PERSONAL EXPLANATION

Mr. ORTIZ. Mr. Speaker, I was unable to vote during the following rollcall votes. Had I been present I would have voted as indicated below. Rollcall vote No. 401—"no"; rollcall vote No. 402—"no."

GENERAL LEAVE

Mr. SENSENBR c nonren. Mr. Spea ke r, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3199.

The SPEAKER pro tempore (Mr. ADERHOLT). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

USA PATRIOT AND TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005

The SPEAKER pro tempore. Pursuant to House Resolution 369 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3199.

The Chair recognizes the gentleman from Florida (Mr. PUTNAM) as chairman of the Committee of the Whole, and requests the gentlemen from Oregon (Mr. WALDEN) to assume the chair temporarily.

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IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3199) to extend and modify authorities needed to combat terrorism, and for other purposes, with Mr. WALDEN of Oregon (Acting Chairman) in the chair.

The Clerk read the title of the bill.

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

General debate shall not exceed 2 hours, with 1 hour and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 45 minutes and the gentleman from Michigan (Mr. HOEKSTRA) and the gentilwoman from California (Ms. HARTMAN) each will control 15 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER). Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume, and I rise in strong support of H.R. 3199, the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005.

Mr. Chairman, the attacks of September 11, 2001, dramatically affirmed the urgency of updating America’s laws to address the clear and present danger presented by international terrorism. On that day, foreign terrorists maliciously and without provocation attacked the United States, murdered thousands of our citizens, and destroyed symbols of our freedom in a failed effort to break the spirit and resolve of the American people.

We must also recall that these terrorists exploited historic divisions between the law enforcement and intelligence communities that had limited the dissemination of vital and timely information and increased America’s vulnerability to terrorist attack.

In the wake of the 9/11 atrocities, broad bipartisan majorities in both Houses of Congress passed the PATRIOT Act that lowered the wall that prohibited our law enforcement and intelligence communities from effectively sharing information, and to enhance the investigative authority necessary to assess, detect, and prevent future terrorist attacks. U.S. law enforcement and intelligence authorities have utilized the expanded information sharing provisions contained in the PATRIOT Act to avert additional attacks on our soil, that threat has not reeded. Exactly 2 weeks ago, innocent citizens in London were murdered in a series of ruthlessly coordinated attacks. Earlier today, it appears, the London subway system came under renewed attack. Last year, the Madrid bombings brought unprecedented terror to the people of Spain, and ongoing terrorist operations around the globe demonstrate the imperative for continued vigilance.

Mr. Chairman, when the House Judiciary Committee reported the PATRIOT Act in October 2001, I pledged to rigorously examine its implementation and the conduct of the war against terrorism. In my words and in my actions as chairman, I have maintained this commitment and emphasized the importance of better protecting our citizenry from terrorist attack while, at the same time preserving the values and liberties that distinguish us as Americans. Legislation we consider today reflects this careful balance.

H.R. 3199 is based upon 4 years of comprehensive bipartisan oversight consisting of hearing testimony, Inspector General reports, briefings, and oversight letters. Since April of this year alone, the committee has received testimony from 35 witnesses during 12 hearings on the PATRIOT Act. This extensive hearing and oversight record has demonstrated that the PATRIOT Act has been an effective tool against terrorism. Of no less importance, and notwithstanding the vague and general suspicion expressed by some of its detractors, the record shows that there is no evidence whatsoever that the PATRIOT Act has been abused to violate Americans’ civil liberties. None whatsoever.

To further allay concerns expressed by some, this bill makes important revisions to section 215 of the PATRIOT Act, which pertains to business records obtained through the Foreign Intelligence Surveillance Act, or FISA. I would note that some of the most misused and deliberately misrepresented provision of the PATRIOT Act. H.R. 3199 clarifies that the information likely to be obtained through a FISA warrant must relate to foreign intelligence information not concerning a U.S. person, or must be information pertaining to an ongoing international terrorism investigation or clandestine intelligence activities. The legislation also explicitly clarifies that a section 215 order will issue only proper target of a wiretap. This requirement has been met,” and provides a judicial review process to authorize the court to set aside a section 215 order that has been challenged. Contrary to the unfounded allegations of some, there is no evidence that section 215 order has been served on any library since the PATRIOT Act was passed in October of 2001.

The Committee on the Judiciary last week conducted a nearly-hour hearing on H.R. 3199 and the mark-up of this legislation, at which 43 amendments were offered and debated. The reported version of this legislation extends for 10 years the sunset on sections 206 and 215 of the PATRIOT Act. Section 206 pertains to wiretaps under FISA. This crucial provision updates the law to reflect contemporary communications technology by making a suspected terrorist, rather than a communications device, the proper target of a wiretap. This sunset provision was approved by the committee by an overwhelming bipartisan vote of 26 to 2. However, while the legislation sets expiration dates on certain provisions of the PATRIOT Act, congressional oversight of the entire PATRIOT Act must be perpetual.

Let me conclude with the following point: For too long opponents of the PATRIOT Act have transformed it into a grossly distorted caricature that bears no relationship whatsoever to the legislation itself. The PATRIOT Act has been misconstrued by some as a springboard to launch limitless allegations that are not only unsubstantiated but absurd and irresponsible. Our constituents expect and deserve substantive consideration of this vital issue, and I hope that today’s debate reflects the bipartisan seriousness that this issue demands.

Mr. Chairman, the security of the American people is the most solemn responsibility of all entrusted to the Congress. Passage of the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 is vital to maintaining the post-9/11 law enforcement intelligence reforms that have reduced America’s vulnerability to terrorist attack. We must never return to the pre-
9/11 mindset that ignores the painful lessons of that day as well as the tragic experiences of our friends and allies. I would urge my colleagues on both sides of the aisle to support this vital legislation.

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

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

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

Mr. CONYERS. Ladies and gentlemen of the House, let me say from the outset that every Member of this body wants to make sure that law enforcement officials have the tools they need to protect the American people from terrorism. I also know that all of us want to make sure that we protect our civil liberties and freedoms as we fight terrorists anywhere in the world and in this country as well.

I support the majority of the 166 provisions of the PATRIOT Act. In fact, in the first original PATRIOT Act, I helped write many of them. In a version of that I passed the Committee on the Judiciary 36-0, but a bill we never saw after it left the Committee on the Judiciary. It was replaced in the middle of the night in the Committee on Rules.

I did it, I wrote the provisions because I believe as technology changes, our laws need to keep up and change as well. I believe our law enforcement officials need to be able to talk with one another and connect the dots to prevent terrorist attacks.

In some sense this is not really about the PATRIOT Act, the debate that is going on here, or even most of the 16 provisions scheduled to sunset this year. It is about four areas that are subject to amendments and need greater checks and balances, and I would like to suggest what they are.

First, the business records, 215, allows the FBI to obtain any record considered relevant to any investigation, which means it does not warrant passage until it is corrected.

Third, under section 213, the government can sneak and peek into your business, your office, your car, your home, anywhere, even if there is no emergency. This means the government can break into your home and search it without telling you. It was not in the bill originally reported by the Committee on the Judiciary and was slipped in by the Department of Justice or the administration when the bill was first written a few years back.

This provision has been subject to exceedingly widespread abuse. It has been used more than 240 times, and it has been delayed sometimes for over a year before anybody can be told what happened, that they were broken into, they were broken into. They had things taken out of their home.

Worse yet, only 10 percent of these uses had anything to do with terrorism, which is the whole purpose of the PATRIOT Act.

Finally, it is clear to me that we need to have additional sunsets in this legislation. What is wrong with sunsets? That is why we are here, because the bill is being sunsetted in more than a dozen ways. If we have learned anything over the last 4 years, the only thing that makes the administration give us any information on oversight on the use of these new powers was the sunset provision.

We have also learned of abuses during our oversight that has led to us making modifications. Given this history, it simply makes no sense to make these provisions permanent or near permanent. And 10 years is not a sunset; 10 years is semi-permanent.

The lessons of 9/11 and London, and even today in London, are that if we allow law enforcement to do their work free of political interference, give them adequate resources and modern technologies, we can protect our citizens without intruding on our liberties.

We all fight terrorism, but we need to fight it the right way consistent with our Constitution and in a manner that serves as a model for the rest of the world. I believe that the committee-passed legislation that is on the floor right now does not meet that test. As such, it does not warrant passage until it is corrected.

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

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I strongly support the USA PATRIOT Act of 2005. The continued threat of a terrorist attack in the United States and this month’s terrorist attacks in London remind us of the need to prevent, investigate, and prosecute all terrorist acts.

The PATRIOT Act was a long-overdue measure that enhanced our ability to collect crucial intelligence information about the global terrorist network. It passed by a margin of 98-1 in the Senate and by a margin of 357-66 in the House.

Even the American Civil Liberties Union, until last April said the voluminous PATRIOT Act is actually unobjectionable from a civil liberties point of view. The law makes important changes that give law enforcement agents the tools they need to protect against terrorist attacks.

Many of the tools of the act provided to law enforcement officials have been used for decades to fight organized crime and drug dealers. They have been reviewed and approved by the courts and found constitutional. For instance, prior to the PATRIOT Act, the FBI could get a wiretap to investigate the Mafia, but they could not get one to investigate terrorists. Well, what is good for the Mob should be good for terrorists.

America is a safer country today than before September 11 because of the PATRIOT Act. Giving the Department of Justice, the Central Intelligence Agency, and the FBI information-sharing powers enabled law enforcement officials to disrupt terrorist cells in New York, Oregon, Florida, and Virginia. Since September 11, 2001, over 200 people charged with crimes stemming from international terrorist investigations have been convicted or have pled guilty. The PATRIOT Act helped also investigate and apprehend an individual who in Texas threatened to attack a mosque.

Chairman, our success in preventing another attack on the American homeland would have been much less likely without the PATRIOT Act. Law enforcement and intelligence agencies must continue to have the powers they need to protect all Americans.

Mr. CONYERS. Mr. Chairman, I yield 4½ minutes to the gentleman from Virginia (Mr. BOUCHER), a distinguished member of the Committee on the Judiciary.

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

Mr. BOUCHER. Mr. Chairman, I thank the gentleman for yielding me this time and commend him on his previous eloquent statement.

I rise this afternoon in opposition to this measure which would perpetuate the invasions of civil liberties that are embedded within the 4-year-old PATRIOT Act. I have deep concerns about many provisions of the original law, such as the use of the appropriately named sneak-and-peek warrants that allow the secret search of homes with delayed notification to the homeowner that a search has occurred. The secret search can be in almost any kind of investigation, and the notification to the
person whose premises are searched can be delayed almost indefinitely.

But I am going to focus my remarks this afternoon on the two provisions of the original law which I think cause the deepest civil liberties invasion and which before us was not, in my opinion, appropriately reformed.

In my view, the single most troubling provision confers on law enforcement the ability to use so-called national security letters. No prior review by a court is required. The FBI can issue a national security letter and then demand records from a business or from another record custodian. There is no requirement that the object of the search be an agent of a foreign power. The only requirement is that the seizure be relevant to a terrorism investigation, but there is no procedure by which a court would make that finding of relevance before the seizure occurs.

Frankly, there is no meaningful way through the use of this provision to ensure that First and Fourth Amendment civil liberties are protected. It is the unilateral ability of law enforcement to issue these letters and seize records without prior court review that I find to be the most troubling.

I want to point out one Federal court has found the section 505 national security letter provisions to be an abridgement of both the first and the fourth amendments to the U.S. Constitution. The bill before us does noth- ing to abridge the First Amendment. It is the unilateral ability of law enforcement to issue these letters and seize records without prior court review that I find to be the most troubling.

Secondly, I strongly oppose the PATRIOT Act’s grant to law enforcement of the ability to go to the Foreign Intelligence Surveillance Court and obtain an order permitting the seizure of library, bookstore, bank, or medical records of a person who is not even the subject of an investigation. Moreover, the library or other institution is barred from telling its customer that his record has been seized. All law enforcement has to do is say to the court that there is a reasonable expectation that foreign intelligence about a non-U.S. person will be obtained or that the information is relevant to an ongoing investigation and the records can be seized. Virtually anyone could have their records seized. You could be sitting in a concert near someone who is a suspected foreign agent, and potentially your records could be seized. You would never learn that seizure has occurred.

While the custodian of the records could challenge the seizure, the library, the hospital, the bookstore, or the bank in possession of those records has a lot less incentive to spend resources hiring a lawyer in order to resist the seizure than would the person whose records are about to be seized; but that person, the real party of interest, never knows that the seizure is about to occur.

The House recently voted by a margin of 238–187 to bar enforcement of this overly broad provision, but the bill before us with minor changes perpetuates it and, I think, in an inappropriate way.

Mr. Chairman, there is no need to short-circuit our normal processes that are designed to protect privacy and protect civil liberties. Law enforcement’s ability to go to a court and present evidence of probable cause that a crime has been committed, and by that showing obtain the records that it needs in both of these situations. These powers conferred by the original PATRIOT Act under sections 505 and 515 are designed for the convenience of law enforcement, but mere convenience should not be a reason for a deep abridgement of privacy and individual rights.

The protection of our freedoms does not require surrender of our long-held civil liberties. For these reasons, I oppose the measure before us, and I urge others to do so.

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

The gentleman from Virginia (Mr. BOUCHER) is sincere in his opposition to this bill, and I respect that. However, neither the national security letter scheme nor the delayed notification scheme were authorized for the first time by the PATRIOT Act. That was legislation that was in place prior to October 2001 when the original PATRIOT Act was passed and signed into law by the President.

What the PATRIOT Act did in both national security letters as well as in delayed notification is simply to extend to anti-terrorism investigations authorities that already existed and up until that time had been found constitutional in investigations such as Mafia investigations, racketeering investigations, and drug-trafficking investigations.

So these complaints were not caused by the PATRIOT Act. They were caused by existing legislation, and we should deal with that, not in the context of this bill but elsewhere.

Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Mr. Chairman, I thank the gentleman from Wisconsin for yielding me this time.

Mr. Chairman, I will reiterate what has been previously said this date about the PATRIOT Act, and I do so for emphasis.

The first point I want to emphasize is the assurance that the House Committee on the Judiciary and the Crime, Terrorism, and Homeland Security Subcommittee would not give the PATRIOT Act a mere wink and a nod. We, in fact, hosted 12 public hearings; three before the full committee, nine before our subcommittee. It was exhaustive, it was deliberate, it was thorough. So this matter was not accelerated and processed through hurried means, as some people seem to believe.

I mentioned during the rule debate earlier, Mr. Chairman, about a constituent of mine who complained about the PATRIOT Act but he had no specifics. He said he had heard it was bad, but he could give me no specifics where in any way civil liberties had been compromised or abused.

There has been much talk about sunsetting provisions of the act; 216 and 206 will, in fact, be sunsett ed. But in these two instances, Mr. Chairman, there was no evidence of abuse or any violation at all, but these two were sunned because, among the other sections in the act, these two seemed to attract most of the controversy. So these are the two that stood out controversially, but I reiterate, still no evidence of abuse.

I think we in the Committee on the Judiciary have done a thorough job of exhausting and deliberating a very, very important act, and I believe that one reason why we have not been at war with the threat that we face. The best because of the presence of the PATRIOT Act. We expanded the provisions under which law enforcement and public safety officers must operate and must stay within, and as a result we are better for it.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from New York (Mr. NADLER), who has headed the Constitution Subcommittee.

Mr. NADLER. Mr. Chairman, war has been declared on this country by the Islamic terrorists, and we must protect the citizens of this country. The PATRIOT Act was an attempt in some respects to do this.

But before commenting on the specifics of the PATRIOT Act, I would be derelict if I did not mention that the majority party in this House and the Bush administration have really been derelict by not dealing more directly with the threats that we face. The biggest threats we face are sabotage, bombings in our mass transit systems, sabotage of our chemical farms, our nuclear plants that could kill thousands of people, yet we do not see funds to deal with this.

It is easy to be demagogic. The Bush administration does not want to throw money at the problem; they want to throw rhetoric at the problem. So we have the PATRIOT Act. I wish we had real measures to protect our mass transit systems, to protect our vulnerable infrastructure, to protect us against what happened in London again this morning.

The PATRIOT Act was an attempt to do several things, some of which were very necessary. Breaking down the wall between intelligence and police information was very necessary and was in the PATRIOT Act and is not before us today. Most of the PATRIOT Act is permanentized. It is permanent law. But when we are expanding police powers and when we are expanding surveillance powers, the power of government to pry PATRIOT Act is not before us today. Most of the PATRIOT Act is permanentized. It is permanent law. But when we are expanding police powers and when we are expanding surveillance powers, the power of government to pry

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for security to do so. But it endangers liberty, and that has to be balanced. We should always be nervous about expanding police and surveillance powers, and that is one of the greatest weaknesses of this bill.

We are unable to pass the PATRIOT Act 4 years ago because most, not all but most of the sections of the PATRIOT Act that expanded the powers of the police to pry into the privacy of ordinary Americans, to go into their homes and their papers and their Internet records, their bank records, were sunsets.

So what? What is the point of sunsetting? It means that every 4 years at least Congress has to look at that again, has to revisit it, has to have oversight and determine whether those powers are being abused. Mr. SENSENBRINNER says they are not being abused. He knows. The Justice Department said so. They said, We are not abusing it. We are not abusing it. And every 4 years we should have to look into it and ask are these powers being abused? Should it be fine tuned? Should they be narrowed? Have we made the right balance between security and liberty? The provision to go into those sunsets, except for two, which it makes 10-year sunsets.

We have had 4 years since the PATRIOT Act was enacted. We did not do any oversight in this House until 6 months ago. Why? Because of the sunset. If it had not been for the sunsetting, we would not have had the oversight. We must have that oversight and we should have had all of these things sunsetted, continued another 4 years, another 4 years.

Secondly, Members have heard about section 215. The powers granted in section 215 of the PATRIOT Act, which is hardly modified by this bill, to look into anybody’s library and medical records in secret and not tell anybody that they have done so, not tell the person whose records are pried into is a very disturbing invasion of liberty, and amendments to limit it were not made in order. Section 505 of the bill, which enables any FBI agent, any FBI field office director, to issue a national security letter to let them go and see their Internet records, their phone records, and so forth without even going to a judge and telling them it is relevant to a national security investigation is wrong, and it was declared unconstitutional by a federal court. The amendments to make this constitutional, to say that they have to at least allow for judicial review and to sunset the gag order were not made in order.

The CHAIRMAN. The gentleman’s time has expired.

Mr. NADLER. This should be defecated for those reasons because it is not a way to balance between security and liberty.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. Members are re-minded to heed the gavel.

Mr. SENSENBRINNER. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN).

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I thank the gentleman for yielding the floor.

This is an important day for us today, not just because of the explosions that have taken place in London today or those that took place several weeks ago, but rather because of 9/11 and our response to that wake-up call of the war on terrorism.

The Preamble to the United States Constitution posits that both the provision for the common defense and the need to secure the blessings of liberty are central to the constitutional order.

Freedom presumes security. The converse is equally true. In the delicate balance of these important interests. Our concern for liberty must not discount the consequences of a failure to keep America secure from another terrorist attack. While it is important to avoid hyperbole on such a serious matter, the very nature of American life and the traditional regard for liberty could itself be threatened. It is, therefore, imperative that principles that we hold dear not be reduced to empty platitudes. Rather, they must be applied to the facts which confront us in the war on terrorism.

The 12 oversight hearings conducted by the Committee on the Judiciary have produced no evidence of abuse relating to the act itself. I hope other Members have taken the time to go to the Permanent Select Committee on Intelligence, as I have, to review the documents that are filed pursuant to the PATRIOT Act by the Justice Department, to see for themselves whether or not they have found any evidence of abuse. I did that. Those are available to any Member who wants to go over there as long as they make arrangements. I keep hearing time and time again that, even though the Justice Department has not found any abuses, they are out there. It reminds me of those people who used to find communists under every bed. We know they are out there, we know they are somewhere.

And I have heard on the floor people reciting: Well, the IG for the Justice Department has not found them, we have not found them, but we know they are there. I can safely say that our debate should be above that.

The provisions contained in the chairman’s bill and the amendments adopted by the Committee on the Judiciary provide additional protections against any possible abuse in the future. The sunset of section 206 dealing with roving wiretaps and section 215, which has been referred to, was adopted by the full committee. The bill specifically requires that the government meet a relevant standard when applying for records of U.S. citizens under 215. Remember, it is an application to a court for an order. We have put in the statute the relevant standard, which was the practice we were told, but people wanted more. We have put that in there.

The chairman’s bill, coupled with an amendment adopted by the full committee, explicitly provides that the court of a lower court order under section 215 would have the right to consult with an attorney with respect to the order. The amendment at committee clarified that a recipient of such an order could disclose this information not only to comply with the order but to challenge it.

On these and other parts of this bill, we have done the work in the committee to deal with the problems that have been suggested.

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

Mr. Chairman, to the gentleman from California (Mr. DANIEL E. LUNGREN), I am preparing a list of 10 instances of where there have been abuses that have been reported.

Abuses under 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 "personal" 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 "expertise" were unconstitutional, and as 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 was not applicable to her actions 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 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
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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 July 4 and that courts in over 100 cases (85%) involving terrorism investigations. Thus, ALMOST 90% “of sneak and peek” warrants were used in ordinary criminal investigations: 42 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 were common, and that the courts had granted EVERY SINGLE
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 investi-
gation. In one such case, the delay lasted 496 DAYS.

Abuse of delay extensions: In May 2003, DOJ reported it had asked for 248 delay notification extensions, including multiple ex-
tension 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 Sensenbinder, DOJ reports 92 out of 108 (85%) sneak and peek warrants were justified because notification would have jeopardized the investiga-
tion and in 28 instances that was the sole ground for delaying notice.

SECTION 505, NATIONAL SECURITY LETTERS

Section 505 has been found UNCONSTITU-
TIONAL. The Southern District of New York
held Section 505 violated the 1st and 4th Amendments. Section 505 places a prior re-
straint on free speech with its gag order, and it prevents them from giving the recipi-
ent’s access to the courts. Specifically, an
Internet Service Provider was unconsti-
tutional.

Abuse in Tarig Ramadan case: Professor Ramadan at Notre Dame was
revoked upon charges that he supported ter-
orism; Notre Dame, Scotland Yard, and
Swiss intelligence all agree the charges were groundless.

Abuse in Dora Maria Tellez case: Nica-
raguan Professor Tellez was denied her visa
to teach at Harvard due to her association with
Booker T. Washington in the 1960s, 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.

Mr. SENSENBRENNER. Mr. Chair-
man, I yield 4 minutes to the gentleman from Vir-
ginia (Mr. SCOTT), a subcommittee
ranking member.

Mr. SCOTT of Virginia. Mr. Chair-
man, I thank the gentleman for yielding
me this time.

Mr. Chairman, we live in a democ-
rapy where we respect checks and bal-
ances. The PATRIOT Act is part of a
pattern of lacking checks and balances. Military tribunals, not part of the PA-
TRIOT Act but part of a pattern of redu-
cing checks and balances. Military tribunals were presented with no public
trials, no presumption of innocence, no
guilt beyond a reasonable doubt. Secret
evidence could be used, no judicial re-
view.

Part of that pattern is the enemy combatant where the administration designates someone as an enemy com-
batant, can arrest them and hold them
indefinitely without charges, never
having an opportunity to contest the
allegations.

We have seen material witnesses, people arrested under the material wit-
ess laws, held indefinitely, no charges.

That is the context that we are con-
sidering in the PATRIOT Act. Those are
not in the PATRIOT Act, but we are considering the PATRIOT Act in that
context.

We considered a bill on the same day of
the second bombing in Great Britain
with no money for port security, no
money to secure our rails or bus trans-
portation, no money for first respond-
ers.

Mr. Chairman, I oppose this bill, frankly not so much for what is in the
bill, what we are not going to do today. We can
have plenty of privacy without threaten-
ing security, and we missed an op-
portunity to require standards for
wiretaps and “sneak and peak” searches. We missed the opportunity to require probable cause of a crime be-
fore invading people’s privacy. We
missed the opportunity to limit these
provisions and extraordinary powers to
terrorism.

Ninety percent of the “sneak and peak” searches have nothing to do with
terrorism. Remember that when the
government invades one’s privacy, it is
not robots and computers; it is govern-
ment employees who may be neighbors
looking at one’s medical records, list-
ing to their private conversations,
sneaking and peeking into their homes
without their knowledge or consent.

The major check on any abuse in the
act has been the sunset provisions.
Provisions will expire if they are
abused. During our deliberations, we
got a lot of cooperation on those provi-
sions that are sunsetting. When asked
information on those, we got the infor-
mation. Some of it came in right be-
fore the hearing, but because of the
sunset we found no abuses.

Mr. CONYERS. Mr. Chairman, I yield
to the gentleman from Virginia (Mr. SCOT-
T), the distinguished chairman for yield-
ing me time.

Mr. Chairman, I note that since the
9/11 attacks, in part we all know due to
the PATRIOT Act, there have been no new attacks on America. I also think
Americans ought to know there is a
bookstore in London, in the Leedas sec-
tion, called the Iqra Bookstore; and
among the books that Iqra Learning
Center sells are extremist Muslim ma-
terials. We now believe that three out of
classical Islamic terrorists that attacked
London 2 weeks ago and killed 56 peo-
ple visited frequently this bookstore. If
the British authorities had known
about the possible link and had a 215 clause, the main clause being attacked
by the opponents of the PATRIOT Act,
perhaps there would be 56 people alive
today.

So all the scare tactics can be done
away with, all the hysterical allega-
tions. Every American needs to know
that this 215, which has been referred
to as the library provision, nowhere
mentions libraries. But what 215 does
do is say a Federal judge must make
findings before any warrant would ever
be issued. This can only affect non-
Americans in the United States, non-
Americans would only be affected if there
is an ongoing terrorism or intelligence
investigation.

Mr. Chairman, every American needs
to know that unless there is an ongoing
terror or intelligence investigation, un-
less a judge makes a decision, no
American can ever be affected.

