorist operations."[126] U.S. Congressman Henry Waxman found that Halliburton in particular has circumvented the law by setting up subsidiaries in places such as the Cayman Islands.[127]

In a effort to close the loophole, U.S. Senator Frank Lautenberg offered S.A. 3151, an amendment to the International Emergency Economic Powers Act, that redefined corporate entities subject to U.S. sanction law to include "not only U.S. companies and all foreign branches, but also foreign subsidiaries controlled over 50 percent by their parent American company."[128] This amendment would have stopped companies like Halliburton who have subsidiary companies that conduct business with countries like Iran and Lybia. The amendment was defeated in the U.S. Senate by one vote in 2004.

G. PENALIZING THOSE WHO LEAK CLASSIFIED INFORMATION

This Administration and the Republican majority in Congress have continually accused Democratic Members of Congress, as well as many American citizens, of "aiding the terrorists" by speaking out against actions and policies that appear extreme and unnecessary. However, these same individuals have remained silent when it has been discovered that members of the Administration and others have knowingly leaked classified information that identifies covert operatives and literally put their lives at risk.

Current U.S. law concerning such leaks is insufficient to protect those who put their lives at risk every day for this country. Many have noted that it is difficult to meet the requirements necessary to be found in violation of this law. As a result, Mr. Wexler offered an amendment to fix this problem. The Wexler amendment would penalize anyone who reveals any information that might identify an intelligence officer or source and put their lives in danger. However, the Republicans defeated this amendment by voice vote.

H. IMPROVING THE TERRORIST WATCH LIST

Finally, there is true need for an accurate and up-to-date Terrorist Watch List such that it can be effectively used to identify and catch suspected and known terrorists. To this end, it is important to ensure that the list does not misidentify people and therefore divert needed resources away from catching the true terrorists.

Mr. Van Hollen introduced an amendment which would require the Inspector General to report to Congress on the progress of the Terrorist Screening Center in developing procedures by which to remove misidentified names from the Terrorist Watch List. This amendment is important on two fronts: (1) it will ensure that resources are not spent tracking the wrong people, and (2) it will protect Americans and other persons who are mistakenly identified as terrorists by providing a mechanism for them to clear their name. The much publicized case of Senator Edward Kennedy spending

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[126] Lautenberg to Offer Amendment to the FSC–ETI Bill, Sen. Lautenberg's Website (2004), at http://lautenberg.senate.gov/~lautenberg/press/2003/01/2004422BO8.html.

[127] Herbert, supra note 4.

[128] Lautenberg to Offer Amendment to the FSC–ETI Bill, supra note 6.

many hours to clear his name from this list highlights the problem confronting ordinary citizens. And, our counterterrorism officers need to be assured that they can focus on stopping those who truly intend to do harm to the United States. This amendment was rejected by the majority.

Considering that the majority often suggests we are in a perpetual war against terrorists, including terrorists who wish to attack the United States, we are disappointed that they flatly rejected amendments which would directly help the United States fight terrorists and prevent terrorism. That all of these reasonable measures to enure our safety were rejected contributed to our collective decision not to support this bill.

VI. Description of Amendments Offered by Democratic Members

During the mark-up thirty-nine (39) amendments were offered by Democratic members. The following section provides a brief description of each of these amendments:

1. Nadler Amendment—*Description of Amendment:* The amendment would amend section 215 of the PATRIOT Act to allow for recipients to challenge the orders, and to allow recipients to petition to set aside the non-disclosure requirement. It would also limit Section 215 order to those certified as "agents of a foreign power."

Vote on Amendment: The amendment was defeated by a vote of 23–12. Ayes: Representatives Conyers, Berman, Boucher, Nadler, Scott, Watt, Waters, Delahunt, Weiner, Sanchez, Van Hollen, Wasserman Schultz, Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert, Lofgren, Schiff.

2. Scott Amendment—*Description of Amendment:* The amendment dealt with the limitation on authority to delay notice of search warrants. This amendment would strike "reasonable period" from section 3103a of Title 18, U.S.C. and replace with "seven calender days" and applications thereafter to be extended by the court for an additional 30 calender days for good cause shown to the court.

Vote on Amendment: The amendment was withdrawn.

3. Waters Amendment—*Description of Amendment:* The amendment stated that national security letters would not be issued to a health insurance company.

Vote on Amendment: The amendment was defeated by a vote of 23–14. Ayes: Representatives Conyers, Berman, Boucher, Nadler, Scott, Watt, Lofgren, Waters, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert, Wasserman Schultz.

4. Scott Amendment—*Description of Amendment:* The amendment is a second degree amendment to the Lungren Amendment. The Lungren Amendment sunsetted Sections 206 and 215 of the PATRIOT Act in 2015. The Scott Amendment would sunset these provisions in 2009.

Vote on Amendment: The amendment was defeated by a party line vote of 21–15. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Waters, Meehan, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz, Nays: Representatives Sensenbrenner, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

5. Nadler Amendment—*Description of Amendment:* This a second degree amendment to the Lungren amendment. It would sunset Sections 206 and 215 in 2011.

Vote on Amendment: The amendment was defeated on a party line vote of 9–18. Ayes: Representatives Conyers, Nadler, Scott, Watt, Meehan, Delahunt, Schiff, Sanchez, Nays: Representatives Sensenbrenner, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Issa, Forbes, King, Feeney, Gohmert.

6. Nadler and Lofgren Amendment—*Description of Amendment:* This amendment would sunset the remaining 14 expiring provisions in 2015.

Vote on Amendment: The amendment was defeated on a party line vote of 12–21. Ayes: Representatives Conyers, Berman, Boucher, Nadler, Scott, Lofgren, Meehan, Delahunt, Weiner, Schiff, Sanchez, Van Hollen; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

7. Van Hollen and Conyers Amendment—*Description of Amendment:* This amendment would close the gun buying loophole by prohibiting the knowing sale of firearms to persons on the Violent Gang and Terrorist Organization File.

Vote on Amendment: The Amendment was defeated by 15–22. Ayes: Representatives Conyers, Berman, Nadler, Scott, Lofgren, Waters, Meehan, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert, Boucher.

