

the Iraq Survey Group, said in testimony before Congress that Saddam Hussein had plans to reconstitute his weapons of mass destruction, waiting for the sanctions to erode. In June 4, Mr. Duelfer told me that threat analysis while I visited him in Baghdad. This comes after former weapons inspector David Kay said earlier this year that Saddam was more of a serious threat than we thought.

As President Bush said yesterday, Saddam Hussein retained the knowledge, the materials, the means and intent to produce weapons of mass destruction; and he could have passed that knowledge on to our terrorist enemies. After September 11, we learned we could no longer wait until threats became imminent. If we had waited to liberate Iraq, sanctions may have been lifted, and by that time he may have acquired the weapons that he so desperately wanted. Removing Saddam's brutal, terror-sponsoring regime was the right thing to do at the right time.

Mr. Speaker, we need a courageous President that will continue to protect American families by stopping the enemies at the source in the war on terrorism to reduce the threat of warfare in American neighborhoods.

In conclusion, may God bless our troops. We will never forget September 11.

#### CHANGE IS COMING

(Mr. McDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McDERMOTT. Mr. Speaker, I want to introduce Members to four young men: Justin Sane, Chris #2, Chris Head, and Pat-Thetic. They are a major punk band called Anti-Flag. Do not let this stage name fool you. These kids care about their country. For over a month, they have been touring America and singing to get kids involved in this election.

Yes, they have mohawks and rings, but in the 1960s, we were considered radical because of long hair and beads, and we changed this country. And these kids will, too.

They are straight-edge punk; no drugs, no alcohol, just kids from Pittsburgh with interesting-colored hairdos and a great message for young people, register and vote or be told what to do and where to go and fight by an administration that will not talk straight to the American people.

To their parents I say, be proud; they are smart kids. I ought to know. I am a child psychiatrist. Do not worry about the hair. It will change.

To the country, all I can say is kids are listening and change is coming because voting is going to be the in thing in 2004. Mr. Bush, your days are numbered.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Members should address their remarks to the Chair and not to the President.

#### 9/11 RECOMMENDATIONS IMPLEMENTATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 827 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 10.

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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 further consideration of the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, with Mr. KOLBE (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on the legislative day of Thursday, October 7, 2004, amendment No. 3 printed in House Report 108-571 by the gentleman from Indiana (Mr. SOUDER) had been disposed of.

It is now in order to consider amendment No. 4 printed in House Report 108-751.

#### AMENDMENT NO. 4 OFFERED BY MR. KIRK

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

#### Amendment No. 4 offered by Mr. KIRK:

Page 60, after line 9, insert the following new section:

#### SEC. 1018. REPORT ON INTEGRATION OF DRUG ENFORCEMENT AGENCY INTO THE INTELLIGENCE COMMUNITY.

(a) REPORT.—Not later than 120 days after the date of enactment of this Act, the President shall submit to the appropriate congressional committees a report on the practicality of integrating the Drug Enforcement Administration into the intelligence community.

(b) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "appropriate congressional committees" means—

(1) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate; and

(2) the Committees on the Judiciary of the House of Representatives and the Senate.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Illinois (Mr. KIRK) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Illinois (Mr. KIRK).

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

Mr. Chairman, this amendment corrects a critical problem with our intelligence community and adds a needed bipartisan recommendation to the reforms we have in the underlying legislation. We have known for quite some time that the sale of illicit narcotics and terrorism go hand in hand. This link is now firm and is clear with regard to the terrorist activities and terrorist groups in Colombia. It is also clear in Peru, but this phenomenon has spread far beyond Latin America and is evident in Pakistan and Afghanistan.

Earlier this year, I traveled to Pakistan and Afghanistan, the key frontier border area of such concern to the United States, and there I learned a new fact, that Osama bin Laden's connection to his family fortune has been reduced. His connection to donations to the United States and Europe has been reduced, but he has a new source of income. Osama bin Laden is now becoming one of the world's largest dealers in heroin. Through just one of his supply organizations, bin Laden's lieutenants are earning at least \$28 million from the sale of narcotics through Pakistan.

Let us remind ourselves of the conclusion of the 9/11 Commission, that the attacks against the World Trade Centers, Shanksville, and the Pentagon cost al Qaeda only \$500,000. With an annual income of \$28 million coming from the sale of illegal narcotics, we know that one of the key terrorist financing mechanisms is the sale of illegal narcotics.

In the 9/11 Commission report, they briefly mentioned this but did not focus on it. When you are on the front lines in Kandahar or Peshawar in Pakistan, you see that this link is clear.

Our Drug Enforcement Agency has some of the best financial maps of terrorist organizations in the world, and the Drug Enforcement Agency used to be a formal member of the intelligence community. In my judgment and the judgment of my bipartisan partner, the gentleman from Washington (Mr. LARSEN), on this amendment, we believe that the Drug Enforcement Agency should become part of the intelligence community again, that this link between terrorism and illegal narcotics is very clear.

Roughly half of the 28 terrorist organizations identified by the State Department in October, 2001, have links to drug activities. Organizations like the Kurdistan Worker's Party, the National Liberation Army, ELN, al Qaeda, the Revolutionary Armed Forces of Colombia, Shining Path, and the United Self-Defense Forces/Group of Colombia. All of these in a worldwide phenomenon, depending on violence and terror, funded by the sale of illegal narcotics.

This bipartisan amendment would help study the integration of the U.S. Drug Enforcement Agency into the intelligence community. It is supported by Karen Tandy, the administrator of the DEA. It is supported by a number

of minority members. It is supported by the attorney general. I urge adoption of this amendment.

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

Mr. REYES. Mr. Chairman, I ask unanimous consent to claim the time in opposition to the amendment, although I rise in support of the amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

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

Mr. Chairman, I rise today in support of the Kirk amendment to H.R. 10. This amendment requires the President to submit to Congress a report detailing the best way to incorporate the Drug Enforcement Administration into the intelligence community.

The El Paso Intelligence Center, or EPIC, is an asset of the Drug Enforcement Agency. It is located in El Paso, Texas. It is the Nation's singular, multi-agency, tactical intelligence center for drug, alien, and weapons trafficking intelligence. Supporting Federal, State, and local law enforcement officers, EPIC also provides information regarding homeland security, homeland defense and counterterrorism to its member agencies. During my 26½ year tenure with the United States Border Patrol, I was able to utilize the services of EPIC, leading to a personal appreciation of the important role that the El Paso Intelligence Center plays in homeland security defense.

Currently, EPIC accomplishes its mission by processing requests for information received from Federal, State and local law enforcement personnel on persons, modes of transportation, organizations or addresses that are suspected of being engaged or associated with some type of criminal activity. Officers have 24 hours a day, 7 days a week access to the information in its database. It gives them the ability to query and provide simultaneous access to a number of other Federal databases. The El Paso Intelligence Center provides analysis of drug movement events, trends and patterns. They also do research on criminal investigations and communication intercept exploitation in support of its many different customers.

It is well known that there is a link in my opinion between illegal narcotics and the funding that it creates for terrorism. The El Paso Intelligence Center understands this link and is known around the world for its ability to connect the dots between actions and players.

The DEA plays an important role in this Nation's war on terrorism and war on drugs, and should be more fully integrated with our intelligence community. For those reasons, I urge my colleagues to support the Kirk amendment.

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

Mr. KIRK. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. HOEKSTRA), the chairman of the Permanent Select Committee on Intelligence.

Mr. HOEKSTRA. Mr. Chairman, I thank the gentleman for yielding me this time and thank the gentleman for his amendment.

Mr. Chairman, I support this amendment and appreciate the efforts of the gentleman from Illinois on this issue. The intelligence community looks forward to an opportunity to review this issue further.

The DEA has substantial capabilities around the world that should be fully utilized in an appropriate fashion. The report that is provided for in this amendment will assist Congress in its consideration of the role of the Drug Enforcement Administration and the intelligence community along with the other important responsibilities that the DEA undertakes on a daily basis. I look forward to seeing the report and look forward to the passage of this amendment.

Mr. REYES. Mr. Chairman, I yield 2 minutes to the gentleman from Washington (Mr. LARSEN).