To the extent that we want to create
safe harbors, either in bookstores or li-
braries or anywhere else by elimi-
nating 215, we ought to be candid
about the fact that we expect and are
going to sit back as London-type bomb-
ings take place on our subways and bus
systems.

We may not be able to prevent the
next attack, but as long as Americans’
liberties are protected by a judge ahead
of time, as long as this is a reasonable
provision affecting only non-Americans
or during an intelligence or ongoing
terrorism investigation, it is absolutely
appropriate. I would not be doing my duty as a Congressman to not
fight for 215 to be reenacted. We have
added some protections. Everybody
who receives one of these warrants is guaranteed to see a lawyer, and, if they want to, challenge the warrant.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentlewoman from California (Ms. ZOE LOFGREN), a distinguished member of the Committee on the Judiciary.

Ms. ZOE LOFGREN of California. Mr. Chairman, after 9/11, I worked on the drafting of the PATRIOT Act in the committee and in the weekend drafting sessions, and I voted for the act on the floor. I think it is important to know that most of what is in the PATRIOT Act is not actually before us today. It is only the 16 provisions that are so-called sunsetted, which means that we need to review them and renew them, that are actually before the House today.

First and foremost, as the Justice Department said in their letter to me today, the most important thing in the PATRIOT Act is to help remove the legal barriers that prevented law enforcement and intelligence officers from sharing information so they could, so-called, “connect the dots.” That is important. There are other important things in the act.

I think it is also important to note that there are some things that disturb Americans that are happening in the United States relative to the arrest of American citizens and the holding of American citizens without charge, without access to counsel; but they have nothing whatsoever to do with the PATRIOT Act. They are not in the PATRIOT Act, no matter how concerned we might be about them.

I believe, however, that even though there are important components to the PATRIOT Act, there are some things that deserve more attention and more fine-tuning than they have received in this bill.

For example, section 506 of the act grants law enforcement the authority to issue national security letters, which are essentially administrative subpoenas, for all sorts of personal records about anyone without judicial oversight. These records include telephone and Internet records, financial documents and consumer records.

In addition, we enhanced this section in subsequent legislation to ensure that even more records could be subpoenaed from travel agencies, pawn brokers, casinos, car dealers and more; but all of this is without oversight of a court.

Prior to the act, national security letters could only be used to get records when there was reason to believe that the subject of the record was an agent of a foreign power. Not only did the PATRIOT Act remove the requirement that the subject of the record is a foreign power; it lowered the standard by which those records could be obtained to the relevancy standard.

We have not had meaningful oversight, in my opinion, on this provision of the act. Assuming that law enforcement does need the ability to get some of these records, and I do not dispute that, we do need to have some standards in place. As has been mentioned by the gentleman from Virginia (Mr. BOUCHER), one court has already struck down this section of the act as violative of the Constitution.

We know from our inquiry to the Justice Department that this provision has been used hundreds of times. We got six pages back of redacted records, but we really do not know the full impact of it, and we need to know more than we do today before we allow this sweeping tool to be renewed.

I also want to mention section 215 of the act. I believe that it may be important to obtain certain records, as has been outlined. But, again, we need to have a standard that is beyond relevancy.

So the question here really is about balance. We need to prevent terrorism, we all agree on that; but we also need to prevent the solution from being worse than the problem. The PATRIOT Act has served us so well. So I would urge that we have the oversight that we will need by having some sunsets, and particularly taking a look at the national security letter. We do not need to fine-tune this legislation.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana (Mr. PENCE).

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

Mr. PENCE. Mr. Chairman, I thank the distinguished chairman for yielding me time, and especially I rise to thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for his tireless efforts on behalf of the security and the liberty of the American people in developing this reauthorizing legislation.

Today in London we have seen yet again the work of terrorists on the soil of a freedom-loving people. The explosions in that city today, while less lethal than a few weeks ago, follow the deadly attacks that took place on July 7, and the anguish in London is a vivid reminder of why we cannot relent in taking the steps necessary to defend our homeland from a present terrorist threat.

We all lived through September 11. I was here at the Capitol that day. I saw the smoking site of our enemies written in the smoke rising above the Pentagon. And we are reminded yet today that their desire to do such violence in our homeland and in the homeland of our allies is real.

The PATRIOT Act is essential to our continued success in the war on terror here at home. In the last 4 years under the PATRIOT Act, we have seen a great increase in the ability of law enforcement officials to investigate and track terrorists. For example, aided by provisions of the PATRIOT Act, law enforcement officials in Ohio were able to arrest Imyan Faris, an Ohio truck driver who authorities said plotted attacks on the Brooklyn Bridge and a central Ohio shopping mall. In 2008, he pleaded guilty to charges of aiding andabetting terrorism and conspiracy, acknowledging that he had met with Osama bin Laden in the year 2000 at an al Qaeda training camp and then was trained at a camp run by al Qaeda. He is currently serving a 20-year prison sentence.

While 16 provisions of the PATRIOT Act are set to expire at the end of this year, the threat of terrorism to our families and our allies will not. Therefore, the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 is as necessary today as the PATRIOT Act was when it was originally signed into law in October of 2001.

This reauthorization legislation does make permanent 14 of the 16 sections from the original PATRIOT Act that were set to expire this year. But under the bill, those sections of the act that have caused the greatest concern in the hearts of many millions of Americans are set to sunset, sections 206 and 215, within 10 years, thanks to the leadership of this committee and of this Congress.

The concerns that have been raised about abuses simply have not been borne out. With over 4 years of oversight hearings and six Department of Justice Inspector General reports, there is no evidence of abuse under the PATRIOT Act. Like what the people of London are feeling today, I felt it that day. September 11, and my heart and my prayers go out to them. I am absolutely convinced that what we have done in this country in a bipartisan way has contributed mightily to the fact that there has not been another major terrorist event in our Nation since that awful day.

The PATRIOT Act and the elements which we will reauthorize today are central to the ongoing war on terror, and I urge its adoption.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 4 minutes to the gentleman from California (Mr. BERMAN), a senior member of the Committee on the Judiciary.

Mr. BERMAN. Mr. Chairman, I thank our wonderful ranking member for yielding me this time.

Mr. Chairman, I voted for the PATRIOT Act in 2001. I abstained in the Committee of the Judiciary this year because I was hoping that some of my concerns could be addressed through a rule that would allow some of these issues to be brought to the floor. But I am very disappointed to say that the rule that was adopted for this very important bill is designed to look like it is fair, because it allows a number of amendments, but those amendments are either so sweeping that they will never get anywhere near and should not get a majority of the House to vote for them, or they linger on the edges of some critical issues.

There are, to my way of thinking, two critical things that need to be
done; and this rule does not allow them to be done. One is addressing the issue of sunsets.

The chairman bemoans the fact that out in the Nation so many people have such a misunderstanding of what the PATRIOT Act does or does not do. He may feel it is because of the bad motives of the people who talk about it. I would suggest it comes from this fundamental conflict between our desire for enhanced security and our love and commitment for continued liberty.

So I said about detentions of people without being indicted or without any deportation proceedings against them and wonder what is going on; and he is right, many of the things we have read about have nothing whatsoever to do with the PATRIOT Act. But part of the reason why the chairman can say we had such rigorous oversight, 10 hearings on this subject, continued letters from the chair and the ranking member pushing for information from the Justice Department, is because of the sunsets.

The failure of the rule to make the sunsets in order is a tremendous failure, not that all of them need to be re-enacted, but on key sections at a time that is relevant for what the American people want, which is within the next 4 or 5 years there should be a chance to have those provisions sunsetted.

I want to get to just as fundamental an issue, to my way of thinking and that is the issue of the standards for secret orders from FISA courts that allow our law enforcement agencies to pursue terrorist investigations and break up terrorist cells.

Prior to the PATRIOT Act, and even under the SAFE Act, we have a standard which does not give law enforcement enough tools to gather the information through a carefully developed investigation to find out who the future terrorists are, who the people who might be planning terrorist attacks are.

Under the existing law, you have much too broad a standard. You are allowing orders that are not based on criminal information to be issued by FISA courts, required to be issued by FISA courts, allowing any kind of tangibles records to be seized, whether or not they are pertaining to a specific person, if it is connected with, or, in the case of the base bill here, relevant to a terrorist investigation.

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An amendment that the gentleman from Massachusetts (Mr. DELAHUNT) and the gentlewoman from California (Ms. JACKSON-LEE of California) and the gentlewoman from Massachusetts (Mr. DELAHUNT) and the gentleman from California (Mr. DANIEL E. LUNGER), in criticizing the SAFE Act and pre-PATRIOT Act standard, it provides every hypothetical created that I have heard about with the ability to be pursued under FISA orders. Why were we not allowed to vote on this? Why would the Senate Committee on the Judiciary unanimously pass that sensible correction in the PATRIOT Act and this body not be even allowed to debate and vote on it?

For these reasons, I am going to be forced to vote “no” on this bill for the lack of opportunity to sunset key provisions like the lone-wolf provision, like the issue of national security letters to provide a forcing mechanism for the FBI to get a warrant to deal with the overly broad standard in the existing law and in the base bill. I hope when it comes back from the conference committee, that we will have a more balanced product that I will be able to support.

Mr. SENSENBERN. Mr. Chairman, I yield 1 minute to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I sit here and listen to this debate, and I have been through a number of the 12-or-so hearings that we have had in the Committee on the Judiciary on the PATRIOT Act; and I want to compliment this Congress, this bipartisan Congress, that met almost with a sense of urgency and almost a sense of emergency to write this PATRIOT Act just 3-plus years ago.

And throughout all of those hearings, we needed to put security in place, we needed to be able to access information. One of the standards was, why can we not access information in an international terrorist investigation as we can in a criminal investigation? We set higher standards here in this Congress rather than lower standards and, still, the debate comes back.

But I am proud and amazed and pleased and in admiration by the work done by this Congress to put this language in this PATRIOT Act that has withstood all legitimate criticism. It has protected people’s rights. There is a name here who has had their rights violated by the PATRIOT Act. We have had the hearings, and we have had serious deliberation. I hope we have a serious consideration of these amendments and final passage of a very good PATRIOT Act.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I hope we can characterize this debate in the manner that it was done, particularly as we rise in the backdrop of the tragedy of London, England.

I might say that even though we would have preferred, many of us as Democrats, a lengthier time for debate, Mr. Chairman, I want to thank the gentleman from Michigan (Mr. CONyers) and the gentleman from Wisconsin (Mr. SENSENBERN) for the ongoing debate and allowing for amendments over a period of time to discuss the PATRIOT Act.

It should be commented on that this is not a definition of patriotism, of who is more patriotic than the next person, for the underlying bill exists. But there also should be some concerns about limiting overreach and overbreadth, that Americans understand none of the issues that we are debating today, and that is the very premise of civil liberties juxtaposed against the responsibility of fighting the war on terror.

I would have hoped my colleagues could have fought for by enhancing and making sure that the agencies responsible for sharing intelligence are really doing that. We find that that is not the case. Whether it is the FBI, the CIA, or other counterterrorism groups, they can do a better job. That certainly helps to stop terrorist acts.

Then, I would have hoped my colleagues would have supported an increased funding, which has not been done by the majority, on rail security and port security and, of course, the idea of insuring our buses and other public transportation modes. These are also components of making sure that we are safe.

But the reason why we raise the question today about the PATRIOT Act is that 14 provisions are being made permanent. Mr. Chairman, even though it is a different story, the Voter Rights Act in 1965, which goes to the core of our democracy, was sunsetted; and it has to be reauthorized. We only argue that it is important to reauthorize or to sunset so that we can have these debates, so that the American people can understand the limitation of their rights or the enhancement of their rights.

For example, I think my colleagues would be troubled by the fact that we know that the FBI could get any tangible record by a rubber stamp by what we call PISA and that the showing would only be relevancy. I have signed probable cause warrants as a judge, and you have to ask hard questions when a policeman comes in late at night to go into your home.

We also know that these items can be used against Americans, not just a foreign power, or the national security letters that the FBI can get financial, telephone, Internet, and consumer
goods records relevant to intelligence investigations, not just against agents of foreign powers, but against Americans. Or what about the sneak-and-peek provision that allows someone to come into your home and take anything, of course, called search and seizure, without much sayings. It is involved in an investigation, and most of you would not know, most of America would not know that this is not limited to terrorism. But it is far-reaching for it is true.

So the question on debate today, I hope that we can center it around the question of restraint, but yet be vigorous in our fight for the war on terror. I hope that we will have that opportunity, and I hope as well that in the amendment that I offer that we will be able to say that if you are impacted by a terrorist act, that you can sue and enforce your civil judgement, and I hope to have mutual support on that.3 Mr. Chairman, my many colleagues, many victims of terrorism, and many victims of racial and religious profiling in opposing this legislation, H.R. 3199, for several reasons. First, we have never been given the facts necessary to fully evaluate the operation of the underlying bill, the USA PATRIOT Act. Second, there are provisions in 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. Finally, there is the refusal 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 7 States have passed resolutions opposing parts of the PATRIOT Act, representing over 62 million people. Additionally, numerous groups ranging the political spectrum have come forward in response to 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, Central 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 Advance- ment of Colored People (NAACP), National Association of Criminal Defense Lawyers, People for the American Way, and numerous groups concerned about immigrants’ rights. 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 suspensation 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.

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 is denied, the person 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 7 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 these groups are still subject to deportation.

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 only membership in terrorist organizations, this law would make it a crime to engage in any activity 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 law, the mere payment of membership dues is a deportable offense. This vague and overly broad language constitutes guilt by association. Our laws should never have his or her day in court to prove otherwise.

In the Sobero case, a U.S. national was held for $250 million in damages for a terrorist incident and because of the Algiers Accord—that led to the release of the hostages, which required the U.S. to bar the adjudication of suits arising from the incident. As a result, those hostages received no compensation for their suffering; several examples of how the Libyan government, the Administration lifted sanctions against Libya without requiring as a condition the determination of all claims of American terrorism.

The legislation, H.R. 3199, as drafted, fails to deal with the current limitation on the ability to enforce civil judgments by victims and family members of victims of terrorist offenses. The current limitation is based on a recent decision by the current Administration has sought to bar victims from satisfying judgments obtained against the government of Iran, for example.

In the Sobero case, a U.S. national was held for $250 million in damages for a terrorist incident and because of the Algiers Accord—that led to the release of the hostages, which required the U.S. to bar the adjudication of suits arising from the incident. As a result, those hostages received no compensation for their suffering; several examples of how the Libyan government, the Administration lifted sanctions against Libya without requiring as a condition the determination of all claims of American terrorism.
victims of terrorism. As a result of this action, Libya abandoned all talks with the claimants. Furthermore, 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 from collecting their judgment from the Iraqi government. Although the 17 veterans won their case in the District Court of Columbia, the Administration argued that the Iraqi assets should remain frozen in a U.S. bank account to aid in the reconstruction of Iraq. Claiming that the judgment should be overturned, the Administration deems that rebuilding Iraq is more important than recompensing the suffering of fighter pilots who, during the 12-year imprisonment, suffered 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 U.S. 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.

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’s been used more than 150 times to secretly search an individual’s home, with nearly 90 percent 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, spy on his children, and take his DNA, all without his knowledge.

It’s 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 the Notre Dame University.

It’s 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 the provider from even disclosing the abuse to the public.

Because of gag restrictions, we will never know who wants to reconstruct that metaphorical wall that prevented the sharing of information. I do not know of anyone on either side. And that was the key and the linchpin, I would suggest, of the success of the PATRIOT Act.

Now, it is my understanding that your version of the bill has added protections to ensure that law-abiding citizens and residents of the United States do not see their cherished civil liberties violated. Specifically, the bill states that no search can be conducted unless, I repeat, unless a Federal judge impaneled at the Foreign Intelligence Surveillance Court makes a finding that the information likely to be obtained is relevant to an ongoing investigation; repeat, an ongoing investigation to prevent international terrorism, and that that investigation is geared toward gathering foreign intelligence.

Mr. SENSENBRENNER. Mr. Chairman, reclaiming my time, yes, that is an accurate reading of the bill.

I further yield to the gentleman from Michigan (Mr. SCHWARZ).

Mr. SCHWARZ of Michigan. Mr. Chairman, I thank the gentleman. Is it in order for me to read, in part, that hypothetical example I gave to show how such an order, such as a business or video store, is allowed to consult a lawyer and to contest these orders, and that judges are authorized to review such challenge? In other words, we are not stripping judges to the executive branch pow- ers of the judicial branch?

Mr. SENSENBRENNER. Mr. Chairman, further reclaiming my time, again, that is an accurate reading of the bill. I further yield to the gentleman from Michigan.

Mr. SCHWARZ of Michigan. Mr. Chairman, I thank the gentleman for his time. I have, and I hope the American people have, an accurate understanding of the safeguards put in place by the USA PATRIOT Act.

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

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts (Mr. DELAHUNT), a former prosecutor and a member of the Committee on the Judiciary.

Mr. DELAHUNT. Mr. Chairman, I want to comment and express my appreciation for the remarks of the gentleman from Iowa (Mr. KING) when he suggested that this has been a good process. We have significant disagreements, and they are healthy disagreements, I would add.

But I think he made the point. There is no one, no Democrat and no Republi- can who wants to reconstruct that metaphorical wall that prevented the sharing of information. I do not know of anyone on either side. And that was the key and the linchpin, I would suggest, of the success of the PATRIOT Act.

Now, some have suggested that there has been no abuse discovered by the Department of Justice, and I will accept that premise. But I would also put forth that the reality of the sunsets were an encouragement to the part of the Department of Justice to ensure full compliance with the law as it was then written. If you will, one could argue that it served as a deterrent,
that it encouraged good behavior; and that is why some of us here on this side of the aisle are so passionate about the issue of sunsets.

It is my understanding that this morning in the Senate Committee on the Judiciary, there were a number of sunset provisions that were approved, and they were full-year sunsets. I dare say, if various amendments relative to sunsets had been allowed and made in order, this debate could have been cut in half in terms of the time.

I also want to speak to the issue of library records. My good friend and colleague on the committee, the gentleman from Florida (Mr. FEENY), talked about some using the library provision, if you will, as a red herring. Well, the reality is that library records under section 215 can be gleaned under section 215, if you could, according to the Attorney General, it has never been used, which just leads me to ask the question, does anyone really need it? But, yes, it ought to be a concern.

I would further suggest that in terms of if there is no concern about libraries, if it is a red herring, why does the first amendment that we will consider was that made in order have to do with the issue?

Mr. SENSENBRENNER. Mr. Chairman, I yield 1½ minutes to the gentlewoman from Florida (Ms. GINNY BROWN-WAITE).

Ms. GINNY BROWN-WAITE of Florida, Mr. Chairman, I certainly want to thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for putting together this excellent extension and reauthorization of the USA PATRIOT Act.

Mr. Chairman, America faced a new kind of enemy on September 11, one that mercilessly attacked civilians on our own shores. In response, the Congress, I was not here at the time, passed the PATRIOT Act to give law enforcement appropriate tools to fight the new war on terror.

Today, we have a great opportunity to send a strong message of support for several provisions of this bill which would have expired on December 1. I specifically want to mention the library section. For some reason, section 215 has come to be known as that.

Actually, it is one that allows law enforcement officers to gain access to business records. Why would we not want to have library records and bookstore records be available if there is a suspected terrorist? By doing so, we would only be making bookstores and libraries sanctuaries for these terrorists. The purpose of this legislation was when it was originally created and now as we extend it to protect Americans.

We cannot afford to make libraries and bookstores havens for those bent on harming our fellow citizens.

Opponents have waged a campaign of misinformation. Recently, some Members on the other side have actually admitted that it has not been abused. We want to make sure that Americans are protected. For that reason, I fully support the reauthorization of the expiring PATRIOT Act, and I thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for putting together this issue.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Chairman, I too rise in support of this bill. We have had some great agents appropriate tools to fight the new war on terror.

Well, the reality is that library records are being used as a red herring. We have seen over and over that libraries have been used by terrorists and this will help address that.

The thing is so far that provision of 215 has not been used with regard to libraries. But if a terrorist is using that information, as a former judge, I would not hesitate to use it there, raising probable cause. But there are safeguards in 215. There is a court. There is a judge reviewing.

I was terribly concerned about the right to an attorney not being in there. This is being amended that I was concerned about not having a provision for appealing that power under 215. That has been added and amended. And so we are coming to a bill here, and it has come about through great debate, back and forth.

And I would also point out though, with regard to the London bombings and the further activity today, you know, our hearts and prayers go out to our friends and relatives of the targets of the terrorists. These tools have been critical in gathering knowledge on the activities and the targets of the terrorists. These tools have assisted in dismantling the al Qaeda terrorist financial network. And as I meet with constituents in my district they are continually saying what are we doing to help fight the terrorists?

However, I have never heard from one man or woman in my district who has said that their constitutional rights have been violated by any aspect of the PATRIOT Act. And while I care deeply about protecting the civil rights of law abiding Americans, I do not care one bit about the civil rights of terrorists bent on destroying our way of life.

Just yesterday over 300 Members of this House voted for an amendment that supported the capture and the detention and the interrogation of international terrorists.

Mr. Chairman, today we face a new type of enemy, an enemy who preys on the innocent, an enemy who lives in the shadows, an enemy whose tactics are the tactics of cowards. And as we saw in London on July 11 and as we are seeing again today, the terrorists are still out there targeting the murder of the innocent. And in fact I will predict that other countries are following the lead of America and what we are doing on the floor of this House today as they enact similar protections for their citizens against these murderers. And now is not the time to take away tools that law enforcement needs to protect us.

Now is the time to send a message to the terrorists that we are not backing down from the fight.

I urge my colleagues to support this legislation.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. WATERS), a distinguished member of the Judiciary Committee.

Ms. WATERS. Mr. Chairman, I rise in strong opposition to H.R. 3190, the U.S. PATRIOT and Terrorism Prevention Reauthorization Act. This act grants the government overbroad and even unconstitutional powers that have not been adequately addressed.

The PATRIOT Act is misleading American citizens and causing them to forfeit their civil liberties in the interest of what has become a political war on terrorism. At the same time, the President's war on terror results in un inspected cargo being placed in the belly of airplanes of all of our airlines.

Yet we continue in this act to violate the privacy of our citizens with section 505, the National Security Letters section of the PATRIOT Act, which allows...
law enforcement to demand detailed information about an individual’s private records without judicial review, without the individual ever being suspected of a crime, without a requirement that law enforcement notify the individual that they are the subject of an investigation. In one section of the PATRIOT Act, 215, they can get an attorney. In section 505 they cannot. I do not know what we are doing here today.

Mr. Chairman, this power represents a clear violation of the fourth amendment against unreasonable search and seizure, as well as threatening speech protected under the first amendment. In fact, a U.S. district judge struck down section 505 in a case involving the government’s collection of sensitive customer information from Internet service providers without judicial oversight. The judge found that the government seizure of these records constituted an unreasonable search and seizure under the fourth amendment, and found the broad gag provision to be an unconstitutional prior restraint on free speech.

To address this, I proposed an amendment that would have provided the recipients of national security letters that would allow them to consult with their attorneys and any person that was necessary to produce the required records. This amendment would not have greatly changed the real meaning of section 505. It was simply a common sense amendment that would have provided some legal recourse and balance for the recipients of national security letters. However, the amendment was not made in order.

Mr. Chairman, what makes this country so great is our respect and protection of individual rights and civil liberties, and we must continue to provide adequate safeguards and protection to these rights. While I agree that our national security is a top concern, we must find the appropriate balance.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. McCaul).

Mr. McCaul of Texas. Mr. Chairman, I want to thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for his leadership on this important legislation, and I rise today in support of this bill.

I served in the Justice Department before and after 9/11. I led the Department’s counterterrorism efforts in the United States’ Office of the Attorney General of the State of Texas. I worked with the Joint Terrorism Task Forces fighting this war on terror in the trenches. I know firsthand that this PATRIOT Act provides the necessary tools to win this war on terror at home.

Signed into law, the PATRIOT Act tore down the wall between the criminal division and the intelligence side of the house. Prior to this it was dysfunctional. The left hand literally did not know what the right was doing. The 9/11 Commission reported this wall may have contributed to 9/11. An FBI agent testified that efforts to conduct a criminal investigation into two of the hijackers were blocked due to concerns within the FBI headquarters and said, some day someone will die. And wall or not, the public will not understand why we were not more effective at throwing every resource we had at certain problems. We hope that the national security law unit will then stand behind their decisions, especially since the biggest threat to us now is Osama Bin Laden.

Today, thanks to the PATRIOT Act, this wall has come down. It helps us connect the dots by removing the legal barriers that prevented law enforcement and the Intelligence Community from sharing information.

But the PATRIOT Act provides many other tools for law enforcement in this war on terrorism. It updates the law to the technology of today. The PATRIOT Act also takes laws which have not been applied in drug cases and organized crime cases and applies them to the terrorists. And contrary to critics’ assertions, the Justice Department cannot do anything without court supervision. The U.S. PATRIOT Act does not abrogate the role played by the judiciary in the oversight of the activities of Federal law enforcement.

And while we are talking about libraries, let us not forget al Qaeda operative Mohammed Babar who used a computer in a library and when asked after he was arrested why, he said because the libraries will scrub the hard drives.

I can envision no bigger national security mistake than to go back to the way things were. We owe it to the citizens of this country to reauthorize the PATRIOT Act, for if we do not and another terrorist attack occurs on our shores we will surely all be held accountable.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina (Mr. WATT), the chairman of the Congressional Black Caucus and a distinguished member of the Judiciary Committee.

Mr. WATT. Mr. Chairman, I thank the gentleman for yielding time.

Mr. Chairman, I suspect that the American people do not realize just how much the process of legislating is about reacting to events that take place around us. When something like Enron happens, we react to that. When accounting scandals happen, we react to that. When 9/11 occurred, we obviously reacted to those events. And quite often when we react, we are looking for an appropriate new balance that takes into account some outrageous activity that took place.