8. Berman and Delahunt Amendment—*Description of Amendment:* This amendment would require a report on the use of data-mining technology and procedures, as well as measures to protect privacy with the use of data-mining.

Vote on Amendment: The amendment was withdrawn.

9. Schiff and Waters Amendment—*Description of Amendment:* This amendment would allow only the FBI Director to obtain medical records, and records from libraries and bookstores under Section 215 of the PATRIOT Act.

Vote on Amendment: The amendment was withdrawn.

10. Wexler Amendment—*Description of Amendment:* This amendment adds the revealing of information about the identity of a covert operative to the list of predicate offenses for providing material support for terrorism.

Vote on Amendment: The amendment was withdrawn.

11. Schiff Amendment—*Description of Amendment:* This amendment would add to the list of activities which, if done willfully, will

result in violating the statute which prohibits the planning of terrorist attacks on mass transportation (18 USC 1993(a)(3)).

Vote on Amendment: The amendment was agreed to by voice vote.

12. Lofgren Amendment—*Description of Amendment:* This amendment would prohibit the sale of .50-caliber sniper rifles to a person known to be a member of Al Qaeda.

Vote on Amendment: This Amendment failed on a party line vote of 13–22. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Waters, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

13. Weiner and Sanchez Amendment—*Description of Amendment:* This Amendment would increase grants to first responders, as well as grants for school security and retention grants for local law enforcement.

Vote on Amendment: This amendment was ruled non-germane.

14. Lofgren Amendment—*Description of Amendment:* This amendment would require the Inspector General of the Department of Justice to review the detentions of persons under the material witness statute (18 USC 3144) in its reports required by Section 1001 of the PATRIOT Act.

Vote on Amendment: This amendment was agreed to unanimously, on a vote of 34–0.

15. Schiff Amendment—*Description of Amendment:* This amendment would amend section 105(c) of the Foreign Intelligence Surveillance Act (Section 206 of the PATRIOT Act) to require that where the identity of the target of surveillance is not known, a specific description is provided of the target.

Vote on Amendment: This amendment failed on a party line vote of 15–22. Ayes: Representatives Conyers, Berman, Boucher, Nadler, Scott, Watt, Lofgren, Waters, Meehan, Delahunt, Wexler, Schiff, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

16. Nadler and Jackson Lee Amendment—*Description of Amendment:* This amendment would amend Section 206 of the PATRIOT Act to make FISA wiretaps like criminal wiretaps in that the FBI must choose between obtaining either a roving wiretap or a "John Doe" wiretap.

Vote on Amendment: The Amendment was withdrawn.

17. Watt Amendment—*Description of Amendment:* This amendment allows targets of nationwide search warrants to challenge them in the district where the warrant is served.

Vote on Amendment: This amendment was defeated by a vote of 14–24: Ayes: Representatives Conyers, Berman, Boucher, Nadler, Scott, Watt, Lofgren, Waters, Meehan, Delahunt, Wexler, Weiner, Sanchez, Van Hollen; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert, Schiff, Wasserman Schultz.

18. Schiff Amendment—*Description of Amendment:* This amendment (a) adds to the list of predicate offenses which are considered "federal crimes of terrorism"; (b) allows for the forfeiture of property involved in the trafficking of weapons of mass destruction; and (c) adds numerous crimes related to terrorism to the list of offenses for which oral and wire communications may be intercepted under 18 U.S.C. 2516.

Vote on Amendment: This amendment was agreed to by voice vote.

19. Lofgren Amendment—*Description of Amendment:* This amendment would ensure that no law passed after 9/11, including the PATRIOT Act, would suspend the writ of habeas corpus.

Vote on Amendment: This amendment was initially agreed to by voice vote. There was then a successful vote in favor of reconsidering the amendment. The amendment then was defeated on a party line vote of 14–23. Ayes: Representatives Conyers, Berman, Boucher, Nadler, Scott, Watt, Lofgren, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

20. Schiff Amendment—*Description of Amendment:* This amendment would eliminate the nondisclosure requirement of a Foreign Intelligence Surveillance Court order for business records from a library, bookstore, or for medical records, when an individual is a citizen of the United States, at the conclusion of investigation.

Vote on Amendment: The amendment failed by a recorded vote of 13 yeas and 20 nays. Ayes: Representatives Conyers, Berman, Boucher, Scott, Waters, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz, Goodlatte; Nays: Representatives Sensenbrenner, Coble, Smith, Gallegly, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks.

21. Wexler Amendment—*Description of Amendment:* This amendment would add to Section 805 on Material Support for Terrorism in the PATRIOT Act the act of revealing identifying information about a U.S. covert operative.

Vote on Amendment: This amendment failed on a voice vote.

22. Schiff Amendment—*Description of Amendment:* This amendment would obligate all funds authorized for the Victims of Crime Fund, through the Victims of Crime Act of 1984, to be used.

Vote on Amendment: This amendment was ruled non-germane.

23. Watt and Waters Amendment—*Description of Amendment:* This amendment would strike section 8(c) of H.R. 3199 to eliminate the nondisclosure requirement of a Foreign Intelligence Surveillance Act Court order for business records in a national security case unless law enforcement in an "application for such an order provides specific and articulable facts giving the applicant reason to believe that disclosure would result" in adverse affects specified in the amendment.

Vote on Amendment: This amendment failed on a vote of 13–23. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Waters, Delahunt, Wexler, Weiner, Sanchez, Van Hollen,

Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert, Schiff.

24. Scott Amendment—*Description of Amendment:* This amendment would entitle a person who prevails on a challenge of the legality of a section 215 order to reasonable attorneys fees, if any, incurred by the person in pursuing the challenge.

Vote on Amendment: The amendment failed by a party line vote of 14–22. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Waters, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

25. Schiff Amendment—*Description of Amendment:* This amendment would sunset Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 ("lone wolf") in 2008.

Vote on Amendment: This amendment failed on a party line vote 14–22. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Weiner, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

26. Nadler, Jackson Lee and Waters Amendment—*Description of Amendment:* This amendment would limit the length of delays for delayed notification search warrants under Section 213 of the PATRIOT Act. Delays would be limited to 30 days, with extensions of up to 60 days.