Mr. LARSEN of Washington. Mr. Chairman, I rise in support of this amendment along with my colleague, the gentleman from Illinois (Mr. KIRK).

We need to consider making the DEA part of our intelligence network. Before our own eyes, Afghanistan is re-emerging as the international leader in the heroin trade. As this problem grows, the less control our Nation will have over the funding sources of international terrorism. A direct relationship exists between terrorism and the drug trade. Therefore, a direct relationship is needed between the DEA and our intelligence agencies. The DEA not only combats the drug trade around the world but can gather valuable information that can transcend drug trafficking and reach into the shadowy corners of international terrorism.

According to the State Department, 12 of the 28 terrorist organizations listed in the Department of State October, 2001, Report on Foreign Terrorist Organizations have links to foreign drug trafficking. One fitting example of this relationship happened in 2003 when a seizure of hashish from a trafficking group included suspected al Qaeda members and involved drugs worth nearly \$30 million at wholesale.

The drug trade not only has a role in funding terrorists but also plays a significant destabilizing role in Afghanistan. Just yesterday, drug smugglers were implicated in a terrorist attack on Hamid Karzai's vice presidential candidate. Free elections in Afghanistan are a threat to the drug trade, just as free elections in Afghanistan are a threat to global terrorism.

According to our Office of National Drug Control Policy, the challenging security situation in Afghanistan has complicated the task of fighting the

war against drugs and vice versa. As the terrorists lose ground, the opium poppy growers win, and much of the money from Afghanistan's opium sales goes right back to the terrorists.

Drug traffickers and terror networks work out of the same rule book. They both strive to undermine democratic institutions and engage in widespread violence and corruption. Both groups also depend on money laundering, forgery and arms deals to implement their deadly goals.

We cannot separate international terrorism from the drug trade. They are intertwined. This amendment will examine the ways DEA can maintain its current role while sharing information to help further protect our Nation. I believe this amendment is in the spirit of the 9/11 Commission recommendations and will help create and consolidate the whole intelligence picture that a president needs to defend our Nation. I urge its support.

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

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

In closing, I thank the gentleman from Texas (Mr. REYES) and the gentleman from Washington (Mr. LARSEN) for supporting this amendment. The gentleman from Texas is exactly right. El Paso Intelligence Center already does this. It is a critical asset but should be a formal part of the intelligence community, as are combatant commands that do a number of key tasks with regard to drug profits and terrorism.

We know that half of the Afghan economy is now related to the sale of illicit narcotics. We know that the Taliban and al Qaeda depend on terrorist profits. We started winning the battle against narcoterrorism in Colombia because we took a unified campaign on this approach against terrorism and the sale of illegal narcotics.

The DEA is the expert on these financial organizations. If the 9/11 Commission said anything, it said we should attack the financial support for terrorism and that financial support is increasingly reliant on the sale of illegal narcotics, especially for Osama bin Laden becoming one of the number one heroin dealers in Central Asia. For these reasons, I urge adoption of the amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Illinois (Mr. KIRK).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

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

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Illinois (Mr. KIRK) will be postponed.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 5 printed in House Report 108-751.

AMENDMENT NO. 5 OFFERED BY MR. SESSIONS

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. SESSIONS:

At the end of title II of the bill (page 235, after line 21), insert the following new subtitle:

**Subtitle J—Prevention of Terrorist Access to Destructive Weapons Act of 2004**

**SECTION 2211. SHORT TITLE.**

This subtitle may be cited as the “Prevention of Terrorist Access to Destructive Weapons Act of 2004”.

**SEC. 2212. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds the following:

(1) The criminal use of man-portable air defense systems (MANPADS) presents a serious threat to civil aviation worldwide, especially in the hands of terrorists or foreign states that harbor them.

(2) Atomic weapons or weapons designed to release radiation (“dirty bombs”) could be used by terrorists to inflict enormous loss of life and damage to property and the environment.

(3) Variola virus is the causative agent of smallpox, an extremely serious, contagious, and sometimes fatal disease. Variola virus is classified as a Category A agent by the Centers for Disease Control and Prevention, meaning that it is believed to pose the greatest potential threat for adverse public health impact and has a moderate to high potential for large-scale dissemination. The last case of smallpox in the United States was in 1949. The last naturally occurring case in the world was in Somalia in 1977. Although smallpox has been officially eradicated after a successful worldwide vaccination program, there remain two official repositories of the variola virus for research purposes. Because it is so dangerous, the variola virus may appeal to terrorists.

(4) The use, or even the threatened use, of MANPADS, atomic or radiological weapons, or the variola virus, against the United States, its allies, or its people, poses a grave risk to the security, foreign policy, economy, and environment of the United States. Accordingly, the United States has a compelling national security interest in preventing unlawful activities that lead to the proliferation or spread of such items, including their unauthorized production, construction, acquisition, transfer, possession, import, or export. All of these activities markedly increase the chances that such items will be obtained by terrorist organizations or rogue states, which could use them to attack the United States, its allies, or United States nationals or corporations.

(5) There is no legitimate reason for a private individual or company, absent explicit government authorization, to produce, construct, otherwise acquire, transfer, receive, possess, import, export, or use MANPADS, atomic or radiological weapons, or the variola virus.

(b) PURPOSE.—The purpose of this subtitle is to combat the potential use of weapons that have the ability to cause widespread harm to United States persons and the United States economy (and that have no legitimate private use) and to threaten or harm the national security or foreign relations of the United States.

**SEC. 2213. MISSILE SYSTEMS DESIGNED TO DESTROY AIRCRAFT.**

Chapter 113B of title 18, United States Code, is amended by adding after section 2332f the following:

**“§ 2332g. Missile systems designed to destroy aircraft**

“(a) UNLAWFUL CONDUCT.—

“(1) IN GENERAL.—Except as provided in paragraph (3), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

“(A) an explosive or incendiary rocket or missile that is guided by any system designed to enable the rocket or missile to—

“(i) seek or proceed toward energy radiated or reflected from an aircraft or toward an image locating an aircraft; or

“(ii) otherwise direct or guide the rocket or missile to an aircraft;

“(B) any device designed or intended to launch or guide a rocket or missile described in subparagraph (A); or

“(C) any part or combination of parts designed or redesigned for use in assembling or fabricating a rocket, missile, or device described in subparagraph (A) or (B).

“(2) NONWEAPON.—Paragraph (1)(A) does not apply to any device that is neither designed nor redesigned for use as a weapon.

“(3) EXCLUDED CONDUCT.—This subsection does not apply with respect to—

“(A) conduct by or under the authority of the United States or any department or agency thereof or of a State or any department or agency thereof; or

“(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof or with a State or any department or agency thereof.

“(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

“(1) the offense occurs in or affects interstate or foreign commerce;

“(2) the offense occurs outside of the United States and is committed by a national of the United States;

“(3) the offense is committed against a national of the United States while the national is outside the United States;

“(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

“(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

“(c) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than \$2,000,000 and shall be sentenced to a term of imprisonment not less than 30 years or to imprisonment for life.

“(2) LIFE IMPRISONMENT.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than \$2,000,000 and imprisoned for life.

“(3) DEATH PENALTY.—If the death of another results from a person’s violation of subsection (a), the person shall be fined not more than \$2,000,000 and punished by death or imprisoned for life.

“(d) DEFINITION.—As used in this section, the term ‘aircraft’ has the definition set forth in section 40102(a)(6) of title 49, United States Code.”

**SEC. 2214. ATOMIC WEAPONS.**

(a) PROHIBITIONS.—Section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) is amended by—

(1) inserting at the beginning “a.” before “It”;

(2) inserting “knowingly” after “for any person to”;

(3) striking “or” before “export”;

(4) striking “transfer or receive in interstate or foreign commerce,” before “manufacture”;

(5) inserting “receive,” after “acquire,”;

(6) inserting “, or use, or possess and threaten to use,” before “any atomic weapon”;

(7) inserting at the end the following:

“b. Conduct prohibited by subsection a. is within the jurisdiction of the United States if—

“(1) the offense occurs in or affects interstate or foreign commerce; the offense occurs outside of the United States and is committed by a national of the United States;

“(2) the offense is committed against a national of the United States while the national is outside the United States;

“(3) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

“(4) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.”