And so when we passed the PATRIOT Act originally, our effort was to try to find a new security balance for people here in our country, and we thought we had done a tremendous job of doing that. But then when the Justice Committee, with only to find that the Rules Committee, which did not even have any jurisdiction over the matter or had any hearings about the matter, took the bill, rewrote it, brought it to the floor and put it through a process that was the opposite direction of against government and law enforcement in unreasonable ways, just as we are reacting in favor of law enforcement now.

So here are a couple of statistics that you need to know about: the American Library Association found that libraries have received over 200 formal and informal requests for materials including 49 requests from Federal officers. Well, maybe they did not find anything. Maybe that was not an abuse of power. I think that is outrageous.

In section 213 it talks about sneak-and-peek searches. In a letter to the gentleman from Virginia (Mr. Scott), the Department of Justice said on July 5, 2005 that that section had been used 153 times as of January 2006. Only 18 of those times were the uses for terrorism investigations.

Well, what is happening with the other 80 percent is in my estimation an abuse of this provision because we passed the law so that we could make it easier for law enforcement to get to terrorists. The law is being used in ways that, but for the events of 9/11 and the terrorism that occurred, we would not have accepted as residents of this country.

Mr. Chairman, I just think we have struck the wrong balance. We need to sunset this bill for a shorter period of time, and I hope my colleagues will take that into account and vote against it.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 1 minute. I simply disagree with my friend from North Carolina (Mr. WATT), but I want to take some time to correct the record.
The delayed notification or so-called "sneak-and-peak" warrants were authorized in the late seventies for purposes of racketeering and drug-trafficking investigations and were held constitutional by the Supreme Court in the early eighties as not violative of the Fourth Amendment.

What the PATRIOT Act did was expand this previously existing authority to terrorism investigations. So if the PATRIOT Act never existed, the 18 instances where the delayed-notification warrant was used for terrorism investigations would have been illegal. But all of the other investigations that the gentleman from North Carolina referred to would have been legal under existing practice which have been held constitutional.

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

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Chairman, I rise in reluctant opposition to this bill.

In 2001 after an attack on the United States and the slaughter of innocent civilians, this Congress passed the PATRIOT Act. It was supported at that time. It gave our investigative agencies a wide variety of special powers to fight terrorism and to win this war on terrorism. However, these powers were not to be permanent. They were designed to help us win the war, not to change our country permanently.

Now we have the PATRIOT Act being handed to us again, but instead it is being handed to us in a permanent form. You do not make policy for the United States Government protecting the rights and freedoms of our people in an extraordinary time as this, a time of war, and then mandate it so it is going to be the rule of our country once we live in peacetime.

Our country was founded on the idea of limited government and individual liberty. I gladly supported PATRIOT I. Now they have taken all but two of the sunset provisions which would make those extraordinary new powers that we gave the government lapse once we have peace in this country.

Any real patriot will vote against this expansion of government at the expense of the individual even when peacetime comes.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 1½ minutes to rebut my good friend from California.

Mr. Chairman, effective oversight is a function of effective congressional leadership and not as a result of legislative sunsets. If we meted out oversight to legislative sunsets, only about 5 percent of the laws that we pass are sunset, and most of those are appropriations bills.

Now, the gentleman from California (Mr. ROHRABACHER) is the chairman of an Oversight and Government Reform Committee on International Relations. I do not see any sunsets coming on bills coming out of the Committee on International Relations because I have faith in the gentleman from California's (Mr. ROHRABACHER) being able to do effective oversight.

The Committee on the Judiciary has done a huge amount of oversight. We have had there has been more process and more hearings and more witnesses on more sides of the issue on the PATRIOT Act than practically any other piece of legislation that I have faced in my 26-plus years as a Member of Congress. This year alone, it has 12 hearings, oversight letters, responses, inspectors general reports. I wish I had brought all of the paper that has come about as a result of the Committee on the Judiciary's oversight, because it would stack this high off the table here in the House Chamber.

Mr. Chairman, the following is a listing of the oversight activities so that the American public and everybody can see that this committee has done its job. It has done it effectively, and it has made sure that the civil liberties of the people of this country have not been infringed upon.

HEARING CHRONOLOGY: HOUSE JUDICIARY COMMITTEE CONSIDERATION OF THE USA PATRIOT ACT

FULL COMMITTEE CONSIDERATION
June 10, 2005: Full Committee—Oversight Hearing on the Reauthorization of the USA PATRIOT Act: Carla C. Tiapua-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 1, 2005: Oversight Hearing on the Reauthorization of the USA PATRIOT Act: Deputy Attorney General James B. Comey.

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 894 that Addresses Jurisdiction over Warrants 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, Chief Deputy Assistant Attorney General of the Department of Justice (Minority witness); Gregory Nojeim, Deputy Director of the Office of the Inspector General (Minority witness); and Shayana Kadidal, Managing Director, the Center for National Security Studies (Minority witness).
May 20, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing on the Prohibition of Material Support to Terrorists and Foreign Terrorist Organizations under the Criminal Code and the Implementation of the USA PATRIOT Act: Section 1002 and Section 1003—Chuck Rosenberg, Chief of Staff to the Deputy Attorney General 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 Pulina Galuhia, Deputy Director of the Western Hemisphere Division, Drug Enforcement Administration (Minority witness).
May 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 Michael Moschella, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice (Major witness); William L. Tokars, Deputy Director of the Counterterrorism Division, Federal Bureau of Investigation (Majority witness); Professor Orin S. Kerr, Director of the Law and Technology Program 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 Section 223 of the USA PATRIOT Act and Their Effect on Law Enforcement Surveillance: Honorable Richard L. Thornburgh, former U.S. Attorney for the District of Pennsylvania (Majority witness); Chuck Rosenberg, Chief of Staff to the Deputy Attorney General (Majority witness); Heather Mac Donald, John M. Olin fellow at the Hoover Institution (Minority 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—Have sections 206 and 215 improved FISA Investigations? (Part I): Honorable Kenneth L. Wainstein, U.S. Attorney for the District of Columbia (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 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 6003 of the Intelligence Reform and Terrorism Prevention Act of 2004, improved FISA Investigations? (Part III): 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); Robert Katz, former Assistant United States Attorney’s Office for the Southern District of New York (Majority witness); and Barry Sabin, Chief of the Counterterrorism Section of the Criminal Division of the Department of Justice (Minority witness).
April 26, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing—Have sections 201, 202, 213, and 223 of the USA PATRIOT Act and Their Effect on Law Enforcement Surveillance: Honorable Susan Webber, former U.S. Attorney for the District of Massachusetts (Majority witness); Shirley S. Abrahamson, Assistant Director of the FBI (Majority witness); and Chip Pitts, Chair of the Board of Amnesty International USA (Minority witness).
April 26, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing—Have sections 201, 202, 213, and 223 of the USA PATRIOT Act and Their Effect on Law Enforcement Surveillance: Honorable David Cole, former U.S. Attorney for the District of Columbia (Minority witness); and the Honorable John C. West, former Director of the Central Intelligence Agency (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); 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 201, 202, 213, and 223 of the USA PATRIOT Act and Their Effect on Law Enforcement Surveillance: Honorable Susan Webber, former U.S. Attorney for the District of Massachusetts (Majority witness); Shirley S. Abrahamson, Assistant Director of the FBI (Majority witness); and Chip Pitts, Chair of the Board of Amnesty International USA (Minority witness).
April 26, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing—Have sections 201, 202, 213, and 223 of the USA PATRIOT Act and Their Effect on Law Enforcement Surveillance: Honorable David Cole, former U.S. Attorney for the District of Columbia (Minority witness); and the Honorable John C. West, former Director of the Central Intelligence Agency (Minority witness).
Electronic Evidence: Laura Parsky, Deputy Assistant Attorney General of the Criminal Division, U.S. Department of Justice (Majority witness); Steven M. Martinez, Deputy Assistant Attorney General of the Counterterrorism Division, Federal Bureau of Investigation (Majority witness); James X. Dempsey, Executive Director of the Center for Democracy and Technology (Majority witness) plus a favor to Minority); and Peter Swire, Professor of Law, Mortiz College of Law, the Ohio State University (Minority witness).

April 21, 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 Privacy. 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).

Witnesses (alphabetical)
1. Arulanantham, Atilan T.—Staff Attorney, American Civil Liberties Union
2. Baginski, Maureen—Executive Assistant Director for the Office of Intelligence, Federal Bureau of Investigation
3. Baker, James A.—Executive Assistant Director for the Office of Intelligence, Federal Bureau of Investigation
4. Barr, Bob—Former Member of Congress, Atlanta, Georgia
5. Berry, Matthew—Counselor to the Assistant Attorney General, United States Department of Justice
6. Buchanan, Mary Beth—United States Attorney, Western District of Pennsylvania
7. Comey, James B.—Deputy Attorney General, United States Department of Justice
8. DeSocio, Vincent—Deputy Executive Director, Center for Democracy and Technology *testified twice
9. Edgar, Timothy—National Security Policy Counsel, American Civil Liberties Union
10. Fine, Glenn A.—Inspector General, United States Department of Justice
12. Gonzalez, Alberto—Attorney General of the United States
13. Hulon, Willie T.—Assistant Director of Counterterrorism Division, Federal Bureau of Investigation
14. Kadidal, Shayana—Staff Attorney, National Security Policy, Department of Justice
15. Katsas, Gregory—Deputy Assistant Attorney General, United States Department of Justice
16. Kerr, Orin S.—Associate Professor of Law, The George Washington University
18. Kris, David—President, National Security Policy Counsel, American Civil Liberties Union (*3 different witnesses)
19. Martin, Kate—Director, Center for National Security Studies
20. McCaul, Michael—U.S. Representative & former Chief of Counterterrorism and National Security for the U.S. Attorney’s Office in Western Judicial District of Texas
21. McFarland, William—Assistant Attorney General, United States Department of Justice
22. Meijer, Gregory T.—Associate Director/Chief Legislative Counsel, American Civil Liberties Union *testified twice
23. Nojeim, Gregory T.—Associate Director/Chief Legislative Counsel, American Civil Liberties Union *testified twice
24. Nojeim, Gregory T.—Associate Director/Chief Legislative Counsel, American Civil Liberties Union *testified twice
25. Parsky, Laura H.—Deputy Assistant Attorney General, Department of Justice
26. Pearlstein, Deborah—Director, U.S. Law and Security Program
27. Pitts, Chip—Chair of the Board, Amnesty International USA
28. Rosenberg, Chuck—Chief of Staff to Deputy Attorney General, United States Department of Justice *testified twice
29. Sabin, Barry—Chief of the Counterterrorism Section for the Criminal Division, Department of Justice *testified twice
30. Spaulding, Suzanne—Managing Director, the Harbour Group, LLC
31. Sullivan, James—United States Attorney, District of Massachusetts
32. Swire, Peter—Professor of Law, Ohio State University
33. Tapia-Ruano, Carlina—First Vice President, American Immigration Lawyers Association
34. Wainstein, Kenneth L.—Interim U.S. Attorney, District of Columbia
35. Zogby, Dr. James J.—President, Arab American Institute

Government Witnesses
1. Baker, James A.—Counsel for Intelligence Policy, Department of Justice *testified twice
2. Baginski, Maureen—Executive Assistant Director for the Office of Intelligence, Federal Bureau of Investigation
3. Berry, Matthew—Counselor to the Assistant Attorney General, United States Department of Justice
4. Buchanan, Mary Beth—United States Attorney, Western District of Pennsylvania
5. Comey, James B.—Deputy Attorney General, United States Department of Justice
6. Fine, Glenn A.—Inspector General, United States Department of Justice
8. Gonzalez, Alberto—Attorney General of the United States
9. Hulon, Willie T.—Assistant Director of Counterterrorism Division, Federal Bureau of Investigation
10. Katsas, Gregory—Deputy Assistant Attorney General, United States Department of Justice
11. Martinez, Steven M.—Deputy Assistant Director of Counterterrorism Division, Federal Bureau of Investigation
12. Moschella, William—Assistant Attorney General, United States Department of Justice
13. Parsky, Laura H.—Deputy Assistant Attorney General, Department of Justice
14. Pearlstein, Deborah—Director, U.S. Law and Security Program
15. Sabin, Barry—Chief of the Counterterrorism Section for the Criminal Division, Department of Justice *testified twice
16. Sullivan, Michael—United States Attorney, District of Massachusetts
17. Wainstein, Kenneth L.—Interim U.S. Attorney, District of Columbia

Witnesses Testifying in Their Capacity as Former Government Officials
2. McCaul, Michael—U.S. Representative & former Chief of Counterterrorism and National Security for the U.S. Attorney’s Office in Western Judicial District of Texas

Non-Government Witnesses
1. Arulanantham, Atilan T.—Staff Attorney, American Civil Liberties Union
2. Barr, Bob—Former Member of Congress, Atlanta, Georgia
3. DeSocio, Vincent—Executive Director, Center for Democracy and Technology *testified twice
4. Edgar, Timothy—National Security Policy Counsel, American Civil Liberties Union
5. Kadidal, Shayana—Staff Attorney, Center for Constitutional Rights
6. Meijer, Gregory T.—Associate Director/Chief Legislative Counsel, American Civil Liberties Union
7. Pearlstein, Deborah—Director, U.S. Law and Security Program
8. Pitts, Chip—Chair of the Board, Amnesty International USA
9. Spaulding, Suzanne—Managing Director, the Harbour Group, LLC
10. Swire, Peter—Professor of Law, Ohio State University

Organizations represented
1. American Civil Liberties Union (*3 different witnesses)
2. Center for Democracy and Technology
3. Center for Constitutional Rights
4. Time Warner Corporation
5. The Manhattan Institute
6. Center for National Security Studies
7. U.S. Law and Security Program
8. Amnesty International USA
9. The Harbour Group, LLC
10. American Immigration Lawyers Association

President, Arab American Institute
*Not sure how to classify Universities that have professors testifying, since their testimony does not necessarily reflect the views of the institution. Also, was Barr representing anyone?

OVERSIGHT: HOUSE JUDICIARY COMMITTEE
OVERSIGHT THROUGH LETTERS TO THE DEPARTMENT OF JUSTICE

House Judiciary Committee sent the Attorney General, John Ashcroft, a letter on June 13, 2002, with 50 detailed questions on the implementation of the USA PATRIOT Act. The questions were submitted following 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. On August 26, 2002, Mr. Bryant sent the responses to the remaining questions, 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 additional information regarding the Department of Justice’s responses to these questions.

On April 1, 2003, Chairman Sensenbrenner and Ranking Member Mr. Conyers sent a second letter to the Department of Justice with additional questions regarding the use of granting authorities and the new authorities conferred by the USA PATRIOT Act. 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 questions to the appropriate officials at the Department of Homeland Security. 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.

On November 20, 2003, Chairman Sensenbrenner and Congressman Hostetler, 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.

OVERSIGHT THROUGH HEARINGS

On May 20, 2003, the Committee’s Subcommittee on Immigration, Border Security, and Claims held an oversight hearing entitled, “Anti-Terrorism Investigations and the Fourth Amendment TRIOT Act.” During the hearing, several senators and representatives discussed oversight aspects of the USA PATRIOT Act.

On June 5, 2003, the Justice Department 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.

OVERSIGHT THROUGH BRIEFINGS

The Subcommittee on Crime, Terrorism, and Homeland Security of this Committee requested that officials from the Department of Justice answer questions regarding the implementation of the USA PATRIOT Act. In response to our request, the Department of Justice gave two separate briefings to Members, counsel, and staff.

During the briefings held on August 7, 2003, Department officials covered the long-standing authority for law enforcement to conduct warrantless searches and collect business records, as well as the effect of the USA PATRIOT Act on those authorities.

During the 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 the classified briefing on the use of the Foreign Intelligence Surveillance Act (FISA) under the USA PATRIOT Act for Members of the Judiciary Committee.

On March 7, 2004, 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.

Mr. CONYERS. Mr. Chairman, I yield 15 seconds to the gentlemen from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. I would suggest that we do not have to sunset all the legislation going through this Congress to pay particular attention to that legislation that affects the civil liberties of our people. And if we are going to in some way expand the power of government over our people in time of war because it is necessary to see that the sunsets before the war is over. By permanently changing America, we are not furthering the cause of freedom in this country.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin (Mr. ROGERS), a former member of the Committee on the Judiciary.

Ms. BALDWIN. Mr. Chairman, I rise today to oppose H.R. 3199. As the gentleman just mentioned, I was a member of the Committee on the Judiciary on September 11, 2001. And in the weeks that followed, I joined my colleagues in committee to carefully craft a bill to give law enforcement personnel additional and powerful tools to fight terrorism. As you recall, the result product of our committee was rejected at the eleventh hour in favor of a far more expansive act which has continued to raise concerns among those who cherish our constitutional liberties.

Through the PATRIOT Act and other anti-terrorism measures, we have become a country that permits secret surveillance, secret searches, denial of court review, monitoring of communications between citizens and their attorneys, and searching of library and medical records of citizens. This does not sound like America to me.

Mr. Chairman, reauthorization of this act is an opportunity; it is an opportunity to strike a balance that must exist in a free society. I urge my colleagues to vote "no" to allow us that chance.

Mr. CONYERS. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Massachusetts (Mr. MEEHAN).

Mr. MEEHAN. Mr. Chairman, September 11 made it clear that the world had changed, that our law enforcement and intelligence agencies needed to change accordingly.

Democrats and Republicans agreed on the need to update the tools necessary for law enforcement to address the threat of terrorism on American soil. What started as an effort to protect our country from terror has become a virtually uncontrolled vehicle for government to invade the privacy of every American.

It was with that possibility in mind that the Congress included in the PATRIOT Act a provision requiring a review after a few years to determine which parts should be retained, which parts should be modified, and which should be repealed. It is evident to me and to many Americans that the PATRIOT Act is inadequate in its protection of civil liberties.

Section 206’s blanket, roving wiretaps, section 213’s sneak-and-peek searches, and section 215’s expansive power allowing the government to obtain and piece together information on any American are just three examples of how the PATRIOT Act is out of control.

Last week, the Committee on the Judiciary met to address these and other issues in an attempt to bring back some balance to the law enforcement power and civil liberties. Democrats on the committee offered dozens of amendments in an attempt to control this bill and bring balance to it. Virtually every single one of these amendments were defeated by a party-line vote. Most troubling was the extension of sunsetted provisions that should have been allowed to expire or at least require reauthorization in the next 4 years.

Periodically revisiting the PATRIOT Act is a good thing. To preserve our commitment to making the best and most up-to-date assessment of our law enforcement and intelligence policies, we should include more, not fewer, sunsets and make them shorter, not longer.

The PATRIOT Act was an effort to answer the most difficult question our democracy faces: How much freedom are we willing to give up to feel safe? Too much freedom, giving up too much power given to the Justice Department.

Today we are asking not to hinder the pursuit of terrorists, but to return some sanity and balance to the law.

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

Mr. Chairman, we have heard another attack on delayed notification or sneak-and-peek warrants. Let me tell you what has happened this month. A U.S. district judge in Washington State executed or authorized a delayed-notification warrant to look into a building on the U.S. side of the northern border. And what was discovered but a rather sophisticated tunnel between Canada and the United States to smuggle contraband, and perhaps terrorists, through the border and into this country without being detected by our border patrol.

Using a delayed-notice search warrant, the DEA and other agents entered the home on July 2 to examine the tunnel. Shortly thereafter, a U.S. district judge authorized the installation of cameras and listening devices in the home to monitor the activities in the home.

Using these twice, Federal, State and local law enforcement officials observed multiple trips by three defendants through the tunnel carrying large hockey bags or garbage bags. These bags were loaded into a van on the U.S. side and driven south for delivery.

Ninety-three pounds of Marijuana were found in these bags when the Washington State Patrol stopped the car. That never would have happened without a delayed-notification warrant. And if they can bring 93 pounds of marijuana into the country, they can bring terrorists in as well.

These warrants are good. They protect us. They ought to be kept.

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

The Acting CHAIRMAN (Mr. SWEENEY). The gentleman from Michigan (Mr. HOEKSTRA) and the gentleman from California (Ms. HARMAN) each will control 15 minutes of debate from the Permanent Select Committee on Intelligence.

The Chair recognizes the gentleman from Michigan (Mr. HOEKSTRA).

Mr. HOEKSTRA. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. ROGERS), the only
former FBI member on the Permanent Select Committee on Intelligence.

Mr. ROGERS of Michigan. Mr. Chairman, I thank the gentleman for yielding me this time and for his great work on this, and I want to thank my friends on the other side of the aisle for the work they have given for the PATRIOT Act. Thanks for at least bringing this debate up.

Mr. Chairman, as a former FBI agent, I had occasion to work some pretty bad folks in the City of Chicago in working organized crime and public corruption. I developed the sources for wiretaps and applied wiretaps for things like murder and extortion, gambling, prostitution, racketeering, child pornography.

There was a case of a child pornography who was producing child pornography tapes where we used the legal system, a legal instrument, through due process of law, to get records that we needed from businesses, from his home in places to make sure that we could find the entire network of distribution of criminals who were preying on our children. America said something interesting. The people of America said, you know, Agent Rogers, at the breakfast table, you got to go after child molesters sitting in the library, in our homes, in our workplace and in our church, to remove our ability as agents of the FBI to do that. You do not because it is legal and it is proper under our Constitution.

Mr. Chairman, we must support this act. We must do it today for the future safety of the United States of America. Ms. HARMAN. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, the London attacks this week and the war in Afghanistan, terrorism or yet another al Qaeda attempt, are one more reminder of how vulnerable we are. We need effective tools to combat terrorism. The terrorist threat is real, and if we are going to demand that the FBI uncover terror cells in this country, we need to give them the tools to do that.

The al Qaeda organization that attacked us on 9/11 has changed. It is no longer a top-down centralized terror group planning acts from overseas. Instead, home-grown terror cells, what I call franchise terrorism. Their attacks draw inspiration from al Qaeda, but they act independently, making it tougher to disrupt their plans.

I want to make two points about the PATRIOT Act. First, it gave law enforcement some important new legal authorities. But new legal authorities, Mr. Chairman, on their own, will not protect us from terrorism. We need to shift priorities, to develop better strategies and devote greater resources to protect our soft targets, like rail, subways, and ports, and that we have not yet done.

Second, on the issue of reauthorizing the 16 provisions that are sunsetting, my view is “mend it, don’t end it.” The PATRIOT Act was passed 45 days after 9/11, with little debate. We were bracing for more terror. The invasion of Afghanistan had begun and Capitol Hill was hit with anthrax. Congress did a fairly decent job, and I supported the bill, but we can do better.

We should reauthorize the PATRIOT Act, which modernized law enforcement tools, but we should clarify and mend it, tailor the authorities so that the government does not have a license to engage in fishing expeditions for your personal information or conduct FBI surveillance on innocent Americans.

The bill on the floor today is better than the original PATRIOT Act. And if some of the amendments we will consider pass, it will be even better. But my colleagues on the Permanent Select Committee on Intelligence will describe in a moment amendments which we offered in committee and before the Committee on Rules. Those amendments are solid, moderate, and bipartisan, and they should be able to be debated today. The good news is that the Senate Judiciary Committee on a bipartisan basis just reported a bill that includes many of them. That bill, I hope, will serve as the model in conference committee. That bill could have been the House bill.

In conclusion, protecting America from terrorism is not a Democrat or Republican issue, it is an American issue. As I have often said, the terrorists are not going to check our party registration before they blow us up. So when we defend America, let us forget party labels and focus on what will provide security and liberty for the American people. Balancing liberty and security is not a zero sum game. You either get more of both or less. The American people deserve both.

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

Mr. HOEKSTRA. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. CUNNINGHAM), a member of the committee.

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

I listened to my colleagues on the committee, the gentlewoman from California (Ms. HARMAN), the gentleman from Massachusetts (Mr. DELAHUNT), and also the gentleman from California (Mr. ROHRABACHER), and they have legitimate concerns. I do not think there is anybody in this body on either side of the issue that does not have concerns. I would like to see, in particular, a sunset provision, although I do not know what the timing should be. God willing, there should be a day we will not need a PATRIOT Act, and it is easier to vote it back than it is to get rid of it.

Mr. Chairman, 26 nations have been attacked by al Qaeda, and we saw today England, but also France and Japan. It also tells us the United States is behind in its security for our mass rail and bus transportation systems, not just aviation but those as well.

Let me cite an example of what happened before 9/11 and how the PATRIOT Act, in my opinion, would have stopped an event, not just may have.

Agencies knew of an outspoken terrorist group in support of Osama bin Laden before 9/11, and they were outspoken about their ethnic intolerance and raising money for al Qaeda. Agencies like CIA, FBI and law enforcement had thousands of pages taken to court on profiling. This primary issue at the time was getting out two agents in a foreign country that were under extreme conditions. They were concerned also about if they questioned this group that they would be taken to court. The rhetoric was there, but no action. The FBI and the CIA were limited in their ability to check out this group.
Mr. Chairman, this particular group was the group that was training in Arizona, the pilots and the crews that flew into New York City, that flew into the Pentagon, and that crashed in Pennsylvania. Mohammed Atta is another example. His roommate, the limitation that we had on questioning him, he knew about the 9/11 bombings, is another reason why I think that we need this act.

I am conflicted, just like my colleague the gentlewoman from California (Ms. HARMAN) and others, because there are things that all of us are concerned about. But Khalid Sheikh Mohammed is the guy who planned 9/11. We caught this rascal. His replacement was a guy named Abu al-Libbi, and we caught that rascal. And some of the documents showed that it is only a matter of time, Mr. Chairman, until this country is hit, so we must be diligent. This act helps us do that, and weighing the concerns and is the reason I think all of us need to support the PATRIOT Act.

Ms. HARMAN. Mr. Chairman, it is my pleasure to yield 2 minutes to the gentleman from Texas (Mr. REYES), a member of our committee.

Mr. REYES. Mr. Chairman, I thank the gentlewoman for yielding me this time on this very important issue. I also rise, like my colleagues, understanding that we face a situation that is potentially very dangerous, especially for parts of this morning again in London. But I also think it is important and prudent that we craft legislation that protects our country not just from the terrorists but also from abuses.