Vote on Amendment: This Amendment was withdrawn.

27. Jackson Lee Amendment—*Description of Amendment:* This amendment would amend Section 218 of the PATRIOT Act to provide that notice be given to the target of a search if the target is a U.S. person who is found not to be an agent of a foreign power.

Vote on Amendment: This amendment failed on a party line vote of 10–23. Ayes: Representatives Conyers, Nadler, Scott, Watt, Jackson Lee, Waters, Weiner, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

28. Flake and Nadler Amendment—*Description of Amendment:* This amendment would amend Section 213 of the PATRIOT Act to provide that delays in notification can last for 180 days, with extensions of up to 90 days.

Vote on Amendment: This amendment was agreed to by voice vote.

29. Conyers Amendment—*Description of Amendment:* This amendment would (a) treat electronic communications interception like wire and oral communications under 18 US 2515; (b) require a report on the disclosure of contents of electronic communications by the A.C. to the Congress; and (c) increase to $10,000 the amount recoverable under 18 USC 2707(c).

Vote on Amendment: This amendment was defeated on a party line vote of 14–23. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert

30. Nadler Amendment—Description of Amendment: This amendment would authorize disclosure of a National Security Letter to "qualified persons," including one's attorney. It also provides that the non-disclosure period will last 180 days, with extensions of up to 90 days, if the government proves disclosure would result in a clear harm.

Vote on Amendment: This amendment was defeated 14–23. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

31. Schiff Amendment—Description of Amendment: This amendment would grant citizenship to alien spouses and children of certain victims of the 9/11 attacks.

Vote on Amendment: This amendment was ruled non-germane.

32. Scott Amendment—Description of Amendment: This amendment amend section 105(c) of the Foreign Intelligence Surveillance Act to require surveillance may be directed at a place or facility only for such time as the applicant believes that such facility or place is being used, or about to be used by the target of the surveillance.

Vote on Amendment: The amendment failed by a party line vote of 13 yeas to 23 nays. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Weiner, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

33. Schiff Amendment—Description of Amendment: This amendment would require a report on the use of National Security Letters (Section 505 of the PATRIOT Act) by the Attorney General for the preceding year.

Vote on Amendment: This amendment failed by a party line vote of 15–21. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks.

34. Jackson Lee Amendment—Description of Amendment: This amendment would prohibit medical records from being obtained with a Section 215 order.

Vote on Amendment: This amendment failed by a vote of 12–24. Ayes: Representatives Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler, Weiner, Sanchez, Van Hollen; Nays: Representatives Sensenbrenner, Hyde, Coble, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert, Schiff, Wasserman Schultz.

35. Van Hollen Amendment—Description of Amendment: This amendment requires a report by the DOJ Inspector General on procedures and guidelines to ensure the accuracy of the Terrorist Watch List, including how to remove misidentified persons.

Vote on Amendment: This amendment failed on a party line vote of 15–23. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Meehan, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

36. Nadler Amendment—Description of Amendment: This amendment allows for the recipient of a National Security Letter to disclose receipt of the Letter to a "qualified person," including one's attorney.

Vote on Amendment: This Amendment failed on a party line vote 16–23. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Meehan, Delahunt, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert.

37. Scott Amendment—Description of Amendment: This amendment would exempt humanitarian support such as medical services, food and water from the prohibition on providing Material Support to Terrorists (Section 805 of the PATRIOT Act).

Vote on Amendment: This amendment failed on a vote of 7–31. Ayes: Representatives Conyers, Scott, Watt, Jackson Lee, Waters, Meehan, Delahunt; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert, Berman, Nadler, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz.

38. Jackson Lee Amendment—Description of Amendment: This amendment would require a report by the Inspector General of DOJ under Section 1001 of the PATRIOT Act on any authorities used that go beyond the Attorney General Guidelines written in 1989, such as racial profiling.

Vote on Amendment: This amendment failed on a vote of 13–25. Ayes: Representatives Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Meehan, Wexler, Weiner, Sanchez, Van Hollen, Wasserman Schultz; Nays: Representatives Sensenbrenner, Hyde, Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Baucus, Inglis, Hostettler, Green, Keller, Issa, Flake, Pence, Forbes, King, Feeney, Franks, Gohmert, Berman, Delahunt.

39. Nadler and Scott Amendment—Description of Amendment: This amendment amends the National Security Letter statutes to allow recipients to challenge them in court. It also requires pen register and trap-and-trace orders under Section 214 to be limited to terrorism or espionage investigations.

Vote on Amendment: This amendment was defeated on a voice vote.

VII. Conclusion

There is no more difficult task we have as legislators than balancing our nation's need for security against our citizens' civil liberties. By passing this bill which largely ignores the most serious abuses of the PATRIOT Act, ignores the unilateral misuse of power by the Administration, and fails to provide adequate resources and funding to those on the "front line" in the fight against terrorism, we believe we will be failing in our task.

If we are serious about combating terror in the 21st century, we must move beyond symbolic gestures and begin to make the hard choices needed to protect our nation. Unfortunately, this legislation does not make those choices. The lessons of September 11 are that if we allow law enforcement to do their work free of political interference, if we give them adequate resources and modern technologies, we can protect our citizens without intruding on their liberties.

The bill before us today does not meet this test. It is our hope that we can come together on the House Floor and in conference and craft a bill that fights terrorism the right way, consistent with our constitution and our values, and in a manner that serves as a model for the rest of the world. For all of the aforementioned reasons, we respectfully dissent.

Appendix A, Section-By-Section Summary of the USA PATRIOT Act of 2001, H.R. 3162

TITLE I: ENHANCING DOMESTIC SECURITY

Section 101: Counterterrorism fund—Establishes a counterterrorism fund to rebuild any Justice Department component that has been damaged or destroyed as a result of a terrorism incident; provide support for investigations and to pay terrorism-related rewards; and conduct terrorism threat assessments.

Section 102: Sense of Congress condemning discrimination against Arab and Muslim Americans.