(b) VIOLATIONS.—Section 222 of the Atomic Energy Act of 1954 (42 U.S.C. 2272) is amended by—

(1) inserting at the beginning “a.” before “Whoever”;

(2) striking “, 92.”; and

(3) inserting at the end the following:

“b. Any person who violates, or attempts or conspires to violate, section 92 shall be fined not more than \$2,000,000 and sentenced to a term of imprisonment not less than 30 years or to imprisonment for life. Any person who, in the course of a violation of section 92, uses, attempts or conspires to use, or possesses and threatens to use, any atomic weapon shall be fined not more than \$2,000,000 and imprisoned for life. If the death of another results from a person’s violation of section 92, the person shall be fined not more than \$2,000,000 and punished by death or imprisoned for life.”

**SEC. 2215. RADIOLOGICAL DISPERSAL DEVICES.**

Chapter 113B of title 18, United States Code, is amended by adding after section 2332g the following:

**“§ 2332h. Radiological dispersal devices**

“(a) UNLAWFUL CONDUCT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

“(A) any weapon that is designed or intended to release radiation or radioactivity at a level dangerous to human life; or

“(B) or any device or other object that is capable of and designed or intended to endanger human life through the release of radiation or radioactivity.

“(2) EXCEPTION.—This subsection does not apply with respect to—

“(A) conduct by or under the authority of the United States or any department or agency thereof; or

“(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof.

“(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

“(1) the offense occurs in or affects interstate or foreign commerce;

“(2) the offense occurs outside of the United States and is committed by a national of the United States;

“(3) the offense is committed against a national of the United States while the national is outside the United States;

“(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

“(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

“(c) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than \$2,000,000 and shall be sentenced to a term of imprisonment not less than 30 years or to imprisonment for life.

“(2) LIFE IMPRISONMENT.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than \$2,000,000 and imprisoned for life.

“(3) DEATH PENALTY.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than \$2,000,000 and punished by death or imprisoned for life.”

#### SEC. 2216. VARIOLA VIRUS.

Chapter 10 of title 18, United States Code, is amended by inserting after section 175b the following:

##### “§ 175c. Variola virus

“(a) UNLAWFUL CONDUCT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, engineer, synthesize, acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use, variola virus.

“(2) EXCEPTION.—This subsection does not apply to conduct by, or under the authority of, the Secretary of Health and Human Services.

“(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

“(1) the offense occurs in or affects interstate or foreign commerce;

“(2) the offense occurs outside of the United States and is committed by a national of the United States;

“(3) the offense is committed against a national of the United States while the national is outside the United States;

“(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

“(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

“(c) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than \$2,000,000 and shall be sentenced to a term of imprisonment not less than 30 years or to imprisonment for life.

“(2) LIFE IMPRISONMENT.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than \$2,000,000 and imprisoned for life.

“(3) DEATH PENALTY.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than \$2,000,000 and punished by death or imprisoned for life.

“(d) DEFINITION.—As used in this section, the term ‘variola virus’ means a virus that can cause human smallpox or any derivative of the variola major virus that contains more than 85 percent of the gene sequence of the variola major virus or the variola minor virus.”

#### SEC. 2217. INTERCEPTION OF COMMUNICATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (a), by inserting “2122 and” after “sections”;

(2) in paragraph (c), by inserting “section 175c (relating to variola virus),” after “section 175 (relating to biological weapons),”; and

(3) in paragraph (q), by inserting “2332g, 2332h,” after “2332f.”

#### SEC. 2218. AMENDMENTS TO SECTION 2332b(g)(5)(B) OF TITLE 18, UNITED STATES CODE.

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

(1) in clause (i)—

(A) by inserting before “2339 (relating to harboring terrorists)” the following: “2332g (relating to missile systems designed to destroy aircraft), 2332h (relating to radiological dispersal devices),”; and

(B) by inserting “175c (relating to variola virus),” after “175 or 175b (relating to biological weapons),”; and

(2) in clause (ii)—

(A) by striking “section” and inserting “sections 92 (relating to prohibitions governing atomic weapons) or”; and

(B) by inserting “2122 or” before “2284”.

#### SEC. 2219. AMENDMENTS TO SECTION 1956(c)(7)(D) OF TITLE 18, UNITED STATES CODE.

Section 1956(c)(7)(D), title 18, United States Code, is amended—

(1) by inserting after “section 152 (relating to concealment of assets; false oaths and claims; bribery),” the following: “section 175c (relating to the variola virus),”; and

(2) by inserting after “section 2332(b) (relating to international terrorist acts transcending national boundaries),” the following: “section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices),”; and

(3) striking “or” after “any felony violation of the Foreign Agents Registration Act of 1938,” and after “any felony violation of the Foreign Corrupt Practices Act”, striking “,” and inserting “, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)”.

#### SEC. 2220. EXPORT LICENSING PROCESS.

Section 38(g)(1)(A) of the Arms Export Control Act (22 U.S.C. 2778) is amended—

(1) by striking “or” before “(xi)”; and

(2) by inserting after clause (xi) the following: “or (xii) section 3, 4, 5, and 6 of the Prevention of Terrorist Access to Destructive Weapons Act of 2004, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal devices (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175b);”.

#### SEC. 2221. CLERICAL AMENDMENTS.

(a) CHAPTER 113B.—The table of sections for chapter 113B of title 18, United States Code, is amended by inserting the following after the item for section 2332f:

“2332g. Missile systems designed to destroy aircraft.

“2332h. Radiological dispersal devices.”.

(b) CHAPTER 10.—The table of sections for chapter 10 of title 18, United States Code, is amended by inserting the following item after the item for section 175b:

“175c. Variola virus.”.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Texas (Mr. SESSIONS) and the gentleman from Virginia (Mr. SCOTT) each will control 5 minutes.

The Chair recognizes the gentleman from Texas (Mr. SESSIONS).

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

Today, I rise to offer my legislation, Prevention of Terrorist Access to Destructive Weapons Act, an amendment to H.R. 10. This amendment will aid the hard-working Federal investigators and agents on the front line in the war on terror by establishing a zero tolerance policy towards the illegal importation, possession or transfer of shoulder-fired missiles, atomic weapons, dirty bombs, and the smallpox virus.

□ 0930

Mr. SESSIONS. Today, maximum penalties of only 10 years in prison apply to the unlawful possession of shoulder-fired missiles. The same weak penalty also currently applies to the unlawful possession of an atomic weapon. Today, there is no law criminalizing the possession of dirty bombs with criminal intent, and the unregistered possession of the smallpox virus carries a maximum penalties of only 5 years in prison.

Given the terrorist threats that we currently face in the United States, weak punishments for the possession or use of these weapons is simply unacceptable in light of the fact that we know that 26 terror groups already have shoulder-fired missiles in their possession.

My amendment imposes stringent, mandatory minimum criminal penalties for these heinous crimes similar to the laws that we already use to prosecute drug kingpins. Specifically, for each of the weapons covered by the bill, unlawful possession would result in mandatory imprisonment for up to 30 years to life. Using, attempting, or conspiring to use, or possessing and threatening to use these weapons would result in mandatory life in prison. And if one death were to result from the unlawful possession of one of these weapons, this amendment would allow the death penalty to be applied to anyone who targets America in a terrorist attack.

Although tougher penalties may not deter homicidal terrorists determined to attack the United States, they will help to deter those middlemen who are

essential to the transfer of such weapons. Many of these middlemen aid terrorists purely for financial gain, and significantly tougher mandatory penalties would dramatically alter their cost-benefit calculations.

When the middleman is caught importing or hiding these weapons, the existence of tough penalties will also assist prosecutors and investigators in obtaining cooperation and moving swiftly to identify terrorists. Long mandatory sentences, including life without parole, provide a fast and powerful incentive to cooperate, as has already been proven in cracking the code of silence for organized crime. In the case of these dangerous weapons, the speed with which persons choose to cooperate could also save thousands of lives.