I rise today, Mr. Chairman, to express my disappointment with this House for not allowing my fellow colleague on the Permanent Select Committee on Intelligence, the gentleman from Florida (Mr. HASTINGS), to offer an amendment which is important. H.R. 3199, the USA PATRIOT Act reauthorization. His amendment would have extended until 2010 the sunset date of section 601 of the Intelligence Reform and Terrorism Prevention Act, also known as the “Lone Wolf” provision. Instead, the bill before us makes that provision permanent. It has only been in effect for 7 months, which is, in my opinion, an inadequate amount of time for the government and the public to assess the impact this significant expansion of government authorities has.

We are having this debate today, Mr. Chairman, because 4 years ago Congress had the wisdom to include sunset provisions in the PATRIOT Act. These sunsets are key to ensuring individual rights and liberties as well as allowing Congress to continue to evaluate the effectiveness of this act.

Mr. Chairman, I understand the need for this legislation, and I will support the passage today. However, I hope that my colleagues understand that if we are to continue much further down this road we may be doing irreparable damage to civil liberties in this country without sunset provisions.

Mr. HOEKSTRA. Mr. Chairman, I yield 3 minutes to the gentlewoman from New Mexico (Mrs. WILSON), another member of the committee.

Mrs. WILSON. Mr. Chairman, I thank the gentleman for yielding me this time and for his leadership on this issue.

Over the last several months, the Committee on the Judiciary has had numerous oversight hearings, as has the House Permanent Select Committee on Intelligence, to look at the PATRIOT Act and see where we need to improve it and what we need to do to extend these provisions.

My colleague from southern California said that we should have sunsets on this because once we have peace we should not have these provisions. Once the war is over, once the war is over.

The war against foreign terrorists and spies will not end, any more than the police’s efforts to combat organized crime or drug kingpins. The tools that we have put into the PATRIOT Act are identical to what law enforcement have had for a long time in criminal cases, but we did not have those authorities in foreign intelligence and counterterrorism cases.

There are plenty of myths about the PATRIOT Act, and I think we need to put a few of them to rest. One of them is the myth that the local sheriff can go into your library and find out what you have been reading. They cannot.

Under the PATRIOT Act, they need a court order in order to get any business records or library records or anything else, under the supervision of a Federal judge. And it has to be as part of a foreign terrorist investigation or counterintelligence investigation against foreign spies. It is directed not against Americans or those who might come to this country to do us harm.

The most important thing that the PATRIOT Act did was to break down the walls between law enforcement and intelligence to be able to share information across that wall in order to protect us before the attack comes.

The intention of the PATRIOT Act is to prevent the next terrorist attack, instead of just letting the FBI gather the criminal evidence to convict somebody after thousands more have died.

Mr. BOSWELL. Mr. Chairman, I thank the gentlewoman for yielding me this time to discuss this very important issue.

The PATRIOT Act has sparked important discussion about protecting us from terrorism and protecting our civil liberties. It is clear we can make reforms to better ensure we are giving law enforcement all of the tools they need while maintaining the appropriate safeguards to protect the very freedoms we cherish.

Just this week as the ranking member of the Subcommittee on Human Intelligence with the gentleman from California (Mr. CUNNINGHAM) as the chairman, I was able to include a reform so the PATRIOT Act ensures greater judicial oversight of government wiretaps.

The so-called John Doe roving wiretaps are a critical tool in our efforts to fight terrorism because they allow surveillance when neither the target’s identity nor location of the interception is known.

This amendment allows these wiretaps to continue, but requires the government to report back to the courts with an explanation of the facts and circumstances surrounding the rational for the wiretap. It allows greater oversight of the wiretaps without impeding the government’s need to obtain information on potential terrorist plots quickly. If we focus on commonsense reforms, we can protect our communities from terrorists, and we can protect our civil liberties.

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

Ms. HARMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. ESHOO), a member of the Permanent Select Committee on Intelligence.

Ms. ESHOO asked and was given permission to revise and extend her remarks.

Ms. ESHOO. Mr. Chairman, I thank the distinguished ranking member for yielding me this time.

One of the most prudent things, in my view, that Congress did in passing the original PATRIOT Act was to sunset certain provisions, thus ensuring that a future Congress would review and revise them and have a very healthy and sobering debate. Rather than sunsetting these provisions again, this bill makes permanent 14 of the 16 provisions set to expire without addressing the important civil liberty issues.

I am somewhat taken aback as I listen to different parts of the debate on the floor. One would think that the Constitution is something that can be set aside when it is not convenient to follow. The Constitution is the soul of our Nation. There are magnificently written constitutions around the world, but their countries do not heed their constitution. The American people take our Constitution seriously.

And so this debate, not allowing the sunsets in the future, I think is very, very important to bring up today. The
Mr. CHOCOLA. Mr. Chairman, I apologize, but this is something that I must tell you. Tell that to Brandon Mayfield, tell that to thousands upon thousands of citizens. When we say that it is directed at terrorists, not law-abiding citizens, but they should try to tell that in the state of shock the country was in—being drafted, briefly debated, approved, and signed into law by October 26, 2001, just weeks after the attacks. At the time I, and many other Members of Congress, voted for the Act under the condition that a number of the provisions contained within it would sunset and thus would not be reauthorized. The police and prosecution powers of the government are important and necessary to preserving life and liberty, but they are also among the most fearsome. Section 213, the so-called sneak-and-peek searches, it would allow investigators to come into your home, look through your books, pictures, seize personal items, and when they discover they have made a mistake, there is no time in which they have to notify you that they have been there. One does not have to be a paranoid to be concerned that somebody has been in your house.

Members might say it only applies to terrorists; it does not apply to law-abiding citizens like you and me. Well, tell that to Brandon Mayfield, tell that to the Portland attorney who was detained by investigators under the PATRIOT Act. Now, the FBI in that case apologized, but this is something that hits home, and we have a responsibility to preserve the freedoms of people at home.

Mr. Chairman, I rise today in opposition to the reauthorization of the PATRIOT Act. As you know, the PATRIOT Act was passed in the aftermath of the attacks of September 11, 2001. The Act was an immediate reaction to the state of shock the country was in—being drafted, briefly debated, approved, and signed into law by October 26, 2001, just weeks after the attacks. At the time I, and many other Members of Congress, voted for the Act under the condition that a number of the provisions contained within it would sunset and thus would not be reauthorized.

The police and prosecution powers of the government are important and necessary to preserving life and liberty, but they are also the most fearsome powers of government and, if abused, can rob us of life and liberty. For generations, thousands upon thousands of people have come to America’s shores to be free of the oppressive hand of authorities in other countries, to be free of the fear of the knock on the door in the middle of the night, to be free of the humiliation and costs and stigma of inappropriate investigations that were feared on party lines. And what we did accomplish—the improvements we made—did not make it through the Rules Committee for consideration on the floor.

I remain deeply concerned about many of the provisions in the PATRIOT Act as reported to the House, but I would like to specifically discuss two of them. I am deeply troubled by Section 213, which will be permanently reauthorized by this legislation. The so-called “sneak and peek” searches allow federal agents to literally go into your home, my home, anyone’s home and conduct a secret search. Investigators can take pictures and even seize personal items or records and unbelievably they do not need to tell you about it for an indefinite period of time. When they discover they made a mistake or they discover you are not engaged in terrorism, they are under no obligation to ever let you know promptly.

Another provision of the PATRIOT Act, Section 215, allows investigators broad access to any record without probable cause of a crime. They can obtain a warrant and intelligence in-
In 2001, I voted in favor of the PATRIOT Act with reservations, and my reservations have only increased over time. At the time, I said that in the anxious aftermath of the attacks of September 11, 2001, we were likely to get wrong the balance between freedom and security. An inquisitorial type of operation would be counter productive to all that makes us American. I also believed then that the PATRIOT Act, while good, is not perfect. Additional time is needed to assess its effectiveness and impact on civil liberties, and that is why we need to call for sunsets.

Mr. HOEKSTRA. Mr. Chairman, I yield 1 minute to the gentleman from Kansas (Mr. YATES), a member of the Permanent Select Committee on Intelligence.

Mr. YATES. Mr. Chairman, I thank the gentlewoman for her leadership on this action as well as others that involve the Permanent Select Committee on Intelligence.

I want to remind Members why we are here. We are here because the PATRIOT Act will sunset. It will sunset so we can see if there were any violations of civil liberties during the time it was in effect, which will be approximately 4 years by the end of this year.

There were over 7,000 alleged violations filed by the American Civil Liberties Union, Members heard before the gentleman from Indiana. However, we have no violations of civil liberties under the PATRIOT Act. Of those 7,000 allegations, some were under other parts of the law, but none under the PATRIOT Act. So what we are talking about in this bill is sort of splitting hairs.

We have heard comments about how there is no judicial oversight for what is going on. There is judicial oversight for almost everything involved in the PATRIOT Act with few exceptions, like national security letters, which does require a certification of relevance before they move forward.

We use these tools in the PATRIOT Act so we can catch terrorists and prevent acts of violence against American citizens. We support these same tools in other parts of the law, like when we are trying to find patent infringement, when we are trying to catch organized criminals, when we are trying to stop drug trafficking. This is a good law. I hope my colleagues will support it. It does protect civil liberties, and we should pass it.

Ms. HARMAN. Mr. Chairman, to the last speaker, I agree it is good, but I think it could be better.

Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. RUPPERSBERGER), the former rookie of our committee.

Mr. RUPPERSBERGER. Mr. Chairman, we are watching what is happening in London; and with that backdrop, we are discussing reauthorizing the PATRIOT Act today. We are all committed to finding and fighting terrorists. No one party, Democrats or Republicans, has exclusivity over this issue. We are all for stopping terrorists and protecting our citizens.

While we are all committed to this fight, it is still our congressional duty to exercise our oversight responsibilities. We can do this effectively with the sunset provisions. Sunset provisions hold Congress accountable for reexamining and determining the effectiveness and impact of the PATRIOT Act.

As a member of the Permanent Select Committee on Intelligence, I hold this oversight responsibility as one, if not my most, important function. Let me say up front that I think the PATRIOT Act provides essential tools for law enforcement authorities that were not available before the 9/11 attacks. These tools are a lot better for identifying and tracking terrorists inside the United States.

The House Permanent Select Committee on Intelligence held two open hearings for the PATRIOT Act. These hearings led me to conclude that the PATRIOT Act, while good, is not perfect. Additional time is needed to assess many of these provisions’ effectiveness and impact on civil liberties, and that is why we need to call for sunsets.

It is clear to me that we still face serious threats and we need some of the powers of the PATRIOT Act. Sunset provisions are important because they allow for review and oversight. Oversight allows us to protect civil liberties; but more importantly, it allows us to enhance law enforcement tools to keep pace with the terrorists.

Mr. HOEKSTRA. Mr. Chairman, I yield 1 minute to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, the Cold War is over and the world is a more dangerous place. The strategy that we used to have of containment, react and mutually assured destruction went out the window on 9/11. Lord, it probably went out earlier, we just did not get it.

We need now to be able to detect in order to prevent, and our intelligence community needs the capability and the tools so they can detect and prevent.

We are not going to be able to harden a subway station, a bus station, a train station. We can have more people, dogs, cameras, lights, we can do a lot of things to help, but we cannot stop it unless we have the tools. We do not want to use the criminal means to go after terrorists because you have to wait until the crime has been committed. We want to prevent not a crime from being committed. We want to prevent a terrorist attack from being committed. So give them the tools.

The PATRIOT Act does it. We have seen it operate for 4 years. It has been amazing how well it has operated. When people talk about libraries, why in the world would we want to make a library a free terrorist zone? We allow our forces to go in for a crime in a library. Why should they not be allowed to go in for a terrorist issue?

Ms. HARMAN. Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, the devastation of 9/11 shook our collective consciences to the core; but it should not have shattered the foundation that defines who we are as a people and serves as a beacon of individual rights and liberties throughout the world.

Our Nation has been able to overcome the challenges of the past by proving to ourselves and to the world around us that our rights and our values are the indispensable conditions of being an American. If we allow the threat of fear and terror to undermine our civil liberties, we will have failed not only the Founding Fathers who bestowed upon us the philosophical foundations of this great Nation, but more importantly, we will have failed the future of America as the last great hope of mankind. ☐ 1430

Mr. Chairman, an unforeseen consequence of these infringements on American citizens’ civil liberties is the erosion of our standing as the international leader of the rights of people. With each fundamental mistreatment of our own citizenry, we broadcast an image around the world that will, in fact, come back to haunt us. We will become what we deplore: a hypocritical pseudo-democracy of freedoms granted from the government down instead of from the people up.

Mr. Chairman, do not rewrite our precious Bill of Rights. Vote against this bill just as our Founding Fathers would have.

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

Ms. HARMAN. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, I voted for the first PATRIOT Act, and I strongly supported the creation of the Homeland Security Department and have voted for every large increase in intelligence, homeland security funding, and defense funding.

But I am very troubled here. I am very troubled by the fact that we are
eliminating the sunsets. I am very troubled by the fact that the administration and the leadership here are just going full steam ahead without listening to the very sincere problems that many of us have with the erosion of civil liberties. I do not think they would be trying to protect our freedom by killing the safeguards that keep our liberties. These are very serious issues.

The FBI can get a court order to demand confidential medical and financial records and gag their doctor or banker possessing them. They can even search people’s homes and not tell them until weeks or months later. We have had many colleagues talk about the problems with library records and bookstore records. These are very serious civil liberties problems.

And it is not on the abstract. There are people like me who support a strong defense. There are people like me who support strong intelligence and homeland security funding. But this is a balance the United States and my fear is that we have gone too far.

The administration should listen to us, have a moderate bill, have sunsets, and then we could all vote for this bill.

Ms. HARman. Mr. Chairman, I yield myself and my colleagues on the Permanent Select Committee on Intelligence, and her important comments today.

Mr. Chairman, I yield the balance of my time to the gentleman from California (Ms. PELOSI), minority leader and my predecessor as ranking member on the Permanent Select Committee on Intelligence.

Ms. PELOSI. Mr. Chairman, I thank the gentleman for having me this time, and I salute her for her extraordinary leadership on issues relating to the national security of our country, her excellent leadership as the ranking member on the Permanent Select Committee on Intelligence, and her important comments today.

I also salute the gentleman from Michigan (Mr. CONyers) and commend him for being such a guardian of our Constitution. Mr. Chairman, we take an oath of office to protect and defend the Constitution. No one is more committed to that oath than the gentleman from Michigan (Mr. CONyers). I thank him for his tremendous leadership.

I join them and each and every one of our colleagues in expressing our admiration for the people of Great Britain for their strength and their courage. Together our two nations will defeat terrorism, and we will do so by pursuing real security measures and by providing law enforcement the tools they need.

Mr. Chairman, as we close debate on this important bill, I want to thank again the gentleman from Michigan (Mr. CONyers), the gentlemanwoman from California (Ms. HARman), and so many other colleagues on both sides of the aisle for their thoughtful consideration of this very important matter. I am very impressed by the comments of the gentleman from Virginia (Mr. Boucher), who has contributed enormously to this debate.

Our first responsibility to the American people is to provide for the common defense, to protect and defend the American people. In doing so, we must also protect and defend the Constitution, as I mentioned. We must pursue real security measures that prevent terrorism and establish a strong commitment to homeland security. And we cannot, because of any negligence in terms of protecting the American people in terms of homeland security, take it out on their civil liberties.

Our Founding Fathers in their great wisdom understood the balance between security and liberty. They lived at a time when security was all about homeland security. The war was fought in Europe and against the United States. Hence, the War of 1812 here. And so they knew that in order to have a democracy and to have freedom and to have liberty and to ensure it and to protect the people, they had to create that balance.

Today we are considering the extension of certain provisions of the USA PATRIOT Act. I want to add my voice to those who have made it clear to this body that the PATRIOT Act is the law of the land. Ninety percent of it is in the law. About 10 percent of it, 16 provisions, are what we are considering today. They are the provisions that were considered controversial 4 years ago when the bill was passed. And because they were controversial, in a bipartisan way, these provisions were sunsetted. There was a limit to how long they would be in effect. I supported the bill because of these sunset provisions and because of the rigorous oversight that was put into the law. We have not seen that oversight. It simply has not happened in an effective way. And today there is an attempt on the part of the Republicans to eliminate the 16 provisions and on the two remaining provisions to have a sunset of 10 years. That is a very, very long day when you are curtailing the liberties of the American people.

I again listened intently to the gentleman from Virginia (Mr. Boucher) when he described in detail the serious constitutional issues concerning section 505, national security letter orders, by which government possesses power to search for and other personal records without notice, without the ability to challenge these orders, and without meaningful time limitations. And for this reason, I will join the gentleman from Virginia (Mr. Boucher) in opposing legislation but with the hope that it will be improved in conference and then, when it comes back to this body, that we will be able to all support a PATRIOT Act extension that protects the American people’s privacy and the tools they need without seriously curtailing the privacy and civil liberties of the American people.

I think it is important to note that the bill before us fails to ensure accountability. Again, when Congress voted for this 4 years ago, Members clearly understood that it would be accompanied by strong congressional oversight so that the implementation would not violate liberties. In fact, the Attorney General has admitted that the information on its use of the PATRIOT Act has not been forthcoming to Congress in a timely manner. If not for the sunset provisions, there is no doubt that Congress would not have even received insufficient information we have received to date.

Today we are deciding whether the government will be accountable to the people, to the Congress, and to the courts for the exercise of its power. It is about whether broad surveillance powers that intrude on Americans’ privacy rights contain safeguards and actually materially enhance security to target terrorists and those who wish to harm the United States, not needlessly intrude on the constitutional rights of innocent and law-abiding American citizens.

Unfortunately, Republicans refused to permit amendments that would have extended the sunset by 4 years and created sunsets for the national security letter provisions to ensure that these provisions would never be abused. Perhaps they thought that these amendments would have been too appealing to the many Members of this House on the Republican side who are strong supporters of privacy rights for the American people and they did not want these amendments to pass. For whatever reason, the American people are not well served by not having as open a debate with the opportunity for these sunset provisions to be considered. These amendments should have been considered as a minimum part of any effort to improve the PATRIOT Act and this bill.

I wish to remind you of a editorial: “Congress has an opportunity to . . . ensure” that these provisions “remain temporary, the best way to monitor the law’s use and keep law enforcement accountable.”

We have a duty to protect the American people from terrorism but also to protect law-abiding citizens from unaccountable and unchallengeable government power over their personal lives, to the personal records of their thoughts. Because I believe this bill fails to meet these objectives, as I said, I will oppose it today with the hope that there will be an improved bill coming from the conference committee.

Again, our Founding Fathers left us with the ever present challenge of finding the balance between security and liberty. It is the story of America. We must honor their legacy in however we vote today. I would hope that even those who want to improve the bill in the hope that it will come back a better bill from conference. All Members should honor their oath of office and
carry out their duty to protect and defend our Nation while protecting and defending our Constitution and our civil liberties. I thank all who have participated in this very important debate and hope that at the end of the day, and I hope it is at least a very long sunset, but at the end of the day that we can all get behind a PATRIOT Act extension that does respect the civil liberties of the American people.

Again, in my view, the PATRIOT Act is the law. The sunsets, by and large, have been removed or extended to such an extent that they do not even matter, and we can do better. We have an obligation to do better for the American people.

Mr. HOEKSTRA. Mr. Chairman, as we close general debate on the U.S. PATRIOT Act, I yield 1 minute to the gentleman from Wisconsin (Mr. SENSENBRENNER), the author of the bill, chairman of the Committee on the Judiciary.

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

After listening to the speech of the distinguished minority leader, I have reached the conclusion she has not read the bill. She has not looked at the oversight that the Committee on the Judiciary has done over the last 3½ years.

We have an oversight record of bipartisan letters sent to the Justice Department, Inspector General’s reports, and hearings that have a stack of paper that is about 2 feet high. In this bill we have had 12 hearings with 35 witnesses, people who have come from all over the spectrum; and 13 of the 16 sections of the PATRIOT Act that are sunsettled are not controversial. The three controversial sections, two of them are sunsettled; the third one, as a result of some of the testimony, has been amended, and that is the delayed notification warrants.

The fact of the matter remains that no federal court has found that any of the 16 sunsettled sections are unconstitutional, and the Inspector General, who is required by the PATRIOT Act itself to report to the Congress twice a year, has not found any civil liberties violations.

Let us stick to the facts. Let us stick to the result of the oversight. Let us stop the hyperbole. And let us stop the scare tactics that seem to surround the debate of those who are opposed to this law for whatever purpose.

Mr. HOEKSTRA. Mr. Chairman, I yield myself the balance of my time.

The greatest responsibility of the intelligence community is to protect our country from attack. Today’s debate should flow from this simple premise which should not be controversial, contentious or partisan.

The 9/11 attacks have led us to war, to war with an unconventional enemy that hides literally around the globe. The full energies of the intelligence community are directed to finding and monitoring that enemy abroad, but our most pressing and immediate concern is with those foreign terrorists who may be even closer to home, those within the borders of the United States. The USA PATRIOT Act has provided basic and fundamental tools to investigators to help them find foreign spies and terrorists who may seek to harm our Nation.

The continued acts of alleged terrorism in Europe today should continue to heighten the urgency of these efforts and the critical nature of the PATRIOT Act authorities. Within days of the first London bombings, British authorities were able to rapidly identify the bombers and follow their trail to other terrorists. The PATRIOT Act would be essential to do the same in the United States to investigate or prevent an attack.

By now, you have all seen the chilling photograph of the first group of London bombers to gather in a rail station. In the United States the authorities of the PATRIOT Act likely would have been used to obtain that photograph.

In the London investigation, there has been extensive cooperation between the London Metropolitan Police and the British agencies. In the United States, that cooperation would not be possible without the PATRIOT Act.

British investigators then obtained leads from a terrorist phone to tie them to the coconspirators of the first group of bombers. In the United States, the authorities of the PATRIOT Act likely would have been used to obtain those records.

Mr. Chairman, our counterterrorism investigators in the intelligence community can only work to find terrorists and to piece together the puzzle of their networks, but to do that they need modern legal authorities to deal with modern threats.

Behind all the rhetoric, the PATRIOT Act is simple, sensible, reasonable and necessary. I urge all members to support the intelligence community in its effort to fight terrorism. Support this bill and keep America safe.

Ms. KILPATRICK of Michigan. Mr. Chairman, I rise today to oppose H.R. 3199, the USA PATRIOT and Terrorism and Prevention Reauthorization Act. I want to emphasize at the outset that I share the concern of my colleagues to the result of the oversight. Let us stop the hyperbole. This is a terribly flawed bill.

Mr. PATRIOT Act is simply, sensible, reasonable and necessary. I urge all members to support the intelligence community in its effort to fight terrorism. Support this bill and keep America safe.

Ms. KILPATRICK of Michigan. Mr. Chairman, I rise today to oppose H.R. 3199, the USA PATRIOT and Terrorism and Prevention Reauthorization Act. I want to emphasize at the outset that I share the concern of my colleagues that it is essential to protect our Nation and its citizens from terrorists seeking to harm law-abiding citizens and its citizens. I agree with my colleagues that no safe harbor should be available to terrorists. There should be no doubt that I wholeheartedly support enabling law enforcement officials with the authority to surveil and prosecute terrorists. But it is critical that we resist the temptation to delegate to the government the constitutional protections afforded to Americans.

I am alarmed about the scope of a number of provisions in the bill that are likely to lead to the abuse of personal freedoms enjoyed by Americans. Section 215, Seizure of Records, causes me great concern. This provision allows the FBI, based on the premise of conducting a terror investigation, to obtain any record, after receiving approval from a secret Foreign Intelligence Surveillance Act, FISA, Office. My concern is that law enforcement agencies can engage in such activity without meeting the standard legal threshold of “probable cause”, thereby leading to potential cases of abuse.

I am also very concerned about the ability of law enforcement agencies to use National Security Letters, NSLs, to obtain information about terrorists and to use that information to move in on terrorist activity, that device can be applied to these types of investigations.

I recognize that some of the provisions of the PATRIOT Act have served a useful purpose and are scheduled to end. The process of reviewing the provisions and determining whether to extend them allows the House to evaluate the effectiveness and appropriateness of the provisions. Two of the provisions in this bill are now being scheduled to extend for 10 years as opposed to the 4 years in the expiring legislation. In this scenario, a flawed provision could extend 6 years beyond the normal time frame. Fourteen sections of H.R. 3199 bill will become permanent, and will have virtually no oversight.

I continue to have great reservations about the use of National Security Letters, NSLs. National Security Letters are applicable within the jurisdiction of the United States. The USA PATRIOT Act has been extremely controversial and has led to numerous cases of abuse. The NSLs deny individuals due process by barring targets of investigations access to court and the right to challenge the NSLs. The NSLs allow the government to conduct wiretaps and other forms of electronic surveillance without a court order.

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address terrorism specifically, while simulta-
neously ensuring that these statutory provi-
sions continued to be forced to comply with
the legal threshold of probable cause.

Mr. DeFAZIO. Mr. Chairman, as we learned
here on 9/11 and in London today and on
7/7, we are under attack. We must be vigilant
that the rights and liberties we are fighting to protect are not jeop-
ardized in the name of the war against ter-
rorism. Regrettably, H.R. 3199, the USA PATRIOT Act and Terrorism Prevention Reau-
thorization Act, does not provide adequate protections for the civil liberties of law abiding
citizens and I must rise in opposition to the
bill.

When the House considered the original
USA PATRIOT Act in 2001, I expressed con-
cerns with the bill both for substantive and
procedural reasons. And, unfortunately, I have both substantive and procedural concerns with this reauthorization bill, as well.

With that said, I support a number of provi-
sions in H.R. 3199. Law enforcement officials
need tools to find and track domestic criminals
and international terrorists. Federal law has
not kept pace with emerging technological and
communications systems, so I support judi-
cially approved wire-taps to obtain email com-
munications and internet records related to
potential terrorist offenses.