Section 103: Increased funding for the FBI's technical support center—Authorizes $200 million for each of FY 2002, 2003, and 2004 for the technical support center.

Section 104: Requests for military assistance to enforce prohibition in certain emergencies—Allows military to assist state and local law enforcement with domestic chemical weapons emergencies.

Section 105: Expansion of National Electronic Crime Task Force Initiative—Directs the Secret Service to develop a national network with electronic crime task forces based on the New York Electronic Crime Task Force model.

Section 106: Presidential Authority—Expands International Economic Emergency Powers Act to allow the President to confiscate and vest properties of an enemy when United States is engaged in military hostilities or has been subject to an attack by that enemy. It allows classified information, used to make a determination regarding national security or terrorism cases, to be submitted and in camera to the reviewing court of such determinations.

TITLE II: ENHANCED SURVEILLANCE PROCEDURES

Section 201: Authority to Intercept Wire, Oral, and Electronic Communications Relating to Terrorism—Adds terrorism offenses to the list of predicates for obtaining title III wiretaps.

Section 202: Authority to Intercept Wire, Oral, and Electronic Communications Relating to Computer Fraud and Abuse Offenses—Adds computer fraud and abuse offenses to the list of predicates for obtaining title III wiretaps.

Section 203: Authority to Share Criminal Investigative Information—Allows intelligence information obtained in grand jury proceedings to be shared with any law enforcement, intelligence, immigration, or national security personnel as long as notice is given to the court after the disclosure. Recipient can only use information in conduct of their duties subject to disclosure limitations in current law. Intelligence information obtained from wiretaps can be shared with law enforcement, intelligence, immigration, or national security personnel. Recipients can use the information only in the conduct of their duties and are subject to the limitations in current law of unauthorized disclosure of wiretap information. Attorney General must establish procedures for the release of this information in the case of a U.S. person. Intelligence information obtained in intelligence operations can be disclosed to intelligence personnel in performance of their duties.

Section 204: Clarification of Intelligence Exceptions from Limitations on Interception and Disclosure of Wire, Oral, and Electronic Communications—Explicitly carves out foreign intelligence surveillance operations from the protections of ECPA.

Section 205: Employment of Translators by the FBI—Authorizes the FBI to expedite employment of translators.

Section 206: Roving Surveillance Authority under FISA—Expands FISA court orders to allow "roving" surveillance in manner similar to Title III wiretaps.

Section 207: Duration of FISA Surveillance of Non-United States Persons who are Agents of a Foreign Power—Currently, the duration for a FISA surveillance may initially be ordered for no longer than 90 days but later can be extended to one year. This section changes the initial period for electronic surveillance from 90 to 120 days and extensions from 90 days to one year; and for searches from 45 to 90 days.

Section 208: Designation of Judges—Increases number of FISA judges from 7 to 11 and requires that at least 3 judges reside within 20 miles of the District of Columbia.

Section 209: Seizure of Voice Mail Pursuant to Warrants—Provides that voice mails can be accessed by the government with a court order in the same way e-mails currently can be accessed and

authorizes nationwide service with a single search warrant for voice mails.

Section 210: Scope of Subpoenas for Records of Electronic Communications—Broadens the types of records that law enforcement can subpoena from electronic communications service providers by requiring providers to disclose the means and source of payment, including any bank account or credit card numbers, pursuant to a subpoena.

Section 211: Clarification of Scope—Broadens the scope of the subscriber records disclosure statutes to treat cable companies that provide Internet service the same as other Internet Service Providers and telephone companies.

Section 212: Emergency Disclosure of Electronic Communications—Permits Internet Service Providers to disclose voluntarily stored electronic communications of subscribers in the event immediate danger or death or serious bodily injury to a person requires such disclosure. Also otherwise allows law enforcement to compel disclosure to third parties using a court order or a search warrant.

Section 213: Authority for Delaying Notice of Execution of a Warrant—Broadens authority of law enforcement to delay notification of search warrants in criminal investigation if prior notification would have an adverse result and if notification is given a reasonable period after the search. Based on codification of Second Circuit decision.

Section 214: Pen Register and Trap and Trace Authority under FISA—Currently, when the Attorney General or a designated attorney for the government applies for a pen register or trap and trace device under FISA, the application must include a certification by the applicant that (1) the information obtained would be relevant to an on-going intelligence investigation, and (2) the information demonstrates that the phone covered was used in communication with someone involved in terrorism or intelligence activities that may violate U.S. criminal law or with a foreign power or its agent whose communication is believed to concern terrorism or intelligence activities that could violate U.S. criminal laws. The conference report deletes second prong, but limits the use of these tools to protection against international terrorism or clandestine intelligence activities and provide that the use of these tools may not be based solely on First Amendment activities.

Section 215: Access to Records and Other Items under FISA—(1) requires a FISA court order to obtain business records; (2) limits the use of this authority to investigations to protect against international terrorism or clandestine intelligence activities; and (3) provides that investigations of U.S. persons may not be based solely on First Amendment activities.

Section 216: Authorities Relating to the Use of Pen Register and Trap and Trace Devices—Extends the pen/trap provisions so they apply not just to telephone communications but also to Internet traffic, so long as they exclude "content." Excludes ISP's from liability, gives Federal courts the authority to grant orders that are valid anywhere in the United States instead of just their own jurisdictions, and provides for a report to Congress on this "Carnivore" device.

Section 217: Interception of Computer Trespasser Communications—Allows persons "acting under color of law" to intercept communications if the owner of a computer authorizes it, and the person acting under color of law is acting pursuant to a lawful investigation. Section 815 also excludes service provider subscribers from definition of trespasser, limits interception authority to only those communications through the computer in question.

Section 218: Foreign Intelligence Information—Permits FISA surveillance and search requests if they are for a "significant" intelligence gathering purpose (rather than "the" purpose under current law).

Section 219: Single Jurisdiction Search Warrants for Terrorism—Permits Federal judges to issue search warrants having nationwide effect for investigations involving terrorism.