These increased penalties are completely justified in light of the catastrophic destruction that could be caused by the use of any of these weapons, and supporting my amendment will send a strong message of America's resolve to win the war on terrorism.

Mr. Chairman, I encourage my colleagues to join me in supporting and giving Federal investigators and prosecutors the tools they have asked for to aid them in their fight against terrorism by supporting this common-sense, effective amendment.

[From the Associated Press, Aug. 5, 2004]

#### TWO ARRESTED IN MISSILE STING OPERATION

WASHINGTON.—Two leaders of a mosque in Albany, New York, were arrested on charges stemming from an alleged plot to help a man they thought was a terrorist who wanted to purchase a shoulder-fired missile, federal authorities said Thursday.

The men have ties to a group called Ansar al-Islam, which has been linked to the al Qaeda terror network, according to two federal law enforcement authorities speaking on condition of anonymity.

The two arrests came as FBI, Immigration and Customs Enforcement and other agents executed search warrants at the Masjid As-Salam mosque and two Albany-area homes, officials said. The men were identified as Yassin Aref, 34, the imam of the mosque, and 49-year-old Mohammed Hoosain, one of the mosque's founders.

According to law enforcement officials, the two are being charged with providing material support to terrorism by participating in a conspiracy to help an individual they believed was a terrorist purchase a shoulder-fired missile.

The individual was an undercover government agent and no missile ever changed hands. Aref and Hoosain were allegedly involved in money-laundering aspects of the plot, the officials said.

The investigation has been going on for a year and is not related to the Bush administration's decision earlier this week to raise the terror alert level for certain financial sector buildings in New York and Washington, the officials said.

In Albany, some mosque members gathered early Thursday outside the institution for morning prayers.

More details about the case were expected to be released later Thursday by the Justice Department.

[From the Los Angeles Times, Mar. 4, 2004]

#### 2 CONVICTED OF SEEKING MISSILES FOR AL

##### QAEDA ALLY

(By Tony Perry)

SAN DIEGO.—A Pakistani national and a naturalized American pleaded guilty Wednesday to a conspiracy to help the al Qaeda terrorist group by selling five tons of hashish and a half-ton of heroin in exchange for money and four Stinger missiles.

Muhammed Abid Afridi, 30, and a naturalized citizen from India, Ilyas Ali, 56, admitted in U.S. District Court here that they planned to sell the missiles to the Taliban, an ally of al Qaeda.

Afridi, Ali and a second Pakistani were arrested in Hong Kong in September 2002 after meeting with undercover FBI agents posing as arms dealers with Stingers to sell. They allegedly offered to sell the agents heroin and hashish in return for missiles and money.

"They both had the will and the means to carry out the transaction they were negotiating," said Assistant U.S. Atty. Michael Skerlos.

Stingers are shoulder-launched missiles distributed widely by the CIA to Afghan rebels fighting the Soviet army in the 1980s. Easy to use and deadly accurate at hitting low-flying aircraft, Stingers were credited with helping the Afghans demoralize and rout the much stronger Soviets.

"Because of the actions taken in this investigation, America is safer and our citizens are more secure," Atty. General John Ashcroft said in a statement.

Initial meetings between Ali and the FBI agents occurred in San Diego, according to court documents. Afridi and Ali are scheduled to be sentenced June 29 by Judge M. James Lorenz; a plea bargain recommends that each be sentenced to up to 10 years in prison.

The case against the second Pakistani, Syed Mustajab Shah, has a court date April 5.

Ali was a grocer in Minneapolis before his arrest.

[From Jane's Intelligence Review, Sept. 2001]

#### THE PROLIFERATION OF MANPADS

(By Thomas B. Hunter)

Man-portable surface-to-air missiles, also known as MANPADs, represent a significant potential threat to military and civilian aircraft.

Following the collapse of the Soviet Union, the proliferation of SA-series MANPADs has increased, and the diffusion of these weapons now exceeds the infamous spread of US-made Stinger missiles from Afghanistan during the 1990s. Today, MANPADs of various types are in the hands of as many as 27 guerrilla and terrorist groups around the world.

Tracking the proliferation of MANPADs is a difficult endeavour. Often, the only verification of use by non-state actors has been post-event in nature—recovery of a used launcher or fragments from expended missiles. The black market is the primary source for these weapons. Unlike state-to-state transfers, usually documented and visible, the illicit black market MANPAD trade defies accurate tracking.

The inability of governments to correctly identify seized weapons also contributes to inaccurate reports. In many cases, soldiers and government officials have identified rocket-propelled grenades (RPGs) and other handheld rocket launchers as MANPADs. Moreover, the word 'Stinger' has become an all-encompassing term for any MANPAD among many civilian, military, and non-state groups, further complicating efforts to verify proliferation activity.

In many cases of surface-to-air attacks on aircraft, misreporting is quite common. Airbursts occurring near low-flying aircraft have frequently been reported as attacks by MANPADs, when in fact they are usually RPGs. Attacks on aircraft at very low altitudes, those occurring under 1,000 feet, are almost exclusively RPGs. Guerrilla and terrorist forces have successfully adapted the RPG to the anti-aircraft role. This skill was demonstrated perhaps most clearly when two US MH-60 Black Hawk helicopters were shot down by Somali gunmen in October 1993.

One popular misconception is that these missiles become unusable after several years due to battery or other systems failures, and are therefore useless after a period of time. While it is true that all MANPAD batteries have a finite shelf life, these can be replaced with commercially purchased batteries available on the open market and technically proficient terrorist groups might also be able to construct hybrid batteries to replace used ones.

Other concerns include deterioration of missile propellants and seeker coolant, and general storage issues. While these concerns merit attention, the commonly held assumption that these weapons have short shelf lives is erroneous. Most missiles are hermetically sealed in launchers designed for rough handling by soldiers in the field. Temperature extremes are also factored into the design of these weapons, reducing the threat of environmental degradation.

Clearly, the shelf life of MANPADs is, in large part, dependent on the conditions in which the weapon is stored. However, under ideal (factory specified) conditions, some versions of these weapons can remain operational for 22 years or more. So while it can be assumed that some weapons have not been stored in ideal conditions, many weapons previously believed to be inoperative, such as the Afghan Stingers, may indeed be operational.

Furthermore, MANPADs remain a popular commodity on the global black arms market. With the exception of the Soviet-Afghan war, these weapons are more widespread today than at any time since their introduction in the late 1960s. Guerrilla and terrorist organisations can obtain them with relative ease, with the primary limitation being money. As some of these groups increase their profits through drug trafficking and other activities, the likelihood of further illicit purchases will also increase.

MANPADs have proliferated to non-state groups throughout sub-Saharan Africa. These weapons can be found in the hands of insurgent groups in Angola, the Democratic Republic of Congo, Ethiopia, Rwanda and Somalia.

Of these states, Angola has seen the greatest activity. The CIA covertly provided FIM-92A Stinger missiles to UNITA rebels in the late 1980s as part of its effort to assist in the overthrow of Angola's pro-communist government. As in Afghanistan, efforts to recover the missiles following the end of hostilities proved futile. Today UNITA retains an unknown number of advanced weapons, which may be augmented with SA-7 (NATO reporting name 'Grail,' Russian name Strela-2) and FIM-43 Redeye missiles captured from government forces.

UNITA has also shown willingness to use them, sometimes against civilian aircraft. UNITA fired missiles at three World Food Programme (WFP) aircraft in June 2001, for example. One plane was struck but managed to land safely at a nearby airport. This attack was of particular concern in that the missile struck the aircraft at an altitude of 15,000 feet—3,500 feet beyond the weapon's published maximum range. While this is not the first report of Stinger missiles reaching

this height, it is clear that aircraft traveling at an altitude believed to be out of the range of these weapons should be aware of this proven capability.

During the Soviet-Afghan War, the CIA working in conjunction with the Pakistani Army's Inter-Services Intelligence (ISI), delivered over 1,000 Stingers to Mujahideen rebels. While the rebels fired many of the missiles against Soviet aircraft, hundreds remained after the fighting ended in 1987. Poor bookkeeping at the CIA, combined with the dispersal of the weapons to numerous clans throughout the country, made accounting for and recovering them impossible. The result was a proliferation of advanced anti-aircraft weaponry throughout the region.