I also support provisions which authorize
law enforcement officials to share information
with foreign intelligence officials. Allow judi-
cially approved wire-taps on cell phones and
disposable cell phones, permit judicially ap-
proved seizure of voice mail and not make
permanent the provision making it a federal
crime to provide material support to terrorists,
among other meritorious provisions.

However, as I mentioned earlier, I also have
very serious concerns with a number of other
provisions in the bill. Many of the provisions
in the bill that expand law enforcement authority to conduct intelligence gathering, either
do not require judicial review, or require
that law enforcement only assert relevance to
an investigation, rather than show probable
cause that the information is relevant to a ter-
rorist investigation. These expanded powers
go a long way toward tearing down protections
that were put in place in the post-Watergate era when we learned of presidential abuses of
domestic intelligence-gathering against individ-
uals because of political affiliation or citizen
activism.

I am particularly concerned with a provision
authorizing national security letters, NSL’s,
which allow law enforcement officials unlimited
access to business and personal records with-
out any sort of judicial oversight. This provi-
sion is extraordinarily broad and intrusive and
could apply to any tangible records on any
and all Americans whether or not they are
suspected of a terrorist act. Prior to the Patriot
Act, NSL’s could be used to get records only
when there was “reason to believe” someone
was an agent of a foreign power. Now they are
issued simply when an agent asserts that it could
be an investigation. According to the Department of Justice, this new
power has been used hundreds of times since the
USA PATRIOT Act was signed into law in
2001. A Federal court has found this authority
to be in violation of the 1st and 4th amend-
ments of the Constitution, but the administra-
tion continues to use it, and this bill would
sanction this extraordinary expansion of un-
checked governmental authority.

I am also concerned that the bill extends the
government’s so-called “sneak and peek” au-
thority which allows the government to con-
duct secret searches and seizure of property
without notice, in violation of the 4th amend-
ment. This authority has also been used hun-
dreds of times, even by the USA PATRIOT Act,
including against Brandon Mayfield in Portland who was suspected of
being involved in the Madrid bombings. Mr.
Mayfield was later exonerated of all charges
related to the bombings because it was shown
that the FBI based its investigation on incom-
plete and faulty information. But the law has
been changed forever as a result of the investiga-
tion and intrusive searches, and under this bill,
it could happen to other law abiding citizens.

I am disturbed that the bill extends many of
these controversial provisions either perma-
nently or for several years, and I am concerned
that the Congress has not been properly provided informa-
tion on the use of many provisions of the Act
to date. Without that information, it is difficult
to know how this new law enforcement author-
ity is being used, whether it’s necessary at all,
whether it is having any real effect, or whether it
is infringing on the civil rights and liberties of law abiding citi-
izens. We know of some abuses that have oc-
urred under the act, like the Mayfield case.
However, the Administration has refused to
provide information on some of the most
broad and intrusive powers under the Act and
the bill should provide for adequate disclosure
and proper oversight of these provisions, but
it doesn’t.

Finally, I am concerned that the bill is being
brought up with limited debate and amend-
ments. I am particularly concerned that the
Republican leadership refused to allow a vote
on an amendment to remove library and book-
store records from Sec. 215 of the Act, which
grants law enforcement officials the authority
to seize business records without notification.
I would like to be able to support this bill, and
as I said earlier, I support a number of provisions in the bill. I also believe we could
have reached an agreement on protections to
address most of my concerns with the bill by
providing for judicial review and shorter-sunset
provisions. Unfortunately, the leadership chose
to bring a bill to the floor which simply gives
too much broad, intrusive and unchecked au-
thority to the federal government, and does
not provide for adequate legislative oversight
of how these powers are being used, there-
fore, I cannot support the bill. I hope the Sen-
ate and conference committee will address
these concerns.

Mr. BAL-ALLARD. Mr. Chairman, I rise
in opposition to H.R. 3199, the reauthoriza-
tion of 16 expiring sections of the PATRIOT Act,
which weakens the safeguards currently in
place to protect innocent Americans from
sweeping searches and surveillance by the
government.

I am not opposed to the original PATRIOT Act. In fact, I supported the original bill passed in 2001 because it included provisions which
were legitimately needed by law enforcement
in order to better pursue terrorists. Common-
sense improvements have been made to up-
date our intelligence and law enforcement ca-
pabilities, and to reflect modern-day realities.
These will remain intact, and today’s vote will
do not affect such core provisions of the PA-
TRIOT Act. Whether or not H.R. 3199 passes, 93 percent of the PATRIOT Act will continue
to be enforced.

My objection, however, is that H.R. 3199 re-
tains numerous objectionable provisions of the
PATRIOT Act that intrude on our privacy and
civil liberties. We have been objecting to abuse and misuse by the Justice Department,
and have little to do with combating terrorism.
This legislation does nothing to address the
many unilateral civil rights and civil liberties
abuses by the administration since the Sep-
tember 11 attacks. Nor does the bill provide
law enforcement access to any additional real
and meaningful tools necessary to help our Nation
prevail in the war against terrorism.

Since 2002, 389 communities, including Los
Angeles, have passed resolutions opposing
parts of the PATRIOT Act, representing over
82 million people. This outcry from America is
due to the repeated and serious misuse of the
legislation by the Justice Department. Con-
sider that the PATRIOT Act has been used
more than 150 times to secretly search an indi-
vidual’s home, with nearly 90 percent of those
cases having had nothing to do with ter-
rorism. 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. Furthermore, because we lack restrictions, we will never know how
many times it has been used to obtain the
reading records of average Americans from
libraries and bookstores.

H.R. 3199 also extends or makes perma-
nent 16 provisions of the PATRIOT Act con-
cerning the government’s expanded surveil-
lance authorities, which are otherwise sched-
uled to sunset on December 31, 2005. It is
simply irresponsible to make these provisions
permanent when there continues to be wide
spread concern that these sections of the PA-
TRIOT Act could lead to a violation
of civil liberties, as well as tread on our country’s
professed support of basic civil rights for all
individuals. Preserving a 4-year sunset for these
16 provisions in the PATRIOT Act is one of
Congress’s strongest mechanisms for main-
taining oversight and accountability over ex-
panded government controls that could poten-
tially undermine civil liberties. We are talking about critical issues that will
set the precedence for the rights of people in
our country for many years to come.

The Intelligence community would have
offered sensible amendments to the bill, but was de-
ied by the Republican-controlled Rules Com-
mittee. One amendment would have tightened
the ability of the FBI to conduct roving wire-
taps to ensure that only terror suspects—not
innocent Americans—are wire-tapped. Another
amendment would have removed the sunset
provisions originally in the PATRIOT Act to
promote accountability and congressional
oversight. A final amendment would have pro-
hibited the FBI from using the broad powers to
get bookstore or library documentary records
about someone’s associations.

Even though some in our government may
claim that civil liberties must be compromised
in order to protect the public, we must be wary
of what we are giving up in the name of fighting terrorism. Striking the right balance is a difficult, but critically important task. History has taught us to carefully safeguard our civil liberties—especially in times of fear and national outrage.

The events 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 our liberties. We all want to fight terrorism, but we need to fight it the right way, consistent with the Constitution, and in a manner that serves as a model for the rest of the world. Unfortunately, H.R. 3199 does not meet those tests and, without the critical safeguards of sunset provisions, does not warrant reauthorization.

Mr. DELAY. Mr. Chairman, I rise in strong support of the reauthorization and extension of the USA PATRIOT Act, the provisions of which have protected the American people and our soil from terrorism since their enactment 4 years ago.

The PATRIOT Act has been instrumental to our prosecution of the war on terror since 9/11, and, specifically, instrumental to the prosecution of terrorists who have threatened our homeland.

Our law enforcement and intelligence communities have vigorously and appropriately used the PATRIOT Act to investigate, charge, and prosecute terrorists.

Five terrorist cells in Buffalo, Detroit, Seattle, Portland, and northern Virginia have been disbanded. Terrorists around the world have been brought to justice. The notorious wall between law enforcement and intelligence gathering organizations has been broken down. Prosecutors and investigators have been given more tools to go after terrorists without the outdated redtape that, prior to 9/11, always hamstrung such efforts. Loop-holes have been closed, safe-havens have been shut, and the war in being won. Meanwhile, civil liberties are being protected.

Opponents of the PATRIOT Act suggest that we have an either/or choice when it comes to safety and civil liberties, but the PATRIOT Act reflects a compromise that includes the proper balance between safety and civil liberties. It provides a tool for law enforcement to investigate, charge, and prosecute terrorists.

The Patriot Act originally had sunsets on provisions that were supposed to sunset at the end of 2005. While Congress should be revising the flawed aspects of the PATRIOT Act, we should be reviewing and amending the more intrusive of these provisions that are subject to the sunset clause such as:

- Sec. 215: Secret searches of personal records, including library records. The bill does not provide a standard of individual suspicion so that the court that examines these extraordinary requests can ensure personal privacy is respected, and also fails short by failing to correct the automatic, permanent secrecy order.
- Sec. 206: “Roving” wiretaps in national security cases without naming a suspect or telephone. The bill does nothing to correct this overbroad provision of the Patriot Act that allows the government to get “John Doe” roving wiretaps—wiretaps that fail to specify the target or the device. The bill also does not include any requirement that the government check to make sure its “roving” wiretaps are intercepting only the target’s conversations.

The Patriot Act originally had sunsets on some provisions so we could reexamine the extraordinary powers given to the executive branch, in a calmer atmosphere. Instead we are here today ignoring the more troubling provisions such as: the “delayed notice” of a search warrant, the intrusive “national security letters” power of the FBI, and the overbroad definition of domestic terrorism. There is no more difficult task I have as a legislator than balancing the nation’s security with our civil liberties, but this task is not a zero sum game. By passing a bill that largely ignores the most serious abuses of the PATRIOT Act and the most serious problems of the PATRIOT Act, the legislation does not give the Bush Administration the power to shred the Constitution and give up our civil liberties.
Ms. DELAUR. Mr. Chairman, there is no greater responsibility of government than to protect its people from harm. That was the intent of the PATRIOT Act—legislation authored a month after the September 11th attacks 4 years ago. And like any bill quickly passed into law, particularly one this expansive, the PATRIOT Act has worked well in some respects, but less so in others, and in some cases, with unintended consequences. All that is understandable, but making the entire bill work well with the benefit of 4 years hindsight ought to be the challenge before us today.

But this is not the entire PATRIOT Act passed into law 4 years ago—it is only 16 provisions of that law, most of which were set to expire or sunset. This year, we are failing to consider some of the most ineffective and overreaching provisions of the PATRIOT Act. We are making only the most modest changes to others. And, in the case of the so-called “sneak and peek” provision, we are actually making matters worse.

Indeed, under this bill, judges can order searches or seizures without telling the targets for up to 10 years before the search. This bill also expands authority to access medical records and bookstore and library records. And even though it allows recipients of such subpoenas to consult an attorney, there is no requirement that law enforcement show that the information in question is even part of a terrorism investigation.

And while this provision will be revisited again in 10 years, almost all the others are made permanent—access to e-mail and Internet records, wiretap authority, the disclosure of Internet records in emergencies, the use of search warrants to seize voice mail. These are all fundamental matters of privacy—privacy we would all agree terrorists are not entitled to, but the average American is.

By insisting 14 of the 16 expiring provisions in this bill be made permanent, we are essentially abdicating our responsibility as Members of Congress to make sure we strike the right balance of giving law enforcement the tools they need to catch terrorists while still upholding the basic rights to which every American is entitled.

Mr. Chairman, this bill is a matter of security—of homeland security, national security and the security of every American’s right to privacy. Let us honor our obligations and uphold each of those responsibilities.

Mr. DINGELL. Mr. Chairman, I rise in strong opposition to H.R. 3199. This bill does very little other than to make permanent, onerous sections of an onerous law.

Four years ago, Congress passed and the President signed into law the USA PATRIOT Act. Soon after, on October 24, 2001, the legislation’s bill was inserted as the final bill and became law with very little Congressional deliberation or consideration. I was appalled by the process we used then and am only slightly more comforted now.

We are completing making 14 of the 16 provisions of the PATRIOT Act permanent, and making the other 2 provisions semi-permanent. Are we going to yield more of our institutional power by granting the permanency of these provisions? We must remain vigilant against terrorism, but we must also remain vigilant against abuses of power that curtail Americans’ civil liberties in a time of war.

Mr. Chairman, I have heard a lot during the last four years that we will not yield to the ter-
Civil Liberties Board created in last year’s intelligence reform bill. Unfortunately, in its current form, the Board does not have the tools to adequately do its job. My amendment would have changed the Civil Liberties Board to be an independent agency within the Executive Branch with subpoena power, make full and frequent reports to Congress, have access to information through privacy and civil liberties officers, and have fair composition. It is our responsibility to ensure that the Executive Branch has checks and balances, and I am disappointed that this amendment was not allowed a vote today.

I must also express my grave concern about a section of the bill that was not given a sun-
set, and thus has not been given the debate allowed a vote today.

Mr. Chairman, after the tragic events of September 11, every American knows, in every nuance of the truism, that freedom is not free. I firmly believe that in order to have security, we must maintain a reasonable expectation of infringement of some of our civil liberties. The stakes are too high to maintain a pre-9/11 mentality and the threats of terrorism are too real. However, this bill crosses the reasonableness threshold by ab-
ing derechos guaranteed under the Constitu-
tion without a corresponding increase in the real tools law enforcement needs to fight the war on terrorism.

I believe that we should focus on securing our homeland, not by infringing on civil lib-
erties as outlined in the PATRIOT Act—but, by securing our rail and transit systems, by secur-
ing our ports and waterways systems, by securing our airspace, and by refining our in-
telligence organizations for maximum out-
come.

I support the provisions which I believe are cur-
tacted. Today, we are at a critical point as Con-
gress considers extending 16 important provi-
sions of the PATRIOT Act.

I have looked carefully at the law and I have heav-
ily weighed the constitutional questions some have raised. In the end, I whole-
heartedly support all 16 provisions. I believe that the tools provided under the law are consis-
tent with our long cherished values and consistent with our rights under the Constitu-
tion.

I especially support the provisions which take important steps to ensure information sharing and cooperation among government agencies. By providing these necessary tools, the PATRIOT Act builds a culture of preven-
tion and makes certain that our government secures our homeland, not by infringing on civil liberties.
BUTCH OTTER and BERNIE SANDERS, the Security and Freedom Ensured Act of 2005, H.R. 1526, the SAFE Act.

Among other corrections to the PATRIOT Act, this bill would require “specific and articulable facts” (rather than a more generalized suspicion) that a suspect is an agent of a foreign power or that the government wishes to seize records. It would require a far more detailed justification before “roving wiretaps” could be utilized and it would protect our library and bookstore records from unwarranted inspection.

In addition, H.R. 1526 would redefine the new crime of “domestic terrorism” in far more narrow terms, making it clear that our traditional freedom to assemble and challenge governmental action must not be chilled.

Although this bill does not resolve every concern about the USA PATRIOT Act, I believe it represents a better beginning for the House debate than the bill under consideration. Democrats and Republicans alike are seeking to better protect the freedom of Americans—without reducing our ability to protect ourselves against terrorist threats.

Since September 11, Americans have learned to accept some additional intrusions into our privacy as the price that we must pay to protect ourselves. Yet, we must also remain vigilant.

Mr. L.’s experience should be a lesson to us all. As we defend freedom against foreign terrorism and promote freedom abroad, we must be ever-mindful not to destroy the freedoms that make us America.

As Chairman of the House Financial Services Committee, I was proud to help author the antiterrorist financing provisions in the Act. My committee has held numerous oversight hearings on the implementation of the provisions since then. I can report progress. More than 100 individuals in judicial districts have been frozen and roughly $65 million seized since 9/11. The U.S. has broken up suspected terrorist financing networks, including one in my home state of Ohio. Our terrorist financing tools were further augmented by the intelligence reform act that was approved in the wake of the 9/11 Commission report.

As a former FBI agent, I have found other parts of the PATRIOT Act just as vital in the defense of our freedoms. As we have been reminded by the two rounds of bombings in London, the reality of terrorism remains very much with us. The toll that those attacks take is so terrible that the only acceptable approach is to prevent them in the first place. To that end, today we are working to make permanent 14 of the 16 expiring provisions of the PATRIOT Act.

I would note that one of the two provisions being extended for only ten years rather than permanently concerns the use of “roving wiretaps.” As one of the only Members of Congress who has conducted undercover surveillance in all communities in which the need for this authority will not go away. Tying intercept authority to an individual rather than a particular communication device is simply common sense in this era of throwaway cell phones and e-mail. Sunsetting this authority sends the wrong message to our law enforcement agencies: it indicates that our trust in them is incomplete at a time when their services have never proven more important. They should have our full support and every reasonable tool we can give them to help fight the Global War on Terror.

The PATRIOT Act has been a success and we are safer for it. The law has come under misguided criticism from some quarters, and I am constantly answering questions from my congressional district in response to myths surrounding the Act. There is absolutely no evidence that the PATRIOT Act has been used to violate Americans’ civil liberties. Congress recognizes the delicate balance between deterring terrorists and preserving our precious freedoms. I feel confident in saying that terrorists make no such distinction. I support the reauthorization of the PATRIOT Act and hope that we can continue to work on remaining issues—including making the roving wiretap provision permanent.

Mr. BLUMENAUER. Mr. Chairman, the PATRIOT Act was enacted in the wake of the 9/11 terrorist attacks, rushed through the House as a suspension bill the day after it was introduced. This process didn’t permit the public, let alone Congress, to fully understand it. The original bill was written in the Rules Committee instead of the bipartisan bill that was unanimously passed out of the Judiciary Committee. Luckily, there were a few sunset provisions that were intended to help keep people honest and evaluate the impacts on the public.

We have now been fighting the war on terror longer than World War II with no end in sight. The policy decisions we make affect the lives of everyday Americans. It is important to keep these policies narrowly focused on items that are necessary for dealing with terrorism and today’s modern communication developments while not encroaching on America’s fundamental rights. This version is a missed opportunity to narrow the provisions and time limit their applications.

The good news is the public is becoming more educated and involved. Thirteen municipalities in Oregon, including Portland, have already passed resolutions expressing their opposition to the PATRIOT Act.

It seems that the majority of Congress has at least some reservations about this bill. I was one of the “no” votes four years ago and a bipartisan effort to provide more checks and balances is growing. The Senate version will be better, making it likely that the fiscal legislation will be an improvement over the existing law.

I am proud today in support of the renewal of the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 and strongly encourage my colleagues to join me in supporting this important tool in the war on terror. It is vital that we continue to provide the resources and necessary tools that allow for our law enforcement agencies and communities to more effectively fight the terror threat wherever we may find ourselves.

The continued success of the war on terrorism strongly depends upon our law enforcement and counter-terrorism agencies being able to adapt and improve as our ever evolving enemies present new threats. Al Qaeda has shown that they will use various tactics to kill innocent civilians, we must be able to effectively prevent each attack regardless of what form it may come in. In order to do that, we must have numerous tools to track suspects and gather detailed information about possible threats. Additionally, we must be able to effectively use this information to bring would-be attackers to justice before they have a chance to strike.

We must also remain vigilant in dismantling the terrorist financial network. To date, many of the provisions of the PATRIOT Act have allowed our law enforcement agencies to designate 40 terrorist organizations, freeze $136 million in assets around the world, and charge more than 100 individuals in judicial districts throughout the country with terrorist financing-related crimes. Taking these tools and resources is an important method of deactivating and slowing the growth of many of these terror networks.
To date, the PATRIOT Act has been an extremely effective weapon in the war on terror. We cannot allow the terrorists to find any safe havens in this nation. This will continue to be a long and hard fight to protect and defend our homeland against this ruthless and fanatical enemy, but with the necessary tools to root them out. I think that if we do not continue to root them out, that which was a certainty we will continue to be victorious. I would again strongly encourage my colleagues to join me in supporting the USA PATRIOT Act and Terrorism Prevention Reauthorization Act of 2005.

Mr. Chairman, the fight against terrorism is very serious business and we need to give law enforcement the tools it needs to prevent terrorist attacks against the American people. When the Congress approved the PATRIOT Act four years ago, we recognized that the serious nature of the threat required giving law enforcement broad new powers to help prevent it. But we were wise enough to also recognize that under our Constitution, laws and traditions, such broad power requires checks and balances as well as continuous congressional oversight to ensure that this power is not abused.

I voted for the PATRIOT Act four years ago. I support most of the 166 provisions of the PATRIOT Act; indeed, today I support them. But the Majority proposes to discard the sunset provisions, which are already the permanent law of the land. The bill before the House today concerns only the 16 provisions of the PATRIOT Act subject to sunset—the provisions that have the most serious potential impact on the fundamental liberties of innocent Americans. These provisions involve the power of the government to enter and search people's homes without notice, to tap people's communications with roving wiretaps, and obtain people's library and health records. Because these provisions touch on the most basic liberties of citizens, we included sunsets so Congress would be required to revisit them. The sunsets balance the extraordinary powers given to law enforcement with oversight and accountability. More than that, the sunsets give Congress the opportunity to regularly review the PATRIOT Act and tailor it to adapt to changing circumstances.

The bill before the House takes away the sunset provisions for 14 of these sensitive provisions, and sets ineffectively long ten-year sunsets for the other two provisions. In so doing, this bill strips assured oversight and accountability out the window.

Let me say this. Many of us voted for the PATRIOT Act four years ago with the assurance that there would be meaningful oversight and the expectation that much of the rigors we warned about have been imposed. Now the Majority proposes to discard the sunset provisions. The experience of the last four years shows that without sunsets, there is no oversight and no accountability.

I have spoken of the serious shortcomings in this bill that could be corrected on the Floor today, but the Majority has blocked a number of important amendments Democrats sought to offer. I believe that many of these amendments would have been adopted had they been put to a vote. It did not have to be this way. I understand that the Senate Judiciary Committee has unanimously approved its own version of the PATRIOT Act today that contains many of the improvements that the House Leadership denied us the opportunity to debate and consider. The Senate has the courage to do what the House has not embraced a similar bipartisan process.

I will vote for the motion to recommit the bill, which would correct the most serious shortfalls in the legislation; in particular, the lack of sunlight, the lack of checks to advising, and potentially disrupting terrorist activities. I support those provisions. Other provisions, however, fail to provide adequate safeguards to ensure that the privacy rights of innocent citizens are protected. It is very important that, in our effort to defend the liberties that Americans cherish, we not enact measures that erode the very freedoms we seek to protect. We can ensure that the government has the necessary surveillance powers without sacrificing the privacy rights of Americans. Indeed, many amendments to the PATRIOT Act were proposed in both the Judiciary Committee and the Rules Committee to address legitimate concerns.

Unfortunately, many of these amendments were either rejected or blocked from coming up for a vote.

In the aftermath of September 11, 2001, it is essential that we strengthen our ability to detect, deter, and disrupt terrorist activities. Many provisions in the PATRIOT Act accomplish this objective in a balanced way. Other provisions, however, leave citizens vulnerable to additional and potentially abusive invasions of privacy. I am hopeful that the Senate will address these shortcomings in the House bill so that, at the end of the day, we can enact a balanced bill that protects both our security and the rights and liberties we seek to secure.

We can do better. I look forward to continuing to work with my colleagues—both Democrats and Republicans—to develop a bill of which we can all be proud and which can be a true testament to American patriots and to the Constitution we all seek to uphold and defend.

Mr. CARDIN. Mr. Chairman, I rise in support of H.R. 3199, the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005. Following the terrorist attacks on September 11, 2001, Congress undertook a review of Bush Administration proposals to strengthen our laws relating to counterterrorism. Congress passed the Patriot Act in October 2001—which I supported—recognizing that it needed to give law enforcement the proper tools to effectively combat new terrorist threats. The provisions—sunsets that have changed in technology that are used by terrorists, such as cell phones, the Internet, and encryption technologies.

The original Act gives federal officials greater authority to track, intercept, and share communications, both for law enforcement and foreign intelligence gathering purposes. It vests the Secretary of the Treasury with regulatory powers to combat corruption of U.S. financial institutions for foreign money laundering purposes; it provides for federal prosecutors to investigate foreign terrorists and to detain and remove those within our borders. It creates new crimes, new penalties, and new procedural efficiencies for use against domestic and international terrorists. Indeed, the PATRIOT Act allows federal prosecutors to use the same tools to use against terrorists that Congress has already granted them to use against drug traffickers, for example.

The original Act also creates judicial safeguards for e-mail monitoring and grand jury disclosures; recognizes innocent owner defenses to forfeiture; and entrusts enhanced anti-money laundering powers to those regulatory authorities whose concerns include the well being of our financial institutions.

Congress did not grant all of the authority that the President sought in the first Patriot Act, and sunsets much of the Act's authority in 2005. Many of the wiretapping and foreign intelligence amendments sunset on December 31, 2005. The sunset provisions require Congressional oversight because Congress must ensure that these ambitions are in place when they change surveillance locations and turn from conference committee.

Over the past few years I have continued to insist on greater oversight by Congress of the Justice Department as it executes its new powers. I am pleased that the Committee includes sunsets for two provisions; access to business and other records, and roving wiretaps. I support additional sunsets for other provisions in this legislation such as the “sneak and peek” provision which allows delayed notification for search warrants—and I am hopeful that the House will ultimately support additional sunsets approved by the Senate Judiciary Committee when the bill returns from conference committee.

I am disappointed that the House leadership did not make in order amendments that would have: exempted library and bookstore records from Foreign Intelligence Surveillance Act (FISA) searches; reformed the roving wiretap authority in FISA cases to contain the same privacy safeguards as roving wiretaps in criminal cases; established the traditional FISA standards for search warrants; required individualized suspicion for records orders; allowed citizens to challenge secrecy orders in records requests; and extended the sunset clauses for numerous other provisions of the Patriot Act.

I voted in favor of a number of bipartisan amendments to limit the Justice Department's power and increase Congressional and judicial oversight of the executive branch, including: requiring the FBI Director to personally approve searches of library or bookstore records; additional reporting to courts by law enforcement when they change surveillance locations under a “roving wiretap”; allowing recipients of National Security Letters an attorney and challenge the letters in court; and increasing reporting requirements and making it more difficult to obtain “sneak and peak”
search warrants, which entail secret searches of homes and offices with delayed notice.