Section 220: Nationwide Service of Search Warrants for Electronic Evidence—Permits a single court having jurisdiction over the offense to issue a search warrant for e-mail that would be valid in anywhere in the United States.

Section 221: Trade Sanctions (IR Committee)—Adds Taliban to list of entities potentially subject to sanctions and retains congressional oversight in current law.

Section 222: Assistance to Law Enforcement Agencies—Prohibits technology mandates on entities to comply with this Act. Provides for cost reimbursement of entities assisting law enforcement with title III pen trap orders.

Section 223: Civil Liability for Certain Unauthorized Disclosures—Increases civil liability for unauthorized disclosure of pen trap, wiretap, stored communications or FISA information. Also requires administrative discipline of officials who engage in such unauthorized disclosures.

Section 224: Sunset—201, 202, 203(b), 204, 206, 207, 209, 212, 214, 215, 217, 218, 220, will sunset in four years—at the end December 31, 2005. Conference agreement to narrow those investigations that survive sunset to particular investigations based on offenses occurring prior to sunset.

Section 225: Immunity for Compliance with FISA Wiretap—Provides immunity for civil liability from subscribers, tenants, etc. for entities that comply with FISA wiretap orders—dropped Administration proposal allowing FBI to use wiretap information on U.S. citizens it obtained overseas in violation of the Fourth Amendment.

TITLE III: FINANCIAL INFRASTRUCTURE

Other provisions to be supplied by Financial Services conference. Provisions below from House Judiciary Committee bill.

Section 301: Laundering The Proceeds of Terrorism—Expands the scope of predicate offenses for laundering the proceeds of terrorism to include "providing material support or resources to terrorist organizations," as that crime is defined in 18 U.S.C. § 2339B of the criminal code.

Section 302: Extraterritorial Jurisdiction [International Relations Committee]—Applies the financial crimes prohibitions to conduct committed abroad in situations where the tools or proceeds of the offense pass through or are in the United States.

TITLE IV: PROTECTING THE BORDER

SUBTITLE A—PROTECTING THE NORTHERN BORDER

Section 401: Ensuring Adequate Personnel on the Northern Border: Authorizes the waiver of any FTE cap on personnel assigned to the INS to address the national security on the Northern Border.

Section 402: Northern Border Personnel: Authorizes the appropriation of funds necessary to triple the number of Border Patrol, INS and Customs Service personnel in each State along the northern border. The bill also authorizes $50 million each to the INS and Customs Services for purposes of making improvements in technology for monitoring the northern border and acquiring additional equipment at the northern border.

Section 403: Requiring Sharing by the Federal Bureau of Investigation of Certain Criminal Record Extracts with Other Federal Agencies in Order to Enhance Border Security: Requires the Justice Department and FBI to provide the State Department and INS information contained in its National Crime Information Center files to permit INS and State to better determine whether a visa applicant has a criminal history record.

Section 404: Limited Authority to Pay Overtime: Strikes certain prohibitions on the paying of overtime to INS employees.

Section 405: Report on the Integrated Automated Fingerprint Identification System for Points of Entry and Overseas Consular Posts: Requires the Justice Department to report to Congress on the feasibility of enhancing the FBI's Integrated Automated Fingerprint Identification System and other identification systems.

SUBTITLE B: ENHANCED IMMIGRATION PROVISIONS

Section 411: Definitions Relating to Terrorism: Broadens the terrorism ground of inadmissibility to include (a) any representative of a political or social group that publicly endorses terrorist activity in the United States, (b) a person who uses his position of prominence within a country to endorse terrorist activity or persuade others to support terrorist activity, (c) the spouses and children of persons engaged in terrorism, and (d) any other person the Secretary of State or Attorney General determines has been associated with a terrorist organization and who intends to engage in activities that could endanger the welfare, safety, or security of the United States. This bill broadens the definition of "terrorist activity" to include the use, not only of explosives and firearms, but other dangerous devices as well. Further, it broadens the definition of a terrorist "engaging in a terrorist activity" to include anyone who affords material support to an organization that the individual knows or should know is a terrorist organization, regardless of whether or not the purported purpose for the support is related to terrorism. It also broadens the types of organizations that may be designated or redesignated as a foreign terrorist organization by the Secretary of State to comport with definitions of terrorism found elsewhere in the law.

Section 412: Changes in Designation of Foreign Terrorist Organizations: Expands the ability of the Attorney General to mandatorily detain those aliens that he certifies may pose a threat to national security, pending the outcome of criminal or removal proceedings.

Section 413: Multilateral Cooperation Against Terrorists: Enhances the Government's ability to combat terrorism and crime worldwide by providing new exceptions to the laws regarding disclosure of information from visa records. The bill grants the Secretary of State discretion to provide such information to foreign officials on a case-by-case basis for the purpose of fighting international terrorism or other crimes. It also allows the Secretary to provide countries with which he negotiates specific agreements to have more general access to information from the State Department's lookout databases where the country will use such information only to deny visas to persons seeking to enter its territory.

Section 414: Visa Integrity and Security: Includes a sense of the Congress that in light of the terrorist attacks, the Attorney General must expedite the implementation of the integrated entry and exit data system authorized by Congress in 1996.

Section 415: Participation of Office of Homeland Security on Entry Task Force: Includes the Office of Homeland Security in the development and implementation of the integrated entry and exit data system authorized by Congress in 1996.

Section 416: Foreign Student Monitoring Program: Requires the Attorney General to fully implement and expand foreign student monitoring program authorized by Congress in 1996.

Section 417: Machine Readable Passports: Requires the Secretary of State to perform annual audits and report to Congress on the implementation of the machine-readable passport program.

Section 418: Prevention of Consulate Shopping: Requires the Secretary of State to review how consular officers issue visas to determine if consular shopping is a problem.