It is well-known that the rebels did not retain all of the Stingers left behind after the war. Many found their way onto the global grey and black arms markets and ended up in guerrilla arsenals from Sri Lanka to Chechnya. With a reported black market price of between US\$80,000 and \$250,000, Stingers represent a significant profit potential due in no small part to widespread demand.

Terrorist leader Osama bin Laden also reportedly possesses a number of MANPADs, including SA-7s and Stingers. As Bin Laden has both the financial resources and black market connections to make procurement possible, these reports are probably accurate. Persistent rumours also indicate that Bin Laden's personal bodyguards may be equipped with Stingers, ostensibly to counter an airborne attack.

Regardless of the veracity of the latter information, it is logical to assume that Bin Laden's Al-Qaeda ('The Base') network is in possession of additional MANPADs. If this is true, then Al-Qaeda represents the most significant threat to international civil aviation. Given Bin Laden's specific threats against U.S. citizens, this threat is especially relevant with regard to U.S.-owned airlines.

While the Russian military is certainly not confronted with the same threat level that it experienced in Afghanistan, the increased proliferation of MANPADs to Chechen rebels has dramatically increased the danger to close air support (CAS) aircraft operating in theatre. A number of aircraft have been shot down, including Su-25 'Frogfoot' and Su-24 'Pencer' fighter-bombers. MANPADs have also shot down a number of military helicopters.

The sources of Chechen MANPADs are varied. However, a large number of systems have been seized by Russian authorities, indicating that the rebels have established an effective pipeline for delivery. For example, three SA-7 missiles were found in the territory of Ingushetia near the Russian-Georgian border in September 2000. Just one month later, an unspecified number of SA-7s were discovered in a building near Severy airport. The following month a Russian military operation resulted in the seizure of four SA-7 missiles with their launchers from a lorry in Dagestan. A rebel spokesman later announced that the weapons were part of a shipment of arms destined for use in Chechnya. The shipment reportedly cost the Chechens \$40,000.

Another report indicated that Bin Laden might have delivered as many as 50 Stinger missiles to the Chechens. The weapons were to have been transported from either Georgia or Azerbaijan and delivered in December 1999. Eight Stinger missiles were reportedly airdropped in the mountains of Sharoykiy District on the night of 12-13 June 2001. The source of these weapons was not reported.

The primary MANPAD threat in the Western Hemisphere is their possible future use by the two main Colombian insurgent

groups, the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia—FARC) and the National Liberation Army (Ejercito de Liberacion Nacional—ELN). Complicating analysis of the Colombia MANPAD situation is a plethora of false or misleading reporting.

Colombian electronic and print press outlets have regularly reported that both the FARC and ELN possess these missile systems. Government officials have also fanned this fire by issuing corroborating statements. These reports, both military and civilian, cumulatively suggest that the FARC currently possesses SA-7, SA-14 'Gremlin', SA-16 'Gimlet' and Redeye missiles. The Redeye missiles were variously reported to have come from Nicaraguan (former Contra) or Syrian arsenals and the SA-series weapons from various sources. There is no definitive evidence, however, to confirm that any Colombian guerrilla group currently possesses MANPADs of any type.

This misreporting is usually a matter of an honest mistake due to lack of familiarity with MANPADs, the Colombian situation may mask an ulterior motive. While the threat to the Colombian government from insurgent and narcotics trafficking groups is quite real, it is well-known that officials from that government have frequently overstated the sophistication of rebel groups in an effort to garner greater financial and political support from the USA. Given this history, it is possible that MANPAD events have occasionally been intentionally overstated.

According to Colombia expert Steven Salisbury, FARC commanders have admitted to possessing MANPADs. 'The FARC commanders who told me the FARC has shoulder-fired SAMs [surface-to-air missiles] were field commanders talking privately to me,' he said. 'They said, yes, they have SAMs.' This information given to Salisbury was corroborated by two FARC block commanders as well as other guerrillas.

Four additional factors must be highlighted. The first of these is that FARC commanders have stated that they do indeed possess MANPADs. The second is that both the FARC and ELN are known to be aggressively seeking these weapons. The third factor is that the guerrillas have received training on these weapons. In one instance, a Colombian government source stated that 25 guerrillas travelled to Nicaragua to attend an anti-aircraft course taught by former Sandanista soldiers. This course reportedly included MANPAD training as well as gunnery techniques involving 0.50-calibre heavy machine guns and the use of RPG-7s in the anti-air role. FARC members may also have travelled to Syria and Libya to receive similar training. Finally, both the FARC and ELN have the financial resources to make such a purchase possible.

With these factors in mind, it appears likely that the FARC will procure at least one type of MANPAD—if it has not done so already. Colombian guerrilla groups have had very little difficulty obtaining weapons for use in their war against the government. Well-established arms transit routes are in place to facilitate these shipments. The arms pipelines through which the FARC and ELN may obtain MANPADs run through the following countries: Albania, Belgium, Ecuador, Jordan, North Korea, Peru, Romania, and Russia. Of specific concern is the Russian relationship, as the FARC and Russian mafias have a well-established arms-for-drugs pipeline in place. The Russian mafias have demonstrated the ability to obtain virtually any type of weapons system. If the Colombian guerrillas are to obtain these weapons, and have not been successful already, they will most likely come from this black market channel.

It must be noted that when the FARC obtains these weapons, it will almost certainly use them only in critical situations, such as the defence of important base camps or headquarters facilities. They will most likely not be used against drug-spraying aircraft or other non-threatening targets due to the high value of MANPADs to the FARC leadership.

If the FARC does indeed maintain a small inventory of these weapons, this is the most likely explanation for why they have not yet been employed. If employed, targets would most likely include Colombian Air Force CAS aircraft or possibly high-value civilian flights such as aircraft transporting senior government officials.

Hizbullah probably took its first delivery of MANPADs in 1982 with the acquisition of a small number of SA-7s. Reporting since that time indicates that these stocks were supplemented with PIM-92A Stingers in the mid-1990s, provided by Islamic Mujahideen rebels in Afghanistan. Most recently, the group may have received a small number of Chinese-made Qianwei ('Advanced Guard')—1 (QW-1) systems. If true, the acquisition of this latter system represents a significant upgrade in the surface-to-air capabilities of Hizbullah.

The Palestinian Authority also maintains a stock of SA-7 missiles and launchers. Reports also indicate that the Palestinians may have a small number of Stinger systems as well. The source of the SA-7 weapons is unclear, but it is possible some were delivered from Egypt aboard fishing boats, a common local method of arms smuggling.

For example, on 8 May 2001, Israeli security services intercepted the Lebanese-flagged vessel *Santorini* off the coast between Haifa and Tel Aviv. A search of the ship revealed a large quantity of arms, including 60 mm mortars, landmines, grenades, and four SA-7 missiles with launchers. The shipment was reportedly sent by the Palestinian Front for the Liberation of Palestine-General Command and intended for use by Palestinian militants. The MANPADs were confiscated by the Israelis and probably added to their own arsenal.

Apart from the Afghan Mujahideen, the Liberation Tigers of Tamil Eelam (LTTE) have enjoyed the greatest success with MANPADs. LTTE guerrillas have fired an estimated 20 missiles at government aircraft since 1996, shooting down three helicopters and probably two fixed-wing transports. These attacks killed a total of 179 personnel.

It is estimated that the LTTE possesses SA-7, SA-1a, and other MANPADs. One Chinese-built Hongying-5 (HN-5A) system was also discovered during government operations; however, there is no indication that the LTTE possesses additional units. It is possible that this weapon was procured from sources within the Burmese military.

In December 2000 Sri Lankan news carried video of a Tamil rebel holding what appeared to be a Stinger missile during an October operation against the Trincomalee naval facility. However, later analysis indicated this weapon was most probably a double-barrelled 107 mm Katyusha rocket, believed to be a variant of the Chinese Type 63 107mm launcher, and not a MANPAD.