We must not repeat the mistakes of the past, when the United States sacrificed the civil rights of particular individuals or groups in the name of security. Whether in times of war or peace, holding government power and the rights of the American people is a delicate and extremely important process. It is a task that rightly calls into play the checks and balances that the Founders created in our system of government. All three branches of government have their proper role in making sure the line is drawn appropriately, as we upheld our oaths to support the Constitution.

I support H.R. 3199 but I hope as this legislation works its way through Congress, we will include sunsets on the provisions we are reauthorizing, so that Congress will continue to oversee the executive branch’s use of these new powers.

Mr. LARSON of Connecticut. Mr. Chairman, I rise today disappointed at the missed opportunity for the House to strike a reasonable balance between ensuring law enforcement and protects civil liberties.

There is more to protecting American’s security than peering into people’s reading habits or medical records. Protecting America means securing our ports and borders, supporting our first responders, ensuring that our transit systems, nuclear power plants and schools are safe from those who seek to do us harm. Frankly, Americans are still at risk. There are large gaps that still remain in critical areas that leave Americans vulnerable to the threat of terrorism. For example,

Our greatest threat remains an attack by a weapon of mass destruction. But funding for cooperative threat reduction programs to secure unaccounted for nuclear material in the former Soviet Union have remained stagnant since 9/11, taking a backseat to other priorities like expanding tax cuts and privatizing Social Security.

There are almost 2,000 fewer border inspectors and agents than were called for in the 2001 PATRIOT Act. The hard truth is we need more. Of the 2,000 border patrol agents called for in the Intelligence Reform Act, the Republican majority has funded only 500 this year. This leaves our borders dangerously unprotected.

Funding for first responder programs, our front line defense against terrorists at home, has dropped 27 percent in the past three years, from a high of $3.3 billion in 2003 to $2.4 billion in 2006—funds which help our towns and cities hire, train and equip our police, firefighters and medical responders.

When Americans use public transportation every day, we have spent only $250 million on transit since 9/11, compared to the $18.2 billion we’ve spent on aviation. This leaves our buses, trains, subways, highways and bridges dangerously vulnerable to the kind of attacks we saw in London.

Almost four years after 9/11, only five percent of incoming cargo containers are inspected for hazardous materials. Ninety-five percent of American trade comes through our 361 seaports every year, yet there is no dedicated funding steam for port security. Despite the threat, the president requested no money for port security in FY 2006.

Every day, Americans are asked to empty their baggage inspected before boarding an airplane. However, most of the cargo loaded onto passenger and cargo airplanes still goes un inspected.

Protecting America is not a partisan issue, it is a matter of priorities. This version of the PATRIOT Act made it clear that we would come together to protect the homeland. This sunset bill is not about the key issues that will really protect America. It is not even about the whole PATRIOT Act. It is about the reauthorization of 16 highly controversial provisions of the original PATRIOT Act scheduled to expire at the end of the year.

This sunset was critical to earn support for such sweeping legislation. When in the shadow of the September 11th terrorist attack, the Administration pushed Congress to quickly pass legislation that would provide vast new powers to law enforcement. The sunset provisions were intended to be able to take a closer look how this authority was implemented and at its effectiveness of balancing security and liberty.

I was hopeful that an open amendment process would allow the House to address the many concerns of this House and the American public have with the PATRIOT Act. Unfortunately, the House Majority has chosen to prohibit an open debate and reconsideration on the most sensitive and controversial issues surrounding this bill. In fact, most of the amendments they have allowed to be considered would be able to take a closer look how this authority was implemented and at its effectiveness of balancing security and liberty.

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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) by striking “‘e’(1) Except as provided in paragraph (2),” and “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’(1) An” and inserting “‘e’(1) Except as provided in paragraph (2),” and “and”;

(2) in paragraph the end the following new paragraph:

“(2) An order under this section shall not be issued—

(a) to obtain anything under this section to a qualified person who discloses that 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 “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.”

(b) CLARIFICATION OF JUDICIAL DISCRETION.—Subsection (c) 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 order not to exceed seven days, or as modified, approving the release of records.

(c)(2) A qualified person who discloses to any person (other than a qualified person) that the United States has sought or obtained tangible things under this section.

(2) 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.

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

(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.”

(c) AUTHORITY TO DISCLOSE TO ATTORNEY.—Subsection (d) of such section is amended—

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

“(2) The judge considering a petition may modify or set aside an order under this section 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 an order under this section, the judge shall comply therewith. A petition for review of a judgment or order 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 conducted ex parte and in camera and shall also provide for the designation of an Acting Presiding Judge.”

SEC. 9. ACCESS TO CERTAIN BUSINESS RECORDS UNDER SECTION 215 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. 1861) is amended by striking—

“and inserting—

“(B) the investigation pertaining to those communications, or otherwise collects information concerning a United States person, and 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.”

(b) INCLUSION OF SPECIFIC FACTS IN APPLICATION.—Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended by adding at the end the following new subsection:

“(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.

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. 1861) is amended by striking—

“and inserting—

“(B) the investigation pertaining to those disclosures was closed without the filing of a criminal complaint.”

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); and

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

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

“(8) surveillances, 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)”;

(2) inserting after “Department of Justice” the following: “; and (B) review detentions of persons under section 3144 of title 18, United States Code, not preceded by their length of detention of access to counsel, frequency of access to counsel, offense at issue, and frequency of appearance before a grand jury.”

SEC. 13. PRELIMINARY.

Section 581(a)(1)(B) of title 18, United States Code, is amended by inserting “trafficking in nuclear, chemical, biological, or radiological materials), section 930 (relating to possession of weapons of mass destruction), section 751 (relating to escape), section 2281 (relating to violence against maritime-defense utilities), sections 2280 and 2281 (relating to weapons of mass destruction threats), section 175b (relating to biological agents or toxins) after “831 (relating to nuclear materials),”.

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

Section 2339A(g)(5)(B)(i) of title 18, United States Code, is amended—

(1) by inserting “, 2393D (relating to military-type training from a foreign terrorist organization)” before “, 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 of mass destruction 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 1361–1363 (relating to damage to government buildings and communications facilities), section 1369 (relating to destruction of an energy facility),” after “section 1014 (relating to loans and credit applications generally; renewals and discounts),”; (4) by inserting “section 1093 (relating to terrorist attacks against mass transportation), sections 2155 and 2156 (relating to national-defense utilities), sections 2290 and 2291 (relating to violence against maritime navigation),” after “section 1344 (relating to bank fraud),”; and

(5) by inserting “section 2340A (relating to torture), section 2341 (relating to trafficking in certain motor vehicles or motor vehicle parts),”.

(b) Paragraph (p) Amendment.—Section 2516(1)(p) of title 18, United States Code, is amended by inserting “, section 1093A (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 “2339D” after “2339B;”;

and

(2) by inserting “and 2339D” after “2339C”.

SEC. 16. DEFENDANTS RIGHT TO PERIOD OF REASONABLE DELAY UNDER SECTION 213 OF THE USA PATRIOT ACT.

Section 3103(a)(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”; and

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

The Acting CHAIRMAN. No amendment to the amendment in the nature of a substitute is in order except those printed as part of the report. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in House Report 109-178.

It is now in order to consider amendment No. 2 printed in House Report 109-178.

AMENDMENT NO. 2 OFFERED BY MR. FLAKE

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

The Acting CHAIRMAN. The Clerk will designate the amendment. The text of the amendment is as follows:

Amendment No. 2 offered by Mr. FLAKE: At the end of section 8 add the following new subsection:

(c) FBI DIRECTOR REQUIRED TO APPLY FOR ORDER OF PRODUCTION OF RECORDS FROM LIBRARY OR BOOKSTORE.—Section 503(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended—

(1) in paragraph (1), by striking “The Director” and inserting “Subject to paragraph (3), the Director”;

and

(2) by adding at the end of the following 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, the Director of the Federal Bureau of Investigation shall not delegate the authority to make such application to a designee.”

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentleman from Arizona (Mr. FLAKE) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I offer this amendment with my colleague the gentleman from California (Mr. SCHIFF), a Democrat.

Mr. Chairman, this amendment simply states that the Director of the FBI must personally approve any library or bookstore request for records by the FBI under section 215 of the PATRIOT Act. This amendment provides a higher standard for the use of section 215 by the FBI.

At a minimum, what it will prevent I think is some kind of fishing expedition that might be undertaken by an overzealous agent or official at the Bureau. Having the Director of the FBI sign off on the request, it also sends a signal to the library and bookstore owners that a request for information from the FBI is well thought out and comes from the highest level.

This amendment compliments other amendments I have offered in the Committee on the Judiciary, two of which were accepted by the chairman and the committee. Those were: With regard to section 215, we clarified that if there is an inquiry, you not only as a respondent have access to an attorney to respond to the inquiry, but also to challenge it. The other had to do with another section in committee. We will stick with this one.

With these two amendments on 215 combined, I think we have provided strong protections for the contested section of the PATRIOT Act. There has been a lot of attention, as has been noted here, across the country at this provision, which has been termed the library provision. It obviously has a lot to do with PERIS searches. Libraries are not even mentioned in it. But we see the need to make protections to be sure that no overzealous agent at the FBI or anybody goes and searches somebody's library records or bookstore purchases. So that is what this amendment is prepared to do.

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

Mr. SCOTT of Virginia. Mr. Chairman, I ask unanimous consent to control the time in opposition, although I am not in opposition.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SCOTT. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Chairman, I rise in support of the amendment, but I do not believe it is a good enough cure to make this sick legislation well.

I believe that most of what America needs to know about the PATRIOT Act is reflected in its deceptive title. Its authors deliberately designed a name to question the patriotism of anyone who questions them. Are you for patriotism, or are you against patriotism? Are you with America, or are you against America?

The American patriots who declared our independence in 1776 were true patriots who risked their lives in order to secure our liberties. True patriots defend liberty.

Real patriots do not surrender our freedom, unless there is absolutely no other way to protect our lives.

Patriots demand accountability, restraint, and judgment, and judgment of encroachments on the freedoms that make our country unique.

While some portions of this proposed renewal of the PATRIOT Act strike the right balance, other provisions simply strike out. We must balance the demands of keeping our Nation secure with the freedoms that we cherish. We must not sacrifice our democracy in a misguided attempt to save it.

So I support this collection of misguided policies under the rubric the PATRIOT Act is a true mark of how really weak the underlying arguments are for this measure.

Surely we can secure our families' safety without becoming more like a police state, which would deny the freedoms that define us as Americans.

The dangerous road to government oppression begins one step at a time. It doesn't always happen all at once. This bill, I believe, is a step in the wrong direction, a step in the direction of suppressing our freedoms. I believe that it
is very important that we patriotically preserve our liberties and freedoms as Americans by rejecting the measure in its current form.

Mr. SCHIFF. Mr. Chairman, although not in opposition, I ask unanimous consent to control the balance of the time and to the amendment to the amendment.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

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

Mr. FLAKE. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. SCHIFF), the cosponsor of the amendment.

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

Mr. SCHIFF. Mr. Chairman, I rise today to urge my colleagues to support the Flake-Schiff amendment, which would make an important change to section 215 if it is ever used in the library or bookstore context. This amendment is substantially similar to one I offered in the Committee on the Judiciary with the gentleman from Arizona (Ms. WATERS), but one I agreed in order to work with the gentleman from Arizona (Mr. FLAKE) in a bipartisan fashion on a proposal for consideration on the House floor.

I assert that every Member of Congress has heard from their constituents regarding this very provision of the PATRIOT Act. Even if possibly based on misplaced fears, some of the public are now apprehensive about going to their local library or bookstore. Our amendment would not prevent law enforcement from investigating alleged terrorist activity wherever it may occur. It creates no safe haven for terrorists. Instead, our amendment would aim to restore some measure of public confidence that this provision will not be abused.

The Flake-Schiff amendment says that vis-a-vis the records that pose the greatest concern for all of our constituents, library records or bookstore records, the existing authority which allows lower level FBI agents to seek those records should be significantly amended.

If our amendment is adopted, only the FBI Director himself or herself can approve any search warrants for an investigation to protect against international terrorism or clandestine intelligence activities.

As of the latest public disclosure, the Justice Department has reported that section 215 has never been used in a library. The fact, however, that this provision may never have been used in a library to date does not alter the fact that it affects the behavior of all of our constituents who are concerned that their records may one day be the subject of search.

Given the sensitivity of this section, I believe it is worthwhile and necessary to make changes to existing law and that this added protection is warranted.

During the Committee on the Judiciary markup last week, I offered an additional amendment to section 215 that would have lifted the prohibition on disclosure when a United States citizen or permanent resident was involved in the investigation had concluded if there was no good cause to continue to prohibit the disclosure. Unfortunately, this amendment was rejected on party lines.

The Flake-Schiff amendment will still make another important and needed change. It makes very good sense for the FBI Director and the Director alone to make the decision, and not to delegate it away. The bipartisan PATRIOT Act proposal in the Senate makes a similar change, restricting this authority to the FBI Director or Deputy Director. I think our amendment provides an even stronger safeguard and strikes a balance that will restore a measure of public confidence in this area.

Before closing, Mr. Chairman, I want to take a moment to discuss the Sanders amendment and other efforts to make important changes to section 215. While I am appreciative that the Committee on Rules made the Flake-Schiff amendment in order, I am disappointed that the Sanders amendment was not also made in order. I believe that this House and the American people are better served if all proposals are duly and fairly considered on the House floor.

As you know, last month the House decisively adopted the Sanders amendment during consideration of the Science, State, Justice and Commerce appropriations bill. I supported that amendment, which prohibited the use of funds for a section 215 search of a library record, book sale record or book customer list.

The Sanders amendment, however, did not amend the underlying PATRIOT law, which I believe we must do as a first step. We must permanently limit the statutory authority to use section 215 in libraries and bookstores. The Sanders amendment also made no changes to the ability to search library computer and Internet records.

I expect and encourage the gentleman from Vermont (Mr. SANDERS) to bring his amendment before the House floor each year to further limit the use of section 215 with respect to specific lists and records in libraries and bookstores. But, for now, since the amendment only applies for 1 year and only applies to specific items in the library, I think it is important and necessary for the House to pass this broader and permanent change to the PATRIOT Act.

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

Mr. FLAKE. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE), a valued member of the Committee on the Judiciary (Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Chairman, I thank the gentleman from Arizona for yielding me time. I thank the gentleman from California (Mr. SCHIFF) for his tireless advocacy of the liberties of the American people, and I rise in strong support of the bipartisan Flake-Schiff amendment.

Yesterday, Mr. Chairman, I asked, had a plaque on his desk that simply read "The buck stops here." It seems to me that the Flake-Schiff amendment is all about saying that when it comes to that sacred relationship that the American people feel between their local library and their local bookstore, that the FBI Director himself or herself must be directly involved if that relationship is to be intruded upon in the name of an investigation into the war on terror.

The Flake-Schiff amendment requires the Director of the FBI to personally approve any library or bookstore request for records under section 215 of the PATRIOT Act. Currently, the law permits a designee of the Director whose rank cannot be lower than an Assistant Special Agent in Charge to approve section 215 orders, and that will change.

Also under this amendment, the Director of the FBI cannot delegate the duty to personally approve a section 215 request for library and bookstore records. This amendment, as the gentleman from Arizona (Mr. FLAKE) said earlier, will prevent section 215 from being abused or used in a fishing expedition intruding upon the privacy of ordinary Americans in the name of the war on terror.

Again I quote President Harry Truman's famous plaque or missive, "The buck stops here." The Flake-Schiff amendment is simply about saying if the war on terror demands it, when it comes to intruding upon that sacred relationship between the American people and a bookstore or library, we have to have those who are of the highest accountability in our political system to answer to that.

I strongly support the Flake-Schiff amendment and the commonsense underpinning that brings it to the floor today, and urge its passage.

Mr. SCHIFF. Mr. Chairman, I yield 1½ minutes to the gentleman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, I yield 1500.
Ms. HARMAN. Mr. Chairman, I rise in support of this amendment on two grounds.

First, I think it moves us in the right direction. I have said several times on this floor today about the PATRIOT Act that we should mend it, not end it. This does tighten section 215, which has probably been, more than any other section in the PATRIOT Act, the subject of intense worry for outside groups and especially those who use libraries.

But, second, I support it because of the process involved. The gentleman from Arizona (Mr. FLAKE) and the gentleman from California (Mr. SCHIFF) have worked on a bipartisan basis to craft something they could both support and to persuade the leadership of the Committee on the Judiciary and the Committee on Rules to embrace it. This is what we should see more of, and I wish we were seeing more of it in connection with this bill.

Finally, the gentlewoman from California (Ms. LOFGREN) does make important points. There is an even better way to amend section 215, and that way has just been embraced unani-

ously, obviously on a bipartisan basis, by the Senate Committee on the Judiciary, and that is to connect section 215 orders to specific facts which show the target is connected to an agent of a foreign power. That would be best; and, hopefully, we will get there before this bill becomes law.

Mr. FLAKE. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin (Mr. SENSENBERNENNER), the chairman of the Committee on the Judiciary.

Mr. SENSENBERNENNER. Mr. Chairman, I believe this amendment is a good one because it centralizes responsibility in the hands of the Director of the FBI in signing off on 215 applications for bookstore and library records. But in the overall debate, what I think is missing from this debate is not whether there is a potential for abuse by the Justice Depart-

ment, but whether there is an actual record of abuse. And there has been no record of abuse by the Justice Depart-

ment with bookstores and libraries. They have publicly responded repeatedly that they have not used the 215 order to look at the records of people checking out books or buying books at either bookstores or library. Now, without a big deal, it makes an improvement to the law where there is a specific method of contesting a 215 order by the recipient. But to say that all of these records should be exempt from law enforcement scrutiny is to turn our bookstores and libraries into a sanctuary. We cannot allow that to happen.

Mr. SCHIFF. Mr. Chairman, I yield 30 seconds to the distinguished ranking member of the Subcommittee on Crime, the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Chairman, there are a lot of problems with section 215. This amendment does not take care of many of them; but by re-

quiring the FBI Director to personally approve the warrant, that will signifi-

cantly reduce the chance that there will be abuses.

So far as the ability to contest these, it is very unlikely that someone receiving one of these warrants will go through the cost of actually contesting it for someone else’s rights. There are no attorneys’ fees allowed in these pro-

ceedings, and it is just more likely that they will just give up somebody’s in-

formation.

This requirement will reduce the chances that there will be abuses; and although it does not solve all the prob-

lems, it will reduce the abuses, and, therefore, I will be voting for it.

Mr. FLAKE. Mr. Chairman, I yield myself 1 minute. I just wanted to say that the gentleman from Indiana (Mr. PENCE) brought up the point that the buck stops here, and that is what we are really trying to do with the FBI Di-

rector, to ensure that that person is in charge and there is less likely to be a fishing expedition by a lower-ranking official. When you combine that with what we already have in law, which is the requirement that the FBI Director report to Congress every 6 months about the use of this statute, you really have a strong provision and strong protections.

Think of it: you have the FBI Direc-
tor himself, or herself, saying I want to use this authority for this specific purpose, and then having to report that every 6 months to Congress. I think we really have curtailed the possibility for abuse.

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

Mr. SCHIFF. Mr. Chairman, I want to return the courtesy extended by my friend, and I am happy to yield 3 min-

utes to the gentleman from Arizona (Mr. FLAKE) to be subsequently yielded as he chooses.

The Acting CHAIRMAN (Mr. HASTINGS of Washington). Without objection, the gentleman from Arizona (Mr. FLAKE) has an additional 3 minutes.

There was no objection.

Mr. FLAKE. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. ISSA), another member of the Committee on the Judiciary.

Mr. ISSA. Mr. Chairman, I thank the gentleman from Arizona for yielding me this time, and I thank the gen-

tleman from California (Mr. SCHIFF).

I have the distinction of being one of the few members on the Committee on the Judiciary who is not an attorney, and I got a little applause on that. I think. But I came to Congress from the business of automobile security. The one thing I know about what we are dealing with in terrorism is that if you leave an open window on an auto-

mobile, no amount of security will pro-

tect you. If you leave the automobile or your home unlocked, no security system will protect you.
There is absolutely no doubt that we must protect America. To do so, we have to be able to go anywhere and never take anything completely off the table.

I believe that this amendment allows us to guard against the threat before it happens or for terrorism while, at the same time, we will protect the privacy and the fair expectation that there will not be unreasonable rifling through the records at libraries or, for that matter, I hope, anywhere else under this act.

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

Let me just conclude by thanking the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for running a fair and thorough process.

Much has been said about these things being rushed through. I can tell my colleagues that over the past 12 months or so, we have had 12 hearings on this subject, 35 witnesses. We have gone very thoroughly. On each of these sections that we are dealing with, we heard excellent testimony from the administration, from other witnesses, from experts in the field; and that is why these amendments have gone through.

We have sought, as I mentioned, to protect the civil liberties of Americans every bit as much as we can here, while offering effective tools for the war on terrorism, giving the administration the tools that they need to fight this war.

I am persuaded that we have done well with this section, with section 215, that we have put the protections that we need in place; and I would urge my colleagues to support this amendment.

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

Mr. SCHIFF. Mr. Chairman, I am delighted to yield 15 seconds to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I just want to make the simple point that the amendment that was offered that was not made in order by myself, the gentlewoman from California (Ms. HARMAN), and the gentleman from California (Mr. BERMAN) would not have allowed, under any circumstances, a safe haven anywhere for terrorists. It was a different approach. The standards were higher. I think that is an important point to make as a matter of record.

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

I want to conclude by thanking my colleague, the gentleman from Arizona (Mr. FLAKE) for his work on this issue.

The fact that the library provision has not been used as of the last public disclosure does not affect the fact that many Americans are concerned about their expectation of privacy when they go to the library, when they check out books on family matters, on health matters, on other matters. They do not want to think that the government is going to be scrutinizing what they are reading.

And because this has an impact on the behavior of Americans, on the freedom to use libraries, it is an important issue, merely that fear.

This amendment, I think, takes a small, but important, step to provide at least the confidence to the people of this country that no less than the Director of the FBI himself or herself can authorize the use of this provision for library and bookseller records. I think it is an important step forward. I hope we make further progress.

Mr. Chairman, I urge support for the amendment.

The Acting CHAIRMAN. The question was taken; and the Acting CHAIRMAN announced that the ayes had it.

Mr. FLAKE. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Arizona (Mr. FLAKE) will be postponed.

It is now in order to consider amendment No. 3 printed in House Report 109-178.

AMENDMENT NO. 3 OFFERED BY MR. ISSA

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

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. ISSA:

Page 10, line 23, strike "the earliest reasonably determined period of time, but in no case less than 15 days," and insert "the earliest reasonably determined period of time, but in no case less than 15 days."

Page 11, line 6, after "surveillance," insert the following: "and shall specify the total number of electronic surveillances that have been or are being conducted under the authority of the warrant.

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentleman from California (Mr. ISSA) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. ISSA).

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

Mr. Chairman, the threat we face as Americans today is all too real. The recent bombings in London could have happened here. The American soil, and it is only through the vigilance of our many law enforcement entities that we can combat this occurrence.

The PATRIOT Act, as it was originally adopted, contains many needed tools to protect the American soul, and it is only through the vigilance of our many law enforcement entities that we can combat this occurrence.

The PATRIOT Act, as it was originally adopted, contains many needed tools to protect the American soul, and it is only through the vigilance of our many law enforcement entities that we can combat this occurrence.

The law when it came to civil liberties that already had good teeth when it came to the security of our people.

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

Mr. SCOTT of Virginia. Mr. Chairman, I seek unanimous consent to claim 2 minutes.

The Acting CHAIRMAN (Mr. HASTINGS of Washington). Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SCOTT of Virginia. Mr. Chairman, this involves a roving wiretap, and I think you have to put these in perspective. You can get one of these roving wiretaps under the Foreign Intelligence Surveillance Act with any probable cause that a crime has been committed. You are just getting foreign intelligence. It does not have to be a crime. It does not have to be terrorism. It could be negotiations on a trade deal, anything that will help foreign intelligence; you can get one of these roving wiretaps. So you are starting off without probable cause of a crime.

And also, you can start off without it being the primary purpose of the wiretap. What, for example, if the primary purpose, what is the primary purpose? So there is a lot of flexibility and potential for abuse in these things.
The Issa amendment appropriately defines the term “reasonable period for filing return” as not more than 15 days. It also requires that the Intelligence Surveillance Court, which is a FISA court, will receive information related to John Doe roving wiretaps in a timely manner by removing any ambiguity associated with the term “reasonable.” It makes it clear to every FBI agent, DOJ lawyer, and judge from the start, this is a 15-day limit on providing the court with information related to John Doe roving wiretaps. This is a good fix to a good provision that further strengthens the amendment to the PATRIOT Act.

I urge my colleagues to support this amendment. I thank the gentleman from California for offering it.

Mr. SCOTT of Virginia. Mr. Chairman, I yield 1 1/2 minutes to the gentleman from California (Ms. ZOE LOFGREN), a member of the Judiciary Committee.

Ms. LOFGREN of California. Mr. Chairman, I support this amendment although it does not make some of the changes recommended by Mr. SCOTT in committee about ascertainment and accountability. And I think this is important. It would allow for the requirement of oversight, which I think is important. The chairman has said many times that hearings have been held. They were, but they were basically just sessions. We have a tendency to postpone our work until it must be done.

One of the things that I hope we will also come to realize at that has not been discussed is section 209 relative to obtaining electronic information with a subpoena. That is a routine matter that caused no concern because it stored electronic data and that is not new law.

The reason why we need to look at it before 10 years from now is that as technology changes and all telephone communication becomes Voice Over Internet Protocol, theoretically every phone call would be subject to seizure by subpoea, which is not something I think any of us would agree we intend to do. That is a wiretap standard and it may drift down to a subpoea standard. That is why we need oversight, not because there is a problem there necessarily, but because the technology is going to change and change swiftly and potentially very much alter what we think we are doing here today.