SUBTITLE C: PRESERVATION OF IMMIGRATION BENEFITS FOR VICTIMS OF TERRORISM

Adds new subtitle (sections 421–428) to the Administration's proposal to preserve the immigration benefits of the victims of the September 11th terrorist attacks and their family members. For some families, spouses and children may lose their immigration status due to the death or serious injury of a family member. These family members are facing deportation because they are out of status: they no longer qualify for their current immigration status or are no longer eligible to complete the application process because their loved one was killed or injured in the September 11 terrorist attack. Others are threatened with the loss of their immigration status, through no fault of their own, due to the disruption of communications and transportation that has resulted directly from the terrorist attacks. Because of these disruptions, people have been and will be unable to meet important deadlines, which will mean the loss of eligibility for certain benefits and the inability to maintain lawful status, unless the law is changed. The bill:

- Creates a new special immigrant status for people who were in the process of securing permanent residence through a family member who died, was disabled, or lost employment as a result of the terrorist activities of September 11, 2001;
- Provides a temporary extension of status to people who are present in the United States on a "derivative status" (the

spouse or minor child) of a non-immigrant who was killed or injured on September 11, 2001;

- Provides remedies for people who will be adversely affected or will lose their right to apply for benefits because of their inability to meet certain deadlines through no fault of their own and as a result of the September 11, 2001 terrorist attack (visa waiver, diversity lottery, advance parole and voluntary departure);
- Provides immigration relief to the widows/widowers and orphan children of citizens and legal permanent residents who were killed in the September 11 attacks by allowing applications for permanent resident status to be adjudicated;
- Prevents children from aging out of eligibility for immigration benefits were the delay the result of the September 11 attacks;
- Provides for temporary administrative relief to allow the family of people who were killed or seriously injured in the terrorist attacks who are not otherwise covered by this subtitle; and
- Prohibits any benefits from being provided to anyone culpable for the terrorist attacks on September 11 or any family member of such person.

TITLE V: REMOVING OBSTACLES TO INVESTIGATING TERRORISM

Section 501: Attorney General's Authority to Pay Rewards—Ensures non-terrorism rewards are subject to budgetary caps.

Section 502: Secretary of State Rewards (IR Committee)—Amends the Department of State's reward authority so that rewards may be offered for the identification or location of the leaders of a terrorist organization, increases the maximum amount of an award from $5 million to $10 million, and allows the Secretary to further increase a reward to up to $25 million if the Secretary determines that offering the payment of such additional amount is important to the national interest. Also provides a sense of Congress that the Secretary should offer a $25 million award for Osama bin Laden and other leaders of the September 11th attack. Broadens the AG's authority to offer rewards without caps for information related to terrorism.

Section 503: DNA Identification of Terrorists—Requires persons convicted of terrorism offenses also to submit to DNA samples.

Section 504: Coordination with Law Enforcement—Allows Federal law enforcement conducting electronic surveillance or physical searches to consult with other Federal law enforcement officers to protect against hostile acts, terrorism, or intelligence activities.

Section 505: Miscellaneous National-Security Authorities—In counterintelligence investigations, the Director of the FBI or his designee, not lower than the Deputy Assistant Director, may request telephone, financial, or credit records of an individual if he certifies that the information sought is (1) relevant to an authorized foreign counterintelligence investigation, and (2) that there are "specific and articulable" facts finding that the person/entity from whom the information is sought is a foreign power or its agent.

Section 506: Extension of Secret Service Jurisdiction—Allows Secret Service to coordinate with Justice Department to investigate offenses against U.S. government computers.

Section 507: Disclosure of Educational Records (Education and Workforce)—Allows the release of student education records if it is determined by the Attorney General or Secretary of Education (or their designee) that doing so could reasonably be expected to assist in investigating or preventing a federal terrorism offense or domestic or international terrorism.

Section 508: Disclosure of NC Information—Same as 507, but covers surveys conducted by the Education Department.

TITLE VI: PROVIDING FOR VICTIMS AND PUBLIC SAFETY OFFICERS SUBTITLE A: AID TO FAMILIES OF PUBLIC SAFETY OFFICERS

Section 611: Expedited Payment for Public Safety Officers Involved in the Prevention, Investigation, Rescue, or Recovery Efforts Related to a Terrorist Attack—Expedites payment of benefits to victims, their families, and public safety officers.

Section 612: Technical Correction with Respect to Expedited Payments for Heroic Public Safety Officers—Makes technical correction to Nadler bill, which passed into law in mid-September 2001.

Section 613: Public Safety Officer Benefit Program Payment Increase.—Increases public safety officer benefits from $100,000 to $250,000.

Section 614: Office of Justice Programs—Adds to the list of programs within OJP.

SUBTITLE B: AMENDMENTS TO THE VICTIMS OF CRIME ACT OF 1984

This subtitle makes changes to the administration of—and authorizes additional funding for—the crime victims fund.

TITLE VII: INCREASED INFORMATION SHARING

This Subtitle expands regional information sharing to facilitate Federal-state-local law enforcement responses to terrorism.

TITLE VIII: STRENGTHENING THE CRIMINAL LAWS AGAINST TERRORISM

Section 801: Terrorist Attacks and Other Acts of Violence Against Mass Transportation Systems—Establishes a new Federal offense for attacking a mass transportation system.

Section 802: Definition of Domestic Terrorism—Creates a definition for "domestic terrorism" for the limited purpose of providing investigative authorities (i.e., court orders, warrants, etc.) for acts of terrorism within the territorial jurisdiction of the United States. Such offenses are those that are "(1) dangerous to human life and violate the criminal laws of the United States or any state; and (2) appear to be intended (or have the effect)—to intimidate a civilian population; influence government policy by intimidation or coercion; or affect government conduct by mass destruction, assassination, or kidnaping (or a threat of)."

Section 803: Prohibition Against Harboring Terrorists—Makes it an offense when someone harbors or conceals another they know or should have known had engaged in or was about to engage in federal terrorism offenses.

Section 804: Jurisdiction over Crimes Committed at U.S. Facilities Abroad—Extends the special and maritime criminal jurisdiction of the United States to offenses committed abroad by or against U.S. nationals.

Section 805: Material Support for Terrorism—Permits prosecution under current crime of material support for terrorism to occur in "any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law," and includes the provision of "monetary instruments" as "material support."

Section 806: Assets of Terrorist Organizations—Extends forfeiture and confiscation authority to "all assets, foreign or domestic" that are owned or controlled by "any person, entity or organization engaged in planning or perpetuating any act of domestic terrorism or international terrorism against the United States, citizens or residents . . . or their property."