The LTTE reportedly acquired these weapons from a variety of sources. Press reports indicated that the Kurdistan's Worker's Party (PKK), working with the Greek 17 November terrorist organisation, sold 11 Stinger missiles to the LTTE in 1994. These weapons were reportedly built in Greece, which is a member of European consortium manufacturing PIM-92A/C Stinger systems under license from the USA. Other Stingers may have been sold or donated to the Tamils by the Afghan Taliban during the 1990s. LTTE

weapons buyers have also been reported in Cambodia and Thailand, reportedly seeking MANPADs. Given the Tamils success with these weapons, it is likely that procurement efforts will continue.

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

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, this did not go through the Committee on the Judiciary and it is somewhat complicated and it appears to be overlapping and re-creates and reauthorizations present law. For example under title XVIII, chapter 10 already criminalizes the use of biological weapons; chapter 11(b) criminalizes chemical weapons; chapter 39 criminalizes nuclear weapons; chapter 4 criminalizes the use of explosives, and on and on.

In addition, many of those, all of those offenses are predicates to 18 U.S.C. (a) 2332(b) which provides for the death penalty if death results from any violation of those statutes.

The only change appears to be a mandatory 30 years for attempts and conspiracies. There is no differentiation for a role in a conspiracy, relative knowledge of the crime, or even if death were an accident that had not been intended. What we have is new mandatory minimums.

We have, in the Committee on the Judiciary, often cited many findings and recommendations from researchers, sentencing professionals, even the judicial branch, justices on the Supreme Court, including the chief justice, citing problems created by mandatory sentences. They have been found to be a waste of money compared to alternatives such as treatment or traditional sentencing. They disrupt the ability of the Sentencing Commission and the courts to apply an orderly, proportional, nondisparate sentencing system. They discriminate against minorities and they transfer an inordinate amount of discretion to prosecutors in an adversarial system.

Mandatory minimum sentences increase disparities in sentencing because they do not allow distinctions between major players and bit players in a crime. In a recent letter to the subcommittee, the U.S. Judicial Conference, headed by the chief justice of the Supreme Court, noted and I quote: In addition to resulting in unwarranted sentencing disparities, mandatory minimums often lead to treatment of dissimilar offenders in a similar manner by requiring courts to impose the same sentence on offenders, when sound policy and common sense call for reasonable differences in punishment to reflect differences in the seriousness of the conduct or danger to society.

In other words, mandatory minimums violate common sense. That is the chief justice and the U.S. Judicial Conference.

Mr. Chairman, this bill, the underlying bill, is a reorganization bill. We should not include controversial criminal penalties, especially when the Judi-

cial Conference headed by the chief justice tells us that these things violate common sense. We also need to study the international implications of this, because when we add in the death penalty, we add in complications of international cooperation. Most countries around the world do not have the death penalty and we have had problems where they would not even extradite criminals to the United States because we have all of these death penalties.

We need to study this, and having a floor amendment is not the appropriate way to legislate. Mr. Chairman, I would hope that we would defeat this amendment.

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

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

Mr. Chairman, the several very important articles in my added materials that I have submitted speak not only to the threat to the United States, but also the reality of the groups who were engaged in the transfer, the trafficking of shoulder-fired missiles, of weapons of mass destruction, in terms of viruses that could be placed in the United States of America.

Mr. Chairman, I respect the gentleman for not liking the minimum mandatory sentences. I would also say that it is up to this body, Mr. Chairman, to make sure that we provide the tools necessary to the Attorney General and other U.S. attorneys who may be prosecuting these cases, to give to the frontline agents and investigators those abilities to find and stop those people who are perpetrators of crime, mass murder against the United States of America.

Most of all, I would remind this body how important it is to make sure that we keep terrorism away from our doorsteps. I believe in effective law enforcement, effective use of the laws of this country, and making sure that we have looked at this from the perspective of the Attorney General of the United States and U.S. attorneys across this country who support this important legislation.

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

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

Mr. Chairman, I would just point out that we already have in the Code serious penalties for all of these crimes. The appropriate way to legislate would be to go through the committee so that we could see exactly how these fit into the present sentencing scheme. I would hope that we defeat the amendment.

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

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

Mr. Chairman, I believe that the Members of this body understand that there is a need to make sure that we protect this country and the laws of this country. We have consulted with

the Attorney General of the United States and other U.S. attorneys who are asking for this. I support this amendment. I believe it will help the President of the United States to ensure the safety of our country.

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

The CHAIRMAN pro tempore (Mr. KOLBE). The question is on the amendment offered by the gentleman from Texas (Mr. SESSIONS).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

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

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Texas (Mr. SESSIONS) will be postponed.

AMENDMENT NO. 6 OFFERED BY Mr. BONILLA

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Mr. BONILLA:

At the appropriate place in the bill, insert the following (and redesignate provisions and amend the table of contents accordingly):

**SECTION \_\_\_\_\_ . INCREASE IN DETENTION BED SPACE.**

Subject to the availability of appropriated funds, the Secretary of Homeland Security shall increase by not less than 2,500, in each of fiscal years 2006 and 2007, the number of beds available for immigration detention and removal operations of the Department of Homeland Security above the number for which funds were allotted for the preceding fiscal year.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Texas (Mr. BONILLA) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas (Mr. BONILLA).

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

First, let me compliment the committees who put this bill together. They have done a great job facing very complicated circumstances. Specifically, they did a very good job about increasing the Border Patrol staff, that we need to deal with the increased flow of illegal immigration along the southwest border, along with other Federal agents that are necessary to do the job.

Unfortunately, there was an oversight in the bill in providing bed space for the people that we catch. Let me point out as well that the overwhelming number of them now are categorized as they are by the Border Patrol as OTMs, "other than Mexicans," people trying to enter our country that have figured out a different way to come in versus the ports of entry on either coast or using other means.

Mr. Chairman, in many cases the OTMs, are now arrested, processed, interrogated and released into communities because the Department of Homeland Security does not have

enough bed space. So, believe it or not, in Texas alone, since January, there have been over 15,000 OTMs released in communities throughout the State in the neighborhood. They might have been introduced into any neighborhood in Texas, no matter where one lives.

Mr. Chairman, this is an outrage. Homeland Security claims the problem is bed space, so in this amendment we deal with that problem, calling for 2,500 additional bed spaces in 2006 and another 2,500 in 2007.

This is an amendment that is supported by the gentleman from California (Mr. Cox), Chairman of Homeland Security. It is also supported by the gentleman from Texas (Mr. ORTIZ), my good friend, who represents an area near the Mexican border and the Gulf Coast in Texas and who has been working very hard on this issue.

Mr. Chairman, this is a nonpartisan issue. We have strong support by other members of the committees working on this. The gentleman from Texas (Mr. SMITH), my good colleague and friend from San Antonio and central Texas area, has been working hard on this issue as well. This is also something that is supported by, again no matter what ethnic group or political party one belongs to, especially on the southwest border. There is strong support by the mayors, the county judges, the county commissioners that are working very hard to deal with this illegal immigration problem every day.

Finally, Mr. Chairman, I would like to just single out the wonderful Border Patrol agents that are patrolling day and night, sometimes working with fewer resources than they should have, and doing a great job of patrolling the border. Help is on the way for them in terms of manpower and hopefully this amendment, when adopted, will provide the bed space as well to house the illegal aliens that are coming across our border and taking advantage of what we now have along the Mexican border.

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

Mr. TURNER of Texas. Mr. Chairman, I ask unanimous consent to claim the time in opposition to the amendment, although I support the amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The gentleman from Texas (Mr. TURNER) is recognized for 5 minutes.

Mr. TURNER of Texas. Mr. Chairman, there is no example any better of the failure of the administration to make America safe than is illustrated by the amendment offered by my colleague from Texas today. What the amendment says is that we need 2,500 more bed spaces so that we can end this deplorable, unacceptable practice of catching illegal immigrants who come across our borders every day from countries other than Mexico and seeing them immediately released into our country, knowing that 80 to 90 per-

cent of them will never show up again for a deportation hearing.