Mr. SCOTT of Virginia. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. DELAHUNT), a member of the Judiciary Committee.

Mr. DELAHUNT. I thank the gentleman for offering me this time.

Mr. Chairman, I want to associate myself with the remarks of the gentleman from California (Ms. LOFGREN). And I also want to address the issue of oversight. And let me be very clear. The chairman has been most aggressive when it comes to oversight, and I want to publicly commend him, not just in terms of the PATRIOT Act, but many other issues that are within the jurisdiction of the Judiciary Committee.

However, this is not about this particular chairman. It is about the responsibility of future members of the
Mr. ISSA. Mr. Chairman, I yield myself such time as I may consume.

I want to assure the gentlewoman from California that her concerns on electronic data and the fact that in an era of VOIP that we do have to look at that. I serve with the gentlewoman in California on many of the caucuses that deal with that. I look forward to both in Judiciary and, quite candidly, in other committees of jurisdiction here in the Congress to continue to work on properly identifying and modernizing how that is going to be interpreted. I think it is beyond the scope of the PATRIOT Act today, but it certainly is not beyond the Congress to have to bring things up to snuff, and I look forward to working with the gentlewoman from California.

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

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

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

I will just close quickly in thanking the chairman, the ranking member, the staffs for the hard work that led to the underlying bill, but also to this particular amendment. This was done on a bipartisan basis. There was give and take.

Over on the Senate side there is a companion that is somewhat similar that is in a 14-day timeline, and undoubtedly we will work together in conference to reconcile those two. But the good work done on a bipartisan basis in the House has led to what I believe is the right compromise, although I certainly will work with the other body.

Mr. Chairman, I yield back the balance of my time.
“(2) Any person travels or communicates across a State line in order to commit the offense, or transports materials across a State line in aid of the commission of the offense.

“(d) In this section:

“(1) the term ‘biological agent’ has the meaning given to that term in section 178(1);

“(2) the term ‘dangerous weapon’ means a weapon, instrument, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, including a pocket knife with a blade of more than 2½ inches in length and a box cutter;

“(3) the term ‘destructive device’ has the meaning given to that term in section 921(a)(4);

“(4) the term ‘destructive substance’ means an explosive substance, flammable material, or other contrivance used, or capable of giving to that term in section 2266; and

“(5) the term ‘hazardous material’ has the meaning given to that term in chapter 51 of title 49; and

“(6) the term ‘high-level radioactive waste’ has the meaning given to that term in section 5256(a)(17) of title 49, except that the term includes school bus, charter, and sightseeing transportation; and

“(7) the term ‘mass transportation’ means a railroad carrier, track equipment used, operated, or employed by a railroad carrier, on-track equipment, intercity bus or intercity motor unit, freight or passenger car, or other on-track equipment, used, operated, or employed by a railroad carrier;

“(8) the term ‘on-track equipment’ means a car or other contrivance that runs on rails or electromagnetic guideways;

“(9) the term ‘railroad carrier’ means an explosive substance, flammable material, or other contrivance used, or capable of being used, as a means of transporting on land, on water, or through the air; and

“(10) the term ‘railway system’ means a railroad carrier, track equipment used, operated, or employed by a railroad carrier, on-track equipment, charter bus, sightseeing bus, and sightseeing motor unit.

“(11) the term ‘railroad line’ has the meaning given to that term in chapter 201 of title 49;

“(12) the term ‘serious bodily injury’ has the meaning given to that term in section 1365;

“(13) the term ‘spent nuclear fuel’ has the meaning given to that term in section 3(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)); and

“(14) the term ‘State’ has the meaning given to that term in section 2266;

“(15) the term ‘toxin’ has the meaning given to that term in section 1982; and

“(16) the term ‘vehicle’ means any car or other contrivance used, or capable of being used, as a means of transportation on land, on water, or through the air.”.

(b) INFORMING AMENDMENTS—

(1) The table of sections at the beginning of chapter 97 of title 18, United States Code, is amended—

(A) in section 2322(h)(5)(B)(i), by striking “1992 (relating to wrecking trains),” 1995 (relating to the controversial acts of violence against mass transportation systems),” and inserting “1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),”;

(B) in section 2339A, by striking “1993,”; and

(C) in section 2516(1)(c) by striking “1992 (relating to wrecking trains),” and inserting “1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air).”.

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentlewoman from West Virginia (Mrs. CAPITO) and the gentleman from Virginia (Mr. SCOTT) each will control 5 minutes.

The Chair recognizes the gentlewoman from West Virginia (Mrs. CAPITO).

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

Mr. Chairman, millions of Americans travel to work, school and other activities aboard trains, buses, planes, and mass transportation. Our railways are also a primary method of shipping raw materials and manufactured goods across the country.

The openness of our rail and mass transportation network makes it a target for terrorists who would attack our Nation. The network is also a target for people to make empty threats or disable on-track materials. These actions put rail employees and passengers at risk. Threats and sabotage against rail and mass transportation will harm interstate commerce by causing delays on important transportation corridors.

Richard Reid, now known as the Shoe Bomber, actually had a charge against him dismissed because law does not explicitly define an airplane as a vehicle for the purpose of prosecuting.

This amendment would change that. It would bring updated and uniform protections to all forms of railroad carriers and mass transportation providers.

My amendment establishes penalties of up to 20 years for a person who knowingly wrecks, derails, or sets fire to a rail or mass transportation vehicle or knowingly disables on-track equipment or transportation. The same penalty applies for conspiracy or threats against a rail or mass transportation system.

The penalty is increased with life imprisonment with death-penalty eligibility if an attack results in the death of a person.

My amendment allows the courts to consider an attack against a train carrying hazardous materials as an aggravated circumstance. The amendment includes a 50-year minimum sentence for an attack on a train carrying high-level radioactive waste or spent nuclear fuel.

I first offered this amendment last October in the wake of the terrorist attack against the rail system in Madrid. The House passed this amendment on the 9/11 Commission Implementation Act, but it was removed in conference with the Senate. The tragic attacks on London at that time and the attack there earlier today have demonstrated again the dangers facing rail and transit systems in the U.S. and throughout the world.

We must not wait for another attack here at home to modernize our criminal penalties for attacks and sabotage against our transportation system.

Mr. SENSENBRENNER. Mr. Chairman, will the gentlewoman yield?

Mrs. CAPITO. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I am pleased to support the gentlewoman’s amendment and believe that it is an important consolidation in the criminal law relative to attacks against mass transportation systems.

First, we should not have different crimes and different penalties depending upon which type of mass transportation system is attacked. We should have uniform penalties and uniform definitions of transportation involved so someone who attacks a railroad will get the same penalty as someone would in a similar attack against a subway system or a bus or an airplane.

Secondly, I think we have to broaden the definition of what is “attacked” to make sure that attacks against support systems for mass transportation systems are treated the same way as an attack against the transportation system itself. We should not have a lesser penalty if you put a bomb in the station than if you blow up a train while it is crossing a bridge over a big gorge.

And also I think we ought to ensure that terrorists who attack these systems are punished for the appropriate severity. The gentlewoman’s amendment does all of these things, and I would urge its support and unanimous adoption by the House.

Mrs. CAPITO. Reclaiming my time, I thank the gentleman for his support.

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

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, as it has been indicated, this amendment would add a lot of new definitions. It would be helpful if we had considered this in committee where we could have gotten the definitions straight.

This is a complex rewrite of two different sections, 18 U.S.C. 1992 and 1993, which involve wrecking trains and attacks on mass transportation systems.

First, it involves mandatory minimums, and we know from our committee deliberations that the Judicial Conference writes us a letter every time we consider the mandatory minimums to remind us that mandatory minimums violate common sense. If it is a commonsense sentence, it should
Mr. SCOTT of Virginia. Mr. Chairman, I would say that it would have been extremely helpful if we could have considered that. We could have got the definition straight, and we could have considered it in a more deliberative process rather than trying to deal with it here in one meeting, before some constitutional questions such as the death penalty for conspiracy.

Mr. CONYERS. Right. Is the author of the amendment here?

I was wondering if this was sent over to the chairman of the committee at some earlier point in time.

Mrs. CAPITO. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from West Virginia.

Mrs. CAPITO. Yes. This is the identical amendment that was considered last year in October, and it was also passed in the House Intelligence Reauthorization Act that we passed. So this amendment has been considered several times in the House.

Mr. CONYERS. Reclaiming my time, I am sorry I was not on the committee the day they had the hearing, but normally death penalty matters are not brought to the floor this way. Normally, legislation is the jurisdiction of the Subcommittee on Criminal Justice in the Committee on the Judiciary of the House that would be considering this matter.

The Acting CHAIRMAN. The gentleman from West Virginia (Mrs. CAPITO) has 30 seconds remaining. The gentleman from Virginia (Mr. SCOTT) has the right to close.

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

Mr. Chairman, I would say in closing this has been considered in the past. It has passed. It passed on a voice vote last October. I think in view of what is happening to the mass transit systems around the world, we have heard a lot of concerns and cries about helping to protect our mass transit and rail systems. I urge passage of the amendment.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 10 seconds. I say that we need money for port security and rail security funding.

Mr. Chairman, I yield the balance of my time to the gentleman from California (Ms. ZOE LOFGREN).

Ms. LOFGREN of California. Mr. Chairman, I would just note that we have spent since 9/11 only a couple hundred million dollars in homeland security to secure our rail systems. That is the real problem here. We spent nearly $25 billion on air security and a couple of hundred million on rail.

I would also note that although I do not oppose the death penalty, I doubt very much the death penalty we are going to deter the suicide bombers. I think we need to look at not deterrents but at actually preventing the terrorists from harming Americans by protecting the systems and putting our money where our mouth is and in securing these rail systems which we have failed to do.

As my colleague on the Committee on the Judiciary knows, I also serve on the Committee on Homeland Security. We are well aware of how deficient our efforts have been in this regard. That is the crux of this problem, not threatening suicide bombers with the death penalty.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from West Virginia (Mrs. CAPITO).

The question was taken; and the Acting Chairman announced that the ayes had it.

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

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from West Virginia (Mrs. CAPITO) will be postponed.

It is now in order to consider amendment No. 5 printed in House Report 109–178.

AMENDMENT NO. 5 OFFERED BY MR. FLAKE

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

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. FLAKE: At the end of the bill, insert the following:

SEC. 3511. JUDICIAL REVIEW OF NATIONAL SECURITY LETTERS.

Chapter 223 of title 18, United States Code, is amended—

(1) by inserting at the end of the table of sections the following new item:


and

(2) by inserting after section 3510 the following:

3511. Judicial review of requests for information

“(a) The recipient of a request for records, a report, or other information under section 2709(b) of this title, section 625a(b) or (b) or 626a of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947 may petition any court of the United States district court for the district in which that person or entity does business or resides, for an order modifying or setting aside the request or modifying or setting aside the request if compliance would be unreasonable or oppressive.

“(b) The recipient of a request for records, a report, or other information under section 2709(b) of this title, section 625a(b) or (b) or 626a of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, may petition any court described in subsection (a) for an order modifying or setting aside a nondisclosure requirement imposed in connection with such a request.

“(c) If the petition is filed within one year of the request for records, a report, or other information under section 2709(b) of this title, section 625a(b) or (b) or 626a of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, may petition any court described in subsection (a) for an order modifying or setting aside a nondisclosure requirement imposed in connection with such a request.”
the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation or intelligence gathering; unauthorized disclosure of any record or other information with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under subsection (a) shall disclose to any person (other than those to whom such disclosure is necessary in order to comply with the request or to obtain legal advice with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under subsection (a) is subject to the same prohibitions on disclosure under paragraph (1).

(c) CONFIDENTIALITY.—

(1) If the head of a government agency authorizes conduct investigations or, or intelligence or counterintelligence activities or analysis related to, international terrorism, or his designee, certifies that otherwise there may result a danger to the national security of the United States, interference with diplomatic relations, or danger to the life or physical safety of any person, no consumer reporting agency or officer, employee, or agent of such consumer reporting agency or any attorney to obtain legal advice with respect to the request, or a consumer report, that a government agency has sought or obtained access to information under subsection (a).

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(d) Any recipient disclosing to those persons necessary to comply with the request or to any attorney to obtain legal advice with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under subsection (a) shall disclose to any person (other than those to whom such disclosure is necessary in order to comply with the request or to obtain legal advice with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to any attorney to obtain legal advice with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under subsection (a) shall disclose to any person (other than those to whom such disclosure is necessary in order to comply with the request or to obtain legal advice with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

(e) In all proceedings under this section, the court shall, upon the Federal Government’s request, authorize the Government, which may include classified information, ex parte and in camera.

SEC. 6. CONFIDENTIALITY OF NATIONAL SECURITY INVESTIGATIONS

(a) Section 2709(c) of title 18, United States Code, is amended to read:

‘‘(c) Prohibition of Certain Disclosure.—

(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no consumer reporting agency or officer, employee, or agent of such consumer reporting agency, or any attorney to obtain legal advice with respect to the request, or a consumer report, that a government agency has sought or obtained access to information under subsection (a).

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(b) Section 625(d) of the Fair Credit Reporting Act (15 U.S.C. 1681d(d)) is amended to read:

‘‘(d) CONFIDENTIALITY.—

(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no consumer reporting agency or officer, employee, or agent of such consumer reporting agency, or any attorney to obtain legal advice with respect to the request, or a consumer report, that a government agency has sought or obtained access to information under subsection (a).

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to any attorney to obtain legal advice with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under subsection (a) shall disclose to any person (other than those to whom such disclosure is necessary in order to comply with the request or to obtain legal advice with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to information under subsection (a).

(4) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).
Mr. FLAKE. Mr. Chairman, I yield myself such time as I may consume.

Mr. CHAIRMAN. The Chair recognizes the gentleman from Arizona (Mr. FLAKE) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Chairman, I am offering this amendment with my good friend, the gentleman from Massachusetts (Mr. DELAHUNT), I want to assure my colleagues that this amendment has nothing to do with exporting freedom to Cuba. We have teamed up on a few of those items. We are also teaming up with other Members of the PATRIOT Act Reform Caucus, the gentleman from Idaho (Mr. OTTER) and the gentleman from New York (Mr. NADLER), on this amendment.

The Flake-Delahunt-Otter-Nadler amendment provides critical reforms to national security letters. We have heard a lot about this today.

First, this amendment specifies that the recipient of a national security letter may consult with an attorney and may also challenge national security letters in court. A judge may throw out the national security letter by request of the government if compliance would be unreasonable or oppressive to the recipient of the national security letter.

The amendment also allows the recipient to challenge the nondisclosure requirement in the national security letter request. A judge could modify or remove the nondisclosure requirement of the national security letter “if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with criminal counterterrorism or counterintelligence investigations, interfere with diplomatic relations, or endanger the life or physical safety of any person.”

Another important reform to this amendment is that it modifies the nondisclosure requirements so that recipients may tell individuals whom they work with about the national security letter request in order to comply with the national security request. The amendment also contains penalties for individuals who violate the nondisclosure requirements of a national security letter and requires that reports on national security letters by Federal agencies to Congress must also be sent to the House and Senate Committees on the Judiciary so we can exercise proper oversight.

Mr. Chairman, I would like to thank again the gentleman from Wisconsin (Mr. SENSENBERGER) and his staff in helping to write and to work with me on this amendment. It is important to strengthening the rights of average American citizens who receive these national security letters, and I urge my colleagues to accept this amendment.

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

Mr. FLAKE. I yield to the gentleman from Wisconsin.

Mr. SENSENBERGER. Mr. Chairman, I thank the gentleman for yielding to me, and, Mr. Chairman, I rise in support of the amendment offered by the gentleman from Arizona (Mr. FLAKE).

One of the things that the bill did in section 215 was to provide a procedure for challenging a section 215 order. What this does is it codifies procedures for challenging the receipt of national security letters. I think that this is a step in the right direction.

Let me say that a national security letter is never issued to the target of an investigation. A place where it would be issued would be to get records that are in the custody of someone who may have information relative to the target of the investigation. For example, it appears that one of the people who were involved in the London bombings 2 weeks ago was the University of North Carolina. To get the records of this person’s attendance at the University of North Carolina would be a subject of a national security letter. Now, I do not know whether one has been issued or one has not, but that is an example of the type of information that the NSIs are used for.

This is a good amendment, Mr. Chairman, and I support it.

Mr. FLAKE. I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I ask unanimous consent to claim the time in opposition to the amendment, though I am in support of the amendment.

The Acting CHAIRMAN (Mr. HASTINGS of Washington). Without objection, the gentleman from New York (Mr. NADLER) is recognized for 10 minutes.

There was no objection.

Mr. NADLER. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me this time, and I applaud the co-sponsors of this particular amendment because it is a significant amendment.

As it was indicated, under the PATRIOT Act the FBI can merely assert these national security letters. We have heard a lot about this today. A Federal District Court in New York has already ruled that the national security letters for communiqués, as amended by the PATRIOT Act, are unconstitutional because they are coercive and violate the fourth amendment prohibition against unreasonable searches and the first amendment as a result of gag order.

This was truly a profound expansion of government power where the subject of the order need not be suspected of any involvement in terrorism whatsoever, where there was no judicial review, where there was no statutory right to challenge, and where the order gags the recipient from telling anyone about it. A Federal District Court in New York has already ruled that the national security letters for communications, as amended by the PATRIOT Act, are unconstitutional because they are coercive and violate the fourth amendment prohibition against unreasonable searches and the first amendment as a result of the gag order.

This amendment, I would submit, attempts to salvage the use of national security letters in intelligence investigations so as to comply with constitutional standards. It gives the recipient of a national security letter his due process. He can consult a lawyer. A judge can reject or modify the FBI demand upon a finding that compliance would be unreasonable or oppressive.
The recipient can also seek to modify or set aside the gag order if the court makes certain findings that it was unnecessary. The amendment goes further to modify the nondisclosure requirement so that the recipients can tell other people with whom they work about the contents so that they can comply with the order.

As I suggested, the current law is of dubious constitutionality, and I would suggest this amendment would permit appropriate use of so-called national security letters that would only pass constitutional muster but would be sound policy. It also, I believe, strikes a more reasonable balance between privacy and freedom on the one hand and national security on the other with only a negligible burden imposed on the government, and so I urge passage.

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

Mr. NADLER. Mr. Chairman, I yield myself the floor, as I may consume.

Mr. Chairman, section 505 is one of the most, perhaps the most egregious provision of the PATRIOT Act, and it provides essentially, as was said before, that any Director of an FBI field office can issue a national security letter directing the production of financial, telephone, Internet and other records, period, without a court order, without any judicial approval, and there is no provision for going to courts to quash it. That, to my knowledge, it is sought to invade never knows about it because it is directed to a third party; namely, the Internet service provider, the telephone company, or whoever. Furthermore, they are prevented by the gag order provision of section 505 from ever telling the person whose privacy is affected or anyone else about this.

The Federal Court in New York has ruled it unconstitutional for two reasons. One, you cannot issue a warrant that amounts to an intrusive search warrant without any judicial approval or provision for getting judicial approval. That is a violation of the fourth amendment. And, two, the gag order, the nondisclosure provision, was ruled as a prior restraint on speech, the first amendment.

This amendment, which I am pleased to cosponsor, is an attempt to solve these problems. It goes a considerable distance towards solving these problems. I do not think it solves all the problems. It does not make section 505 acceptable or even, in my opinion, constitutional, but it goes a good distance towards doing that.

It solves the first problem by saying that you can get a national security letter without going to court, but the recipient can go to court to quash it. That is a minimum standard that ought to be adhered to. This amendment does that, and I am very pleased it does so. It also empowers the recipient upon receipt of a national security letter to ask that the gag order be set aside, and it sets limits on the gag order and says it has to be renewed after a certain time period and you have to apply to a court to extend it.

It fails, in my opinion, in that second provision to reach constitutional status by saying that the showing the government has to get an extension of the gag order, the affidavit by the government officer asking for the extension, shall be treated as conclusive unless the court finds that certification was made in bad faith. So that certification will not be before the judgment of the judge, and I do not think that would satisfy the court on the first amendment. But it goes a long way, as I said, toward making this less egregious a violation of civil liberties and towards making it more constitutional. I do not think it goes far enough but it is a step forward.

It also does not deal with the fact that section 505 should be sunned down. Because section 505, like some of the other sections we have talked about, is a great expansion of surveillance and police powers, and it may be a necessary one, although I do not agree with that, but even if it is necessary we should be nervous about the expansion of surveillance powers and we should revisit that and force Congress to revisit it through using a sunset, every so often.

So this amendment goes a considerable distance in the right direction. It does not go far enough, in my opinion, to solve the problem with section 505, but it does go several steps in the right direction, and I commend the sponsor for introducing it, the main sponsor for drafting it, and I support the amendment.

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

Mr. FLAKE. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), a member of the Committee on the Judiciary.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in support of this amendment.

Mr. Chairman, national security letters are sort of a strange beast. It is kind of difficult to figure out what they are. They are sort of like administrative subpoenas, but they are not actually administrative subpoenas. They are limited in their scope. NSLs do not allow the FBI to read the contents of surveillance letters, phone, Internet and other records, period, without a court order, without any judicial approval, and there is no provision for going to courts to quash it. That, to my knowledge, is sought to invade never knows about it because it is directed to a third party; namely, the Internet service provider, the telephone company, or whoever. Furthermore, they are prevented by the gag order provision of section 505 from ever telling the person whose privacy is affected or anyone else about this.

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

Mr. FLAKE. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), a member of the Committee on the Judiciary.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in support of this amendment.

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

Mr. FLAKE. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), a member of the Committee on the Judiciary.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in support of this amendment.

Mr. Chairman, national security letters are sort of a strange beast. It is kind of difficult to figure out what they are. They are sort of like administrative subpoenas, but they are not actually administrative subpoenas. They are limited in their scope. NSLs do not allow the FBI to read the contents of communications but rather the records of communications, even like a legal nicety, but it is a major difference. The Supreme Court has recognized those kinds of differences.

Nonetheless, the recipients of these, while the Justice Department has told us that we don’t have to talk to their lawyers, if you look at the statute as it exists now there seems to be a question about that. This amendment makes its explicit. Also, currently under the law, there is no enforcement mechanism when they do issue a national security letter. This amendment allows such an enforcement mechanism by going to a court.
Well, let me ask you this. The amendment allows the recipient to challenge the letter in court, but it can be quashed only if compliance would be unreasonable or oppressive to the recipient.

Mr. FLAKE. Mr. Chairman, if the gentleman would continue to yield, we are offering in this amendment additional protections. We are ensuring that those who receive these letters, and we have in other amendments as well, have access to counsel, not only to respond to the inquiry, but also to challenge in court.

Mr. CONYERS. Mr. Chairman, I thank the gentleman.

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

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

Mr. FLAKE. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, I think underlying the gentleman from Michigan's question, is this not about the difference between the FBI and law enforcement using a national security letter to ask a bank to give him the financial records of all of its customers versus asking the bank to give it the financial records of the specific individuals it suspects might be involved or that it is interested in? I think that is at the heart of the question of the standard. That is why relevance to a terrorist investigation is not an adequate standard. You want the focus on something specific, rather than all of the bank's records of everybody who uses that bank. You want the people who might have had contact with the terrorist or suspected terrorist.

Mr. FLAKE. Mr. Chairman, part of what we have done in this amendment is offer individuals the opportunity to challenge the scope of the request. So whether or not it applies to them or additional people is challengeable through this amendment. That is part of what we are doing here.

Mr. BERMAN. Mr. Chairman, if the gentleman would continue to yield, that requires the bank, not the customers who had nothing to do with anything, to make the challenge.

Mr. FLAKE. The bank can make the challenge itself. The bank can challenge the scope. They are the recipient of the security letter.

Mr. BERMAN. The bank is not, the customers of the bank.

Mr. FLAKE. That is correct.

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

Mr. FLAKE. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I would ask the gentleman from Arizona if he feels that this cures the problem, or does he have some of the reluctance that the gentleman from New York, a co-author of the amendment, has about it not going far enough.

Mr. FLAKE. Mr. Chairman, I have a great deal of respect for the gentleman from New York. I tend not to be as concerned as he is at this point. I share many of his concerns about the overall PATRIOT Act, and we have worked to put many of the amendments in place to put ourselves at rest. I thank him for his involvement. We have had great discussions from both sides of the aisle here.

These amendments that I am offering today, virtually all of them, are offered with Democrat support and cosponsorship, my name is not even at the top of the list of some of them. We have had good cooperation. I feel good about this amendment, about the protection we have offered here, and also to ensure that in cases where it is needed, we offer additional tools for compliance with these amendments. As I mentioned, we had a markup that lasted over 12 hours. Many of these amendments were discussed at length, as were other amendments. I appreciate that and urge support of the amendment.

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

The Acting CHAIRMAN. (Mr. HASTINGS of Washington). The question is on the amendment offered by the gentleman from Arizona (Mr. FLAKE).

The question was taken, and the Acting Chairman announced that the ayes appeared to have it.

Mr. FLAKE. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Arizona (Mr. FLAKE) will be postponed.

It is now in order to consider amendment No. 6 printed in House Report 109-178.

AMENDMENT NO. 6 OFFERED BY MS. WATERS

Ms. WATERS. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Ms. Waters: Add at the end the following:

SEC. 17. DEFENSE AGAINST GAG ORDERS.

A person who has received a non-disclosure order in connection with records provided under the provisions of law amended by sections 215 and 505 of the USA PATRIOT Act may not be penalized for a disclosure if the disclosing person is mentally incompetent or undue stress or fear of a disclosure made because of a threat of bodily harm or a threat to discharge the disclosing person from employment. In order to avoid the penalty of a non-disclosure order, the Federal Bureau of Investigation must immediately cease the investigation or one who has assisted the FBI in gaining access to records, to talk about the investigation, to let people know they have been contacted, or that they in some way have been involved in assisting the authorities in seeking information.