Section 807: Technical Clarification Relating to Provision of Material Support to Terrorism—Makes clear that whoever provides material support or resources to terrorists or foreign terrorist organizations may be subject to criminal liability under §2339A or §2339B. Moreover, proposed section 407 of the Administration's legislation seemed to gut the congressional approval requirement and confer upon the President the independent power to impose agricultural and medical sanctions on terrorists "wherever they are located."

Section 808: Definition of Federal Crime of Terrorism—Adds new highly egregious offenses to existing definition of "Federal crime of terrorism," thereby ensuring that "coercing government" is an element of the offense along with other predicates. Also, added predicates are narrowed to those being the most egregious.

Section 809: No Statute of Limitation for Prosecuting Terrorism Offenses—Provides that terrorism offenses may be prosecuted without time limitations, however, more focused list of offenses will continue to carry an 8–year statute of limitations except where they resulted in, or created a risk of, death or serious bodily injury.

Section 810: Alternative Maximum Penalties for Terrorism Crimes—Provides alternative maximum prison terms for terrorism crimes, including imprisonment for any term of years or for life.

Section 811: Penalties for Terrorist Conspiracies—Adds a new section to the terrorism chapter of the criminal code to provide that the maximum penalties for conspiracies to commit terrorism are equal to the maximum penalties authorized for the objects of such conspiracies (similar approach is found in the criminal code with respect to drug crimes).

Section 812: Post-Release Supervision of Terrorists—Authorizes longer supervision periods, including lifetime supervision, for persons convicted of terrorism crimes (a similar approach is found in the drug crimes statute, which imposes a term of supervised release of at least 10 years, instead of 5 years, in cases where there is a prior conviction).

Section 813: Inclusion of Acts of Terrorism Crimes as Racketeering Activity—Provides that any terrorism-related crimes can be RICO predicates.

Section 814: Deterrence and Prevention of Cyberterrorism—Alters damage and civil liability triggers for computer hacking offenses. Also eliminates mandatory minimums in current law for computer hacking offenses.

Section 815: Additional Defense to Civil Actions Relating to Preserving Records in Response to Government Requests—Eliminates any ISP liability to customers for turning customer records over to law enforcement pursuant to any statutory authorization.

Section 816: Development and Support of Cybersecurity Forensic Capabilities—Requires the Attorney General to establish regional computer forensic laboratories.

Section 817: Biological Weapons—Makes it an offense for a person to possess a biological weapon that is not reasonably justified, under the circumstances, by a prophylactic, protective, bona fide research, or other peaceful purpose.

TITLE IX: IMPROVED INTELLIGENCE

Section 901: Responsibilities of Director of Central Intelligence Regarding Foreign Intelligence Collected under FISA—Authorizes the Director of the CIA to establish requirements and priorities for collecting foreign intelligence, and to provide assistance to the Attorney General in ensuring that information derived from electronic surveillance or physical searches is properly disseminated. The DCI cannot direct, manage, or undertake electronic surveillance or physical search operations unless otherwise authorized by statute or executive order.

Section 902: Inclusion of International Terrorist Activities within Scope of Foreign Intelligence under the National Security Act—Includes international terrorist activities within the scope of foreign intelligence under the National Security Act.

Section 903: Sense of Congress—Sense of Congress on the establishment of intelligence relationships to acquire information on terrorists.

Section 904: Temporary Authority to Defer Submittal to Congress of Reports on Intelligence and Intelligence-Related Matters—Grants DCI temporary authority to delay submittal of reports to Congress on intelligence matters.

Section 905: Disclosure to Director of Central Intelligence of Foreign Intelligence-Related Information with Respect to Criminal Investigations—Requires the Attorney General to disclose to the CIA Director foreign intelligence acquired by the Justice Department in the course of a criminal investigation, except when disclosing such information would jeopardize an ongoing investigation.

Section 906: Foreign Terrorist Asset Tracking Center—Requires the DCI, the AG, and the Secretary of the Treasury to report to Congress by February 1, 2002, on the desirability of a Foreign Asset Tracking Center to track terrorist assets.

Section 907: National Virtual Translation Center—Requires the DCI and the FBI to report to Congress on the establishment of a National Virtual Translation Center.

Section 908: Training of Government Officials Regarding Identification and Use of Foreign Intelligence—Requires DCI and AG to establish program to train officials to handle foreign intelligence information.

TITLE X: MISCELLANEOUS

Section 1001: Review of the Department of Justice—Requires DOJ Inspector General to designate one official to receive complaints of civil liberties and civil rights abuses and to report such abuses to Congress semi-annually.

APPENDIX B, SUMMARY OF 16 EXPIRING PROVISIONS

Below is a summary of each of the sixteen sections set to expire this year pursuant to section 224 (the sunset does not apply to ongoing investigations), an explanation of how each has been used, and any concerns related to such authorities:

Sec. 201—Authority to intercept wire, oral, and electronic communications relating to terrorism

This section adds terrorism offenses to the list of predicates for title III wiretaps. Title III is used for criminal investigations.

Sec. 202—Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses

This section adds computer fraud and abuse offenses as predicates for title III wiretaps.

Sec. 203(b) and (d)—Authority to share electronic, wire, and oral interception information; Authority to share foreign intelligence information

Section 203(b) allows the government to share information from criminal wiretaps and electronic surveillance with federal law enforcement, immigration, and national security personnel as long as notice is given to the court after the disclosure. The recipient can use information only in the conduct of their duties subject to disclosure limitations in current law.

Section 203(d) allows the FBI to share intelligence information with other federal law enforcement, immigration, and national security personnel. The Attorney General must establish procedures for the release of this information in the case of a U.S. person.

Sec. 204—Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications

This section carves out foreign intelligence surveillance operations from the Electronic Communications Privacy Act, which imposes limits on the placement of wiretaps.

Sec. 206—Roving surveillance authority under the Foreign Intelligence Surveillance Act

This section allows the FBI to use roving wiretaps under FISA. This means that the FBI can obtain a single court order to tap any phone they believe a foreign agent would use, instead of getting separate court orders for each phone. The government need not name the target.