Mr. Chairman, it is a practice that must end, but our administration has allowed this to go on for year after year after year. And it is very unfortunate, even though I appreciate greatly the intent expressed by the gentleman from Texas (Mr. BONILLA), my colleague, it is very unfortunate that all the amendment does is direct the Department of Homeland Security to somewhere in their budget find the money for an additional 2,500 beds so we can end this practice that represents a serious threat to the security of our country.

The truth of the matter is the gentleman from Texas is on the Committee on Appropriations, and when we look at what the Committee on Appropriations did to try to help solve this problem, all they did was what the President asked for. He asked for 117 additional bed spaces, when the President knows that even today we have only appropriated money to hold 1,944 detainees who cross the border illegally every day and we are holding 22,500. We are stretched to the limit now.

As the gentleman from Texas (Mr. BONILLA) points out, we need at least 2,500 more and probably 5,000 more beds, which is provided for in his amendment but not funded.

Nowhere is the gap between the rhetoric of the administration on protecting America and the reality of the failure to protect America any clearer than it is right here.

The Democrats on the House Committee on Homeland Security did a 6-month investigation of the problems of our border. We produced a report entitled *Transforming the Southern Border*. It pointed out a lot of interesting facts, one of which is the one we are discussing. As our staff traveled along the Rio Grande south of El Paso, we took this picture. What it shows is a cargo van backed up to a school bus just across the border inside the United States, along with an 18-wheeler, another cargo van, and another school bus.

As the staff flew over, nobody was to be seen who would be a part of our Border Patrol. So they called into the Border Patrol to tell them about this suspicious-looking activity. When they flew back over, the bus and the van and all the vehicles were gone. We do not know if they were exchanging illegal immigrants, illegal goods, narcotics, or nuclear weapons.

As the 9/11 Commission said, our borders are porous and we must remedy this problem. But to do so it is going to take more than rhetoric.

Mr. Chairman, when we look at what we are spending on homeland security today, we are spending \$20 billion more than we did in the year of 9/11. That is a lot of money, but maybe not in an \$850 billion discretionary budget. But last year alone, while we had increased homeland security spending, \$20 billion, the richest 1 percent of Ameri-

cans, those making over a million dollars, got four times the tax relief, almost \$90 billion.

The reality is that we have made the wrong choice. We have failed to make America safe. And when illegal immigrants can come across our borders in the numbers that they are coming, last year alone 25,000 illegal immigrants were actually caught coming across our border from places other than Mexico. Every year there is close to a million that get across that are caught. No telling how many are not caught. But of those 25,000, because we did not have the detention space, the jail space to hold them, 80 to 90 percent of them never showed up because the 25,000 were given a free pass into America, released on personal bond.

Mr. Chairman, it does not surprise anybody that 80 to 90 percent of those 25,000 never show up. They are in our country today. This failure to protect America is inexcusable. I think we have got to stop it.

Mr. Chairman, I think I will vote for the amendment offered by my colleague, but I want to point out that we failed to fund the very issue he raises.

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

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

Mr. Chairman, I would yield to the gentleman from Texas (Mr. TURNER) for a quick question.

Mr. Chairman, did the gentleman acknowledge in the end that he would vote for the amendment? I wanted to understand that clearly.

Mr. TURNER of Texas. Mr. Chairman, if the gentleman would yield, yes, I will vote for the amendment because I believe it is based on a sincere intent to solve a serious problem. But I was simply pointing out that it provides no funding. The gentleman's Committee on Appropriations only provided funding for 117 beds in next year's budget and there is no money to do what is provided for in this amendment. To simply direct the department to take it out of their hide is simply unrealistic.

Mr. BONILLA. Mr. Chairman, reclaiming my time, I thank the gentleman from Texas for his answer.

I wanted to reiterate that in spite of the rhetoric that was just heard from the gentleman from Texas (Mr. TURNER), my colleague, he is supporting the amendment. I am delighted to hear that.

The gentleman makes a lot of good points about problems that the Department of Homeland Security has faced over the last couple of years. I agree with the gentleman. That is why I am here trying to do something about it.

But, again, in spite of the rant that we just heard about how bad the problem is, and I can assure the gentleman that I have probably delivered the same remarks in my district, and here in Washington as well, about the problems that the Department of Homeland Security is facing, but ultimately we are all here to try to do something about it.

So I would hope that the gentleman would not only vote for the amendment, as he has indicated he will, but also tell his friends that we need this help for our good agents that are patrolling the border and for all of us who are trying to do something about it.

Mr. COX. Mr. Chairman, I am proud to rise in support of this amendment. Congressman BONILLA's amendment seeks to increase alien detention bed space by 2,500 beds per year for fiscal years 2006 and 2007. It is a very simple provision, but it will have a material impact on improving the security of our homeland and discouraging illegal immigration.

In order to have a successful border security strategy, it must be balanced. That is why this amendment is so important. There are other provisions in H.R. 10 that will increase staffing levels for the Border Patrol and ICE investigators. These, too, are important initiatives and will result in many more illegal aliens and immigration violators being apprehended. But in order to make the best use of these new assets, we must have adequate facilities to detain those additional immigration violators who are caught, especially those considered high-risk or in mandatory detention categories.

The Department of Homeland Security's Detention and Removal Office, or DRO, is currently authorized to fund approximately 19,000 detention beds. However, they consistently hold over 22,000 illegal aliens each day in facilities around the Nation. In the first year, this amendment would increase available bed space to meet the minimum demand and then would go above that in FY 2007 to provide additional detention resources to meet the expected demand that these other new border control initiatives will create.

It is a well-known fact that the majority of aliens not detained and released, pending an immigration hearing, never return for their scheduled hearing but seek instead to melt into U.S. communities. There are approximately 300,000 non-citizens in the United States who have received deportation orders, but who have not left the country. There is no doubt that more of these individuals would have left the country if they had been detained in the beginning.

Approximately 50 percent of DRO detainees are Mexicans, but there is a growing number of individuals from different countries, called "other than Mexicans" or OTMs. Less is known about their motivation for coming to the U.S., and I have serious concerns about individuals illegally entering America who originally are from countries of interest with respect to terrorism. We must have the resources to detain these individuals to guarantee that we have an opportunity to verify their identity and motives, and that they are deported if necessary.

In order to monitor more of the individuals that are released, DRO utilizes alternative methods of detention. This includes release on recognizance, release on bond, electronic monitoring devices (EMD), and the Intensive Supervision Appearance Program (ISAP). While these alternative methods are appropriate and responsible initiatives, it is essential that we have sufficient detention bed space for high-risk individuals, those with criminal records, and repeat immigration violators.

As Chairman of the Select Committee on Homeland Security, I would like to thank Mr. BONILLA for offering this critical amendment

and request the support of my colleagues in ensuring passage. Thank you, Mr. Speaker, and I yield back the remainder of my time.

Mr. SMITH of Texas. Mr. Chairman, thousands of illegal aliens pour over our southern border each day. A significant number of these aliens are not Mexican, and cannot simply be sent back over the border.

Border Patrol agents must process aliens from countries other than Mexico and are forced to release them into our communities pending a hearing. This is because there is not enough bed space in our detention facilities.

When illegal aliens are released pending a hearing, it is estimated that 85 percent will never be heard from again.

This process has become known as the "catch and release" program, and it threatens our national security.

The Department of Homeland Security recently reported that from October through June over 44,000 non-Mexican aliens were apprehended on the southern border from countries such as Afghanistan, Algeria, Egypt, Iran, Pakistan, Saudi Arabia, and Syria.

The hard work of our Border Patrol agents is wasted when we do not have enough detention space.

The Bonilla amendment would help correct this problem by authorizing an increase of 2,500 detention bed spaces for each of the next two years.

The lack of detention space has reached a crisis.

Every day we are releasing aliens from dozens of countries into our communities. We don't know if these individuals are criminals or terrorists.

The Bonilla amendment curtails the catch and release program on our southern border. It lets the U.S. detain illegal immigrants who enter our country rather than release them in our communities.

Mr. ORTIZ. Mr. Chairman, I rise in support of the amendment by my friend from Texas, and the co-chair of the House Border Caucus, Mr. BONILLA.