This amendment in my view is a very, very simple amendment that talks about what happens to someone who is under a gag order who may, through no fault of their own, place themselves in danger of being harmed or being killed because someone finds out that they have been involved, they are involved in the investigation in some way, and they are threatened by the person who discovers that they have been involved in the investigation; or what happens to someone who is employed at a particular business where they give the FBI access to information. The employer wants to know did they give information, they cannot tell them, they get fired from the records.

So I have raised the question about this gag order of what happens when someone is placed in a position through no fault of their own that they have to give up information. And someone may argue that in one section of the law, 215, they have the right to get a lawyer and this could be included in the information that they share with the lawyer that would attempt to get them out from under the gag order. But we know there is no hope in that. We specifically that would protect this person under the gag order.

Mr. Chairman, what I am attempting to do, and in the scheme of things perhaps it is not that important because we have a PATRIOT II, that will basically extend two sections of the PATRIOT Act, for 10 years, sections 206 and 215, access to businesses and other records and roving wiretaps; and we have these 14 other sections of the PATRIOT Act that are made permanent.

I suppose my colleagues and the people of America should be worried about...
all of this, all of what is being done in this PATRIOT Act in the name of fighting terrorism. People should be wondering whether or not they are being asked to give up their civil liberties, if they are being led by the people to do so in the name of so-called terrorism. And I do not see myself as an elected official nor do I see myself simply as a citizen that believes that the government is right in everything that it does.

Because I do not believe that, I dare to question those on the other side of the aisle and those on this side of the aisle. I dare those who would wish to stand up and challenge me and charge me with not being patriotic because I do so to get up here and debate me now on patriotism.

And I will tell Members what patriotism is all about. Patriotism is about a Constitution and a democracy that says America is different from everybody else and that we have come through time and history that has taught us that if you are to have a democracy, you must have certain guarantees, and those guarantees are embodied in the Constitution that guarantees us freedom of speech, freedom of assembly and freedom of privacy. Those are the things that we should hold dear and we should fight to protect and we should hold onto with everything that we have, with every ounce of energy that we have.

Nobody, no elected officials, no so-called leader is so smart they should tell the American people do not worry about it, give up your rights and give up your freedom. I know better than you. I hope that somewhere in America, in some fourth and fifth grade out there, there are teachers who are watching the debate on the PATRIOT Act. I hope that these are the teachers who are teaching the Constitution of the United States and the history of this Constitution how it evolved and how it developed; and I hope they will teach them about the amendments to the Constitution that strengthen it to make sure that we embody in this Constitution all that may not have been thought about in the original framing of it by way of amendment.

I hope that the teachers are able to say watch the debate on the floor of the Congress of the United States so that you can understand that there are some intrusions that are taking place today with the PATRIOT Act that fly in the face of the Constitution.

I want you to be aware of it because when you leave this class, when you grow up to be whatever it is you are going to be, I expect that no matter where you are, whether you are in the United States, abroad, no matter where you are, you know how to stand up and fight for freedom of religion, freedom of the press and the American public wants to see if somebody gets a national security letter or a grand jury subpoena or testifies before the grand jury, something in the newspaper that says that John Doe is being investigated. And if John Doe is really involved in terrorist activities, that is going to be a tip-off that the feds are on the heels of John and maybe he ought to flee the country or do other things to eliminate the evidence that would be used to convict that person of the crime that he has committed, but it is still good policy that he is in a conspiracy with others to commit.

Let me say that by their very nature national security letters involve our national security, and the national security letters are usually not issued against the targets of investigations but to get records that would establish evidence that could be used against the target of the investigation. And if that evidence that was being collected ended up being disclosed and became a matter of discourse in the public press, I do not know how law enforcement would be able to complete its investigation to go after those that are suspected of criminal or terrorist activities.

But let me say there is another aspect to the gentlewoman’s amendment that I think is really bad policy and can really hurt somebody who is innocent. Because of the nature and threat of terrorism, when there is a tip that is sent to law enforcement, law enforcement is obligated to investigate it. Now, that tip might be false. That tip might be a malicious tip by a personal enemy against the person who had information given to law enforcement. But, nonetheless, law enforcement has got to proceed. And if they do their investigation and issue national security letters and find out that the person that the tip was lodged against is up to absolutely no criminal or terrorist activities, then the newspaper, their reputation is destroyed even though they are innocent. So I think that the amendment of the
gentlewoman from California is one that will end up leaking information about an investigation of someone who may be guilty but also leaking information about an incomplete investigation of someone where the evidence would exonerate them before that exonerative evidence was ever established. That is why, either way we see it, the gentlewoman’s amendment is bad news and should be rejected.

Ms. LEE. Mr. Chairman, I rise in strong support of the Waters Amendment and in strong opposition to H.R. 3199, the USA PATRIOT and Intelligence Reform Act of 2005.

“National security letters” subpoena personal records including telephone, internet, financial and consumer documents, but almost all records are included in this category.

The Waters’ Amendment protects the rights of those individuals who are mentally incompetent, under undue stress, at risk for bodily harm or losing their employment from being forced to disclose information.

It is an honest attempt to reinstate some balance to protect those who are among the most vulnerable under this legislation.

But the underlying bill, Mr. Chairman, like the original PATRIOT Act, continues to trample on civil liberties. But this bill goes further. It makes fourteen of the most egregious components of the PATRIOT Act permanent. This is outrageous.

This bill damages fundamental freedoms:

by invading medical privacy
by allowing the FBI to search in any location showing minimal justification
by allowing for bland form and peaked, national security letters, and roving “John Doe” wire tap provisions

by forcing libraries to police their patrons (an act that this body just voted to overturn I might add)
and by stripping Congress of the right to review and amend these provisions.

These all are examples that blatantly undermine our constitution and do nothing to make us safer.

Mr. Chairman, all of us understand the need to balance civil liberties with national security. And we can do this without sacrificing one for the other.

Mr. Chairman, simply said, this bill is absolutely overreaching. The Waters amendment protects the rights of those who are the overlooked victims of national security letters—upholding the constitution is patriotic, even in times of national security crises.

Mr. SMITH of Texas. Mr. Chairman, we should oppose this amendment.

First, we are revisiting an issue that we just covered in the Flake/Delahunt/Otter/Nadler amendment—protections for recipients of a National Security Letter, which is an administrative subpoena used in terrorism investigations or in covert intelligence activities. They are a necessary and critical tool in our fight against terrorism.

Current laws prohibit the recipient of a National Security Letter from disclosing the fact that they received it. This amendment creates a safe haven for individuals who tell others that they received a National Security Letter, by prohibiting them from being punished for violating this law.

Non-disclosure orders prevent others being investigated for involvement in terrorist activities from being alerted to that investigation. If a person knows he is being investigated, he may destroy evidence, tell others with whom he is working about the investigation, and flee the country.

While I understand the motive behind not punishing mentally incompetent individuals or those under duress, the law already allows for that through the use of an affirmative defense. Any amendment that makes it easier to tip off terrorists to the fact that they are being investigated is irresponsible and should not be supported. The Waters amendment should be opposed.

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

The Acting CHAIRMAN. (Mr. HASTINGS of Washington). The question is on the amendment offered by the gentlewoman from California (Ms. Waters).

The amendment was rejected.

The Acting CHAIRMAN. It is now in order to consider amendment No. 7 printed in House Report No. 109-178.

AMENDMENT NO. 7 OFFERED BY MR. DELAHUNT.

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

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mr. DELAHUNT.

Add at the end the following:

SEC. 9. DEFINITION FOR FORFEITURE PROVISIONS UNDER SECTION 806 OF THE USA PATRIOT ACT.

Section 981(a)(1)(G) of title 18, United States Code, is amended by striking “section 2331” each place it appears and inserting “2332b(g)(5)(B)”:

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentleman from Massachusetts (Mr. DELAHUNT) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. DELAHUNT).

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

Mr. Chairman, again, this is an amendment. My cosponsors are the gentleman from Idaho (Mr. OTTER) and the gentleman from Arizona (Mr. FLAKE).

But, again, let me begin by saying this is not about Cuba. So let us make that very clear. This is about domestic terrorism and the definition of domestic terrorism. And while it does not create a new crime under the PATRIOT Act, the definition triggers an array of expanded governmental authorities, including enhanced civil asset seizure powers. It is so broadly defined that it could include acts of civil disobedience because they may involve acts that endanger human life, one of the elements that goes into the definition of domestic terrorism.

For example, they could implicate anti-abortion protesters who illegally block access to federal clinics, which could be interpreted by others by Attorney General as endangering the lives of those seeking abortions, or environmental protesters who trespass on private land and climb trees to prevent logging, which could be interpreted by a conservative activist Attorney General as endangering their own lives or the lives of the loggers. Since such actions are usually undertaken to influence government policy, the inclusion of the definition of domestic terrorism, such activities could be treated in such a way as to have severe unintended consequences, particularly with regard to the government seizure of property and assets.

For example, any property used to facilitate the acts, such as a church basement, or property affording a source of influence over the group, like a bank account of a major donor to a direct action anti-abortion group, could be seized without any criminal conviction and without a prior hearing notice under section 806, which is implicated into the PATRIOT Act.

This amendment curbs those unintended consequences and possibilities and appropriately limits the qualifying offenses for domestic terrorism to those that constitute a Federal, substantive crime of terrorism, instead of any Federal or State crime. It also limits the definition to actions that are actually intended to influence government policy on a civilian population by coercion or intimidation, instead of the current standard that the actions “appear to be intended” to have that effect.

I would conclude by reminding my colleagues on the Committee on the Judiciary that this amendment is drawn from the version of the PATRIOT Act that was unanimously approved by the Committee on the Judiciary in October of 2001, and I urge its passage.

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

Mr. SENSENBRENNER. Mr. Chairman, I ask unanimous consent to claim the time in opposition, even though I am not in opposition to the amendment.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

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

Mr. Chairman, I believe that this is a good amendment and ought to be supported. It makes important changes to the reference in the forfeiture statute to the definition of international terrorism from the definition of domestic terrorism.

There are various definitions of terrorism under Federal law. In title XVIII there has been a confusion over a new definition created in the USA PATRIOT Act for domestic terrorism. That provision is supposed to be used for administrative procedures such as nationwide searches, but another part of the PATRIOT Act, section 806, uses the reference for asset forfeiture, which is more of a penalty. This has raised
The amendment fixes the problem by changing the definition of a Federal crime of terrorism under section 2332b(g)(5)(B) instead, which lists specific crimes that constitute terrorism. Thus the more general definition may still be used for administrative purposes and the more narrow definition for penalties and criminal prosecutions.

I believe that this is a good amendment.

Mr. Chairman, I yield such time as he may consume to the gentleman from Arizona (Mr. Flake).

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

Let me just briefly thank the gentleman from Arizona for his work. In the committee with regard to other bills that we have considered, one having to do with providing a death penalty for terrorism, the issue came up as well. “Domestic terrorism,” is that too broad a term and how should it be applied? If one causes injury to a Federal building by mistake, are they then subject to these fines? And nobody really believes that the death penalty would be imposed in that case; however, the threat of something like that is out there, acts as a form of intimidation to people from engaging in lawful protest. So the overly broad definition does come up as a problem sometimes, and in this case it comes up as a problem when it has to do with seizure of assets.

So I thank the gentleman for bringing this amendment forward. I am glad to join him and I am glad the chairman has articulated so well the need for this amendment.

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

I thank the chairman for his support, and I thank the gentleman from Arizona for helping draft this particular amendment, and I particularly appreciate the example that he enumerated.

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

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

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

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. FLAKE: Add at the end the following:

SEC. 17. LIMITATION ON AUTHORITY TO DELAY NOTICE.

(a) IN GENERAL.—Section 3103a(b)(1) of title 18, United States Code, is amended by inserting “—except if the adverse result consists only of unduly delaying a trial after “7080”. (b) EFFECTS.—Section 3103a of title 18, United States Code, is amended by adding at the end the following:

(7) EXPERTS.—On an annual basis, the Administrative Office of the United States Courts shall report to the Committee on the Judiciary of the House of Representatives and the Senate the number of search warrants granted during the reporting period, and the number of delayed notices authorized during that period, indicating the adverse result that occasioned that delay."

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

Mr. Chairman, I am offering this amendment today with the gentleman from Idaho (Mr. Otter), my fellow chairman of the PATRIOT Act Reform Caucus.

This amendment addresses two important issues regarding delayed notification of the so-called sneak-and-peek searches. The amendment removes the clause that allows judges, when deciding initially to grant a sneak-and-peek search, to allow it for the reason that it would unduly delay a trial to notify the target of the search. This amendment strikes “unduly delaying a trial” because we believe it is too low a standard for a delayed notification search under the adverse impact clause of section 2705 of title XVIII.

This amendment also requires on an annual basis that the Administrative Office of the Courts must report to the House and Senate Judiciary Committees on the number of search warrants granted and the number of delayed notices authorized. The AOC would also be required to indicate the cause of delay in each instance. This important information will help improve Congress’ oversight role on delayed notification for a delayed notification search under the adverse impact clause of section 2705 of title XVIII.

Mr. Chairman, I yield 2 minutes to the gentleman from Wisconsin (Mr. SENSENBRINNER).

Mr. SENSENBRINNER. Mr. Chairman, I support this amendment. I do not think that there should be a delayed notification warrant excuse for unduly delaying a trial, but we have heard an awful lot about delayed notification warrants here. Let me again repeat the fact that delayed notification warrants were not created by the PATRIOT Act when it was passed 3½ years ago. It was existing law to drug trafficking and racketeering investigations, and the PATRIOT Act only expanded it to include terrorism investigations.

Mr. Chairman, I would like to give Members today a very vivid pictorial example on how these warrants work. Using a delayed notification search warrant, the DEA and other Federal agents entered a home along the border between Washington State and Canada on July 2, 2003, because there was information that the first-ever tunnel under the border between Canada and the United States has being used for drug trafficking.

What did they find? They found a very sophisticated tunnel, and took a picture of it. There were various camera devices and listening devices that the agents put into this tunnel, and they ended up finding that the tunnel had been used to transport 93 pounds of marijuana from Canada into the United States.

This is a picture of the U.S. entrance to the tunnel on our side of the border, very close to Canada. It probably is best described as the U.S. exit. But on the Canadian side of the border the entrance to the tunnel was in a building. So the contraband was stored in this building, was put into the tunnel, taken underneath the border and exited in the United States.

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The tunnel, the tunnel that I showed in the first picture was big enough to smuggle terrorists across the border, should it be used for that purpose. All this ended up being exposed as a result of a delayed notification warrant. The amendment is a good one; so are delayed notification warrants.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I ask unanimous consent to claim the time in opposition, although I am not opposed to the amendment.

Mr. HASTINGS of Washington. There was no objection to the request of the gentleman from Texas?

There was no objection.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me first of all continue to remind my colleagues and remind America that juxtaposed along this debate today is an existing Bill of Rights that is embedded in our Constitution. It obviously says there is the right to a fair trial by due process, the right to association, the right to freedom of speech. So as we have been debating through the day, I
appreciate the tone of my colleagues, because on both sides of the aisle we have raised concerns about overreach and over-breadth when it comes to denying or eliminating the rights and freedoms of Americans.

Mr. Chairman, I would have hoped that we would have had the opportunity to debate an amendment on section 213 that would have sunsetted it; not eliminated it, but sunsetted it.

I heard in earlier debates that none of these provisions have been found unconstitutional by Federal courts. Let me remind the chairman that this legislation is barely, barely, 3 years old. In fact, I would argue that it is not sufficient time to know the extensiveness of the over-breadth on this legislation.

Mr. Chairman, I rise to compliment the gentleman from Arizona (Mr. FLAKE) and the gentleman from Idaho (Mr. OTTER) for at least working to find some limitations on a section that allows the FBI to execute a search and seizure warrant, again in violation of one of our prime tenets of the Constitution, the fourth amendment, without notifying the owner for 6 months, if providing advance notice would interfere with the investigation. How broad can that be, to suggest if it is not providing advance notice would interfer with the investigation, they would have the opportunity to debate this further and recognize that this body has gone on record, particularly by its work in CJS funding, where we were not to fund section 213. I hope my colleagues will support this amendment, but recognize the dilemma we are in.

Mr. FLAKE, Mr. Chairman, I yield 2 1/2 minutes to the gentleman from Idaho (late). (Mr. OTTER asked and was given permission to revise and extend his remarks.)

Mr. OTTER, Mr. Chairman, in my rush to get over here, I had not realized that the chairman had already accepted this amendment, and I thank the chairman for that. But there are a couple of thoughts that I would like to add to the discussion that have already been provided.

Mr. Chairman, I thank my colleague, the gentleman from Arizona (Mr. FLAKE), who is cochair of the PATRIOT Act Caucus with myself. I know the gentleman from Arizona (Mr. FLAKE) and the chairman worked very hard in committee to make sure that they came out with a product that would at least not be as bad as it was when we first passed it in 2001. I thank the gentleman from Arizona (Mr. FLAKE) and also the gentleman from Wisconsin (Chairman SENSENBRENNER).

Mr. Chairman, I rise in support of this amendment, and I appreciate the opportunity to discuss this issue today as we engage in one of the most important debates that we will have during the 109th Congress—that is, how to ensure that neither our national security nor the individual liberties guaranteed by our Constitution are sacrificed to the threat of terrorism.

The amendment we are offering today narrows the scope of so-called “sneak-and-peek” searches and permits the executive to delay the execution of search warrants, in which notification of the execution of a search warrant may be delayed. I understand that these are extreme situations which may call for extraordinary tools. However, the last provision of this list is so vague, so broad, and so all-emcompassing that it essentially expands the use of this tool to any investigation in which it would be easier for law enforcement to deny suspects the Constitutional right of notification.

Our amendment today takes one of the first steps toward rectifying this serious flaw in the original PATRIOT Act language by eliminating provisions that allow so-called “catch-all” searches. In addition, it includes reporting language so that we in Congress know when delayed notification is requested and in what circumstances it is used. Armed with this knowledge, we will be better able to conduct proper oversight to ensure that this tool is used to protect personal freedoms while it advances the cause of preventing and prosecuting terrorism.

In the Fourth Amendment, the Framers endorsed the principle that it is the government’s role to protect our right to individual privacy, not to encroach upon it. This idea of individual rights—that each person is created uniquely and with certain inalienable rights that government cannot take away—is the most basic expression of who we are as a nation and a people.

That is why it is so vital that this amendment becomes law. While I confess that I am less inclined to see stronger language protecting our Fourth Amendment rights included as part of this bill, I am pleased that with this amendment we have the opportunity to reinstate some of the constitutional safeguards that were compromised during passage of the PATRIOT Act.

Such a move would strengthen rather than weaken our ability to fight against those who wish to destroy the essence of what it means to be an American.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, I appreciate the gentlewoman’s courtesy in permitting me to speak on this amendment. I am pleased with the efforts that are under way here on the floor to help try to deal with the shape of the PATRIOT Act. This is a critical discussion.

We have been fighting the war on terror longer than we fought World War II, and it appears to be that this is going to be in the landscape for as far into the future as we can see. This amendment helps get a handle on the sneak-and-peak provisions. Section 213, which authorizes the sneak-
and-peak investigation, is not restricted to terrorists or terrorism offenses. It may be used in connection with any Federal crime, including misdemeanors. The PATRIOT Act did not establish oversight standards for these investigations.

The public has a right to know how these activities are being undertaken. We saw one of these searches in Oregon go sideways and devastate the life of a local attorney. Brandon Mayfield was jailed for 2 weeks as his name was leaked to the media falsely linking him to the Madrid bombing. Now this man is suing the FBI; but he will never, never be able to clear his name. I appreciate what my friends, the gentleman from Arizona (Mr. FLAKE) and the gentleman from Idaho (Mr. OTTER), have attempted to do here, narrowing the application and providing more information to Congress. This is critical. I would hope we would be able to push the limits a little further. I am very apprehensive about this, but we are involved with a process that is very important for Congress.

As I mentioned, this is what we see for as long as the eye can view. In 2001, just days after 9/11, we rushed through a bill that simply cast aside the important by-products that were developed by the Committee on the Judiciary on a bipartisan basis. I am hopeful that this is going to give us a chance to work together to deal with the important privacy provisions.

Nobody wants America at risk; but it is important that we narrow provisions, wherever possible, that we have appropriate sunset provisions and that we are monitoring carefully. It is critical both for the civil liberties of Americans and for developing the right tools to fight terrorism.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield 1½ minutes to the gentleman from Michigan (Mr. CONYERS). The distinguished ranking member of the Committee on the Judiciary, and thank him for his constant moral compass on civil liberties and civil rights for the American people.

Mr. CONYERS. I thank my colleague from Texas for yielding me time.

Mr. Chairman, I would like to just point out that this is another one of the famous half-loaf amendments that we are being peppered with this afternoon.

The amendment leaves “interferes with an investigation” open, but it does take away “when it would delay a trial.” We get half a loaf here again, so I cannot oppose the amendment, because it did make some improvement. After all, what is progress, even if it may be slow?

But at the same time, this may be a nonterrorist provision within the PATRIOT Act, because we already have a provision for secret searches for terrorists. So letting this section expire altogether would not interfere with secret searches for terrorists at all.

What we found out in our examination, the staff examination, is that 90 percent of the uses of the sneak-and-peak authority have been for nonterrorism cases. It seems to me that this amendment goes along in that same direction.

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

Ms. JACKSON-LEE of Texas. Mr. Chairman, it is my great pleasure to yield 1½ minutes to the gentleman from Rhode Island (Mr. LANGEVIN), a former attorney general of the great State of Rhode Island.

Mr. LANGEVIN. Mr. Chairman, I thank the gentlewoman for yielding me this time.

I rise in support of the Flake-Otter sneak-and-peak amendment to drop this provision. Keeping America safe is not a partisan issue; but, unfortunately, several provisions of H.R. 3199 are.

Now, we could have had a bipartisan solution that extends the provisions that are effective and modifies those that need changes. This amendment addresses one of those changes by preventing the use of sneak-and-peak searches when the sole purpose of the delayed notification is to postpone a trial. The current provision is too broad, and this amendment would limit these searches to terrorism cases.

Now, I recognize the need for our laws to keep pace with the changing technology and a changing world, and I am committed to ensuring that our law enforcement has the tools they need to keep our Nation safe. However, providing these tools need not come at the expense of the liberties and freedoms that we hold so dear. If we cede these, we have already given up the very values the terrorists are trying to destroy.

I look forward to working with my colleagues to make many changes to H.R. 3199 to fight terrorism and to protect our freedoms. I urge the Senate to pass the PATRIOT Act, because we already have a provision for secret searches for terrorists.

We have also had many other amendments in committee, and here on the floor, that could be considered half a loaf. With that, I think we got a pretty good product in the end, and that is what we are seeking to have here.

I would urge support of the amendment.

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

The Acting CHAIRMAN (Mr. HASTINGS of Washington). The question is on the amendment offered by the gentleman from Arizona (Mr. FLAKE).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. FLAKE. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Arizona (Mr. FLAKE) will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WISE.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in part B of House Report 109-178 on which further proceedings were postponed, in the following order: amendment No. 2 offered by Mr. FLAKE of Arizona; amendment No. 3 offered by Mr. ISSA of California; amendment No. 4 offered by Mrs. CAPITTO of West Virginia; amendment No. 5 offered by Mr. FLAKE of Arizona; amendment No. 7 offered by Mr. HASTINGS of Massachusetts; amendment No. 8 offered by Mr. FLAKE of Arizona.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 2 OFFERED BY MR. FLAKE OF ARIZONA

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Arizona (Mr. FLAKE) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORD VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—aye 402, no 26, not voting 5, as follows:

[Roll No. 403]  
Abercrombie  Akaka  Andrews  Aderholt
Ackerman  Alexander  Baca  Allen  Baird
The vote was taken by electronic device, and there were—ayes 406, noes 21, not voting 6, as follows:

[Roll No. 404]

AYES—406

Mr. BUYER, Mrs. BONO, Messrs. HOEKSTRA, ROGERS of Michigan, LEWIS of California, COLE, CALVET, WALSH, SESSIONS, Mrs. MYRICK, Messrs. PRICE of Georgia, BUCHAS, OXLEY and THOMAS changed their vote from "aye" to "no." So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Mr. MILLER of Florida. Mr. Chairman, on rollcall No. 403, I was unavoidably detained. Had I been present, I would have voted "aye."

AMENDMENT

The Acting Chairman. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. ISSA) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

RECORDED VOTE

The Acting Chairman. A recorded vote has been ordered.

A recorded vote was ordered. The Acting Chairman. This will be a 5-minute vote.
The vote was taken by electronic device, and there were—ayes 362, noes 66, not voting 5, and as follows:

[Roll No. 405]

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The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.
The Clerk will redesignate the amendment, and the Acting Chairman will announce the vote on the amendment offered by Mr. Delahunt.

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (duly performing the duties of the Speaker in the absence of the Speaker pro tempore of the House) announced the results of the vote as set forth in the preceding announcement by the Acting Chairman.

[Vote of 1736]

So the amendment was agreed to. The result of the vote was announced as above recorded.

AMENDMENT NO. 7 OFFERED BY MR. DELAHUNT

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Massachusetts (Mr. Delahunt) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redescribe the amendment. The Clerk will redescribe the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded. A recorded vote was ordered.

The vote was taken by electronic device, and there were—aye 418, noes 7, not voting 8, as follows:

[List of Members Voting Aye, No, Not Voting, and Voting Absent]
The Acting CHAIRMAN (Mr. HASTINGS of Washington) (during the vote). Members are advised 2 minutes remaining in this vote.

The result of the vote was announced as above recorded.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PUTNAM) having assumed the chair, Mr. HASTINGS of Washington, Acting Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3189) to extend and modify authorities needed to combat terrorism, and for other purposes, had come to no resolution thereon.

SURFACE TRANSPORTATION EXTENSION ACT OF 2005, PART IV

Mr. YOUNG of Alaska. Mr. Speaker, I ask unanimous consent that the Committee on Transportation and Infrastructure, Ways and Means, Science,