Sec. 207—Duration of FISA surveillance of non-United States persons who are agents of a foreign power

This section lets the FBI obtain FISA search and surveillance orders for longer periods of time than they could have prior to the PATRIOT Act:

1. Wiretap orders relating to an agent of foreign power increased from 90 days to 120 days, and subsequent extensions were increased from 90 days to a year;
2. Physical searches of non-U.S. persons who are agents of a foreign power increased from 45 days to 120 days, and subsequent extensions were left at one year intervals;
3. All other physical searches—including those against U.S. persons—were extended from 45 to 90 days, and subsequent extensions were left at one year intervals.

These can be compared to wiretaps in the criminal context that are authorized and extended for only 30 days at a time.[129]

Sec. 209—Seizure of voice mail messages pursuant to warrants

This section provides that the FBI can access voice mails the same way it accesses e-mails and authorizes nationwide service with a single search warrant.

Sec. 212—Emergency Disclosures of Communications held by Phone Companies and Internet Service Providers

This section permits telephone companies and Internet Service Providers (ISPs) to disclose to the government, without penalty, customer communications and records if they think there is a danger of death or serious injury. This section precludes liability regardless of whether the company innocently stumbles on the information itself and approaches the government, or whether law enforcement initiates the disclosure itself. Because this section directly amended Title 18 of the U.S. Code, it can be used in any run-of-the-mill criminal investigation and has no ties to terrorism cases. In fact, all of the examples cited by the Justice Department are non-terror cases, including a bomb threat against a school, numerous kidnaping cases, and computer hacking threats.[130]

Sec. 214—Pen register and trap and trace authority under FISA

This section made it easier for the FBI to get a pen register or trap-and-trace under FISA.[131] The FBI needs to prove the order is needed to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities. Prior to the PATRIOT Act, the FBI needed to establish that the telephone line in question had been used or was about to be used in connection with terrorism or a crime; this requirement was deleted. Before section 214, the government had to prove that the target was an agent of a foreign power; now, they need only prove that the information is related to a terror or intelligence investigation. This extremely broad quali-

[129] USA Patriot Act: Sunsets Reports, April 2005, Department of Justice.

[130] See Reports From the Field: The USA Patriot Act at Work, U.S. Department of Justice, July 2004.

[131] A pen register is used to record the phone numbers that are dialed from a target phone. A trap-and-trace is used to record the phone numbers of the incoming calls to a target phone.

fication of a FISA pen register/trap and trace order has led many groups to oppose it.[132]

Sec. 215—Access to records and other items under the Foreign Intelligence Surveillance Act

This section expanded the FBI's ability to obtain business records under FISA. Before the Act, the government could seek records only from hotels/motels, storage facilities and car rental companies; now, it can seek "any tangible thing" from any business. To obtain such records, the FBI Director (or his designee) must seek an order from the Foreign Intelligence Surveillance Court and specify that the records are sought for foreign intelligence information not concerning a U.S. person or are sought to protect against international terrorism or intelligence gathering. Upon receipt of such a request, the court must grant the order. Recipients are prohibited from disclosing to anyone but their attorneys that they have received a section 215 request.

Sec. 217—Interception of computer trespasser communications

This section allows persons "acting under color of law" to intercept computer communications if a computer owner authorizes it, and if the person acting under color of law is acting pursuant to a lawful investigation.

Sec. 218—Foreign intelligence information

This section says the FBI needs to aver that a "significant" purpose of a FISA order request is to gather foreign intelligence; before the Act, the FBI needed to show that obtaining foreign intelligence was the "primary purpose" of the order.

The effect of letting the status quo continue is that evidence obtained from a FISA warrant under FISA's statutory "probable cause" standard can be given to non-terror criminal prosecutors who are governed by the higher standard of 4th Amendment probable cause. In fact, the lower standard FISA warrant can be sought for criminal prosecution purposes, as long as terrorism or national intelligence is some small part of the reason. The long-standing policy of not letting criminal prosecutors direct intelligence investigations has been vitiated.

Sec. 220—Nationwide service of search warrants for electronic evidence

This section allows a single court to issue a search warrant for electronic evidence that is valid nationally. According to the Department's May 13, 2003 letter, it has used this authority to track a fugitive and to track a hacker who stole trade secrets from a company and then extorted money from it.[133]

Sec. 223—Civil liability for certain unauthorized disclosures

This section was included by Rep. Barney Frank to increase civil liability for unauthorized disclosure of pen/trap, wiretap, e-mail, or FISA information. In its May 13, 2003 letter to the Committee, the

[132] See, for example, Electronic Privacy Information Center "The USA PATRIOT Act," at *www.epic.org/privacy/terrorism/usapatriot/*.
[133] Id. at 24.

Department stated there had been no administrative disciplinary proceedings or civil actions under section 223.

Sec. 225—Immunity for compliance with FISA wiretap

This section immunizes private parties who comply with FISA court orders or "requests for emergency assistance" otherwise authorized under FISA. Immunity already existed for criminal cases, and this section intended to provide the same for people who cooperated with officials in terror or intelligence cases.

"Lone Wolves" as Agents of a Foreign Power

Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 created the so-called "lone wolf" provision of FISA redefining the "agent of a foreign power" to include those who "engage in international terrorism or activities in preparation therefore." In other words, agents of a foreign power no longer need to have any connection to a foreign power. This is limited to non-U.S. persons, although a leaked "PATRIOT II" bill authored by the Justice Department would have expanded the lone wolf provision to cover U.S. persons as well.

The purpose of FISA always has been espionage and terrorism surveillance against foreign governments, foreign groups, or individuals associated with such governments or groups. Section 6001 expanded FISA to include any single person who engages in a violent act that (1) transcends national boundaries and (2) is intended to coerce the government or a civilian population.

When this provision passed committee in the markup of H.R. 10, it had a rebuttable presumption that a FISA judge could invoke when the target had no ties to foreign governments whatsoever. That provision was removed before the bill went to the floor.

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