Let me begin by thanking the gentleman for his hard work to find a way to stop the current "catch and release" policy propounded by this government . . . by releasing many of the illegal immigrants we are catching into the U.S. population. This is frightening for all of us.

Now, the basis for this "catch and release" policy is a lack of beds for the Department of Homeland Security to hold these illegal immigrants from countries other than Mexico (OTMs). The gentleman's amendment today specifically addresses this shortcoming and I join him in advocating it to the House.

We are apprehending an alarming number of OTMs with not enough space to detain them—forcing us to release them into our community—we need additional beds. The gentleman's amendment is certainly a good beginning and I am grateful for his efforts to end this policy.

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

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Texas (Mr. BONILLA).

The amendment was agreed to.

AMENDMENT NO. 7 OFFERED BY MRS. CAPITO

Mrs. CAPITO. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mrs. CAPITO:

At the end of title II add the following:

**Subtitle J—Railroad Carriers and Mass Transportation Protection Act of 20004**

**SEC. 2111. SHORT TITLE.**

This subtitle may be cited as the "Railroad Carriers and Mass Transportation Protection Act of 2004".

**SEC. 2112. ATTACKS AGAINST RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS.**

(a) IN GENERAL.—Chapter 97 of title 18, United States Code, is amended by striking sections 1992 through 1993 and inserting the following:

**"§ 1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air**

"(a) GENERAL PROHIBITIONS.—Whoever, in a circumstance described in subsection (c), knowingly—

"(1) wrecks, derails, sets fire to, or disables railroad on-track equipment or a mass transportation vehicle;

"(2) with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, and without the authorization of the railroad carrier or mass transportation provider—

"(A) places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment or a mass transportation vehicle; or

"(B) releases a hazardous material or a biological agent or toxin on or near any property described in subparagraph (A) or (B) of paragraph (3);

"(3) sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near any—

"(A) tunnel, bridge, viaduct, trestle, track, electromagnetic guideway, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of, or in support of the operation of, a railroad carrier, without the authorization of the railroad carrier, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck railroad on-track equipment;

"(B) garage, terminal, structure, track, electromagnetic guideway, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle, without the authorization of the mass transportation provider, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider; or

"(4) removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, without authorization from the railroad carrier or mass transportation provider;

"(5) with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, or maintaining railroad on-track equipment or a mass transportation vehicle;

“(6) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on property described in subparagraph (A) or (B) of paragraph (3), except that this subparagraph shall not apply to rail police officers in acting the course of their law enforcement duties under section 28101 of title 49, United States Code;

“(7) conveys false information, knowing the information to be false, concerning an attempt or alleged attempt that was made, is being made, or is to be made, to engage in a violation of this subsection; or

“(8) attempts, threatens, or conspires to engage in any violation of any of paragraphs (1) through (7);

shall be fined under this title or imprisoned not more than 20 years, or both.

“(b) AGGRAVATED OFFENSE.—Whoever commits an offense under subsection (a) of this section in a circumstance in which—

“(1) the railroad on-track equipment or mass transportation vehicle was carrying a passenger or employee at the time of the offense;

“(2) the railroad on-track equipment or mass transportation vehicle was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense;

“(3) the railroad on-track equipment or mass transportation vehicle was carrying a hazardous material at the time of the offense that—

“(A) was required to be placarded under subpart F of part 172 of title 49, Code of Federal Regulations; and

“(B) is identified as class number 3, 4, 5, 6.1, or 8 or packing group I or packing group II, or class number 1, 2, or 7 under the hazardous materials table of section 172.101 of title 49, Code of Federal Regulations; or

“(4) the offense results in the death of any person;

shall be fined under this title or imprisoned for any term of years or life, or both. In the case of a violation described in paragraph (2) of this subsection, the term of imprisonment shall be not less than 30 years; and, in the case of a violation described in paragraph (4) of this subsection, the offender shall be fined under this title and imprisoned for life and be subject to the death penalty.

“(c) CIRCUMSTANCES REQUIRED FOR OFFENSE.—A circumstance referred to in subsection (a) is any of the following:

“(1) Any of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider or railroad carrier engaged in or affecting interstate or foreign commerce.

“(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) DEFINITIONS.—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, device, instrument, material, 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 less 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, infernal machine, or other chemical, mechanical, or radioactive device or material, or matter of a combustible, contaminative, corrosive, or explosive nature,

except that the term ‘radioactive device’ does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes;

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

“(6) the term ‘high-level radioactive waste’ has the meaning given to that term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

“(7) the term ‘mass transportation’ has the meaning given to that term in section 5302(a)(7) of title 49, except that the term includes school bus, charter, and sightseeing transportation;

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

“(9) the term ‘railroad on-track equipment’ means a train, locomotive, tender, motor unit, freight or passenger car, or other on-track equipment used, operated, or employed by a railroad carrier;

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

“(11) the term ‘railroad carrier’ 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 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23));

“(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 178(2); and

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

(b) CONFORMING AMENDMENTS.—

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

(A) by striking “RAILROADS” in the chapter heading and inserting “RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS ON LAND, ON WATER, OR THROUGH THE AIR”;

(B) by striking the items relating to sections 1992 and 1993; and

(C) by inserting after the item relating to section 1991 the following:

“1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air.”

(2) The table of chapters at the beginning of part I of title 18, United States Code, is amended by striking the item relating to chapter 97 and inserting the following:

“97. Railroad carriers and mass transportation systems on land, on water, or through the air ..... 1991”.

(3) Title 18, United States Code, is amended—

(A) in section 2332b(g)(5)(B)(i), by striking “1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other 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 CHAIRMAN pro tempore. Pursuant to House Resolution 827, 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, I would like to begin by thanking the gentleman from Wisconsin (Chairman SENSENBRENNER) the Committee on Rules, the Departments of Justice and Transportation, the Subcommittee on Railroads of the Committee on Transportation and Infrastructure, and the many others who are supporting me in this initiative.

Mr. Chairman, in the wake of the September 11th attacks, as well as the recent bombing of four commuter trains in Madrid, Spain, the need for stronger criminal laws to deal with terrorists and other violence has never been stronger. Intelligence reports last spring indicate that some terrorists might try to bomb U.S. rail lines or buses in major U.S. cities. We have also heard reports of so-called “dirty bombs” that can be easily transported over our extensive mass transportation system.

Mr. Chairman, I do not have to remind anyone in this body of the potential loss of life and disruption to our economy and way of life from this modern new threat.

In order to help meet this threat head on, I have introduced an amendment that revises, enhances, and consolidates two Federal criminal law statutes into one comprehensive statute in order to deter and more effectively punish terrorist acts against railroad carriers and other mass transportation providers.

Specifically, under current Federal criminal law, terrorist acts against railroad carriers are prosecuted under the so-called “Wrecking Trains” statute which was enacted in 1940. This statute is in many ways outdated, full of gaps and inconsistencies, and quite literally inadequately addresses modern threats like radioactive materials or biological agents.

Additionally, the September 11 attacks on our homeland gave rise to the creation of another Federal criminal statute which covers terrorist acts against mass transportation systems. By combining these two statutes to cover all forms of transportation and railway carriers, we can introduce more consistency, predictability, and effectiveness into Federal prosecutorial powers.

First, it would reduce our criminal law’s vulnerability to bogus legal claims and also prevent prosecutors from having to prosecute for lesser offenses because of discrepancies or gaps in the current law. Richard Reid, known as the Shoe Bomber, was actually able to have a charge against him

dismissed because the new mass transportation statute did not explicitly define an airplane as a vehicle for purposes of prosecuting under the statute. My amendment will prevent oversights like this from happening.

Secondly, my amendment will bring more consistent and uniform protections to all modes of railroad carriers and mass transportation providers.

Third, my amendment will expand the jurisdictional reach of criminal law to cover more offenses, such as the release of biological agents or radioactive material, and cover more property if the prohibited conduct affects interstate commerce or travel, or communicating, or transporting prohibited materials across State lines.

Fourth, my amendment will make capital punishment an option under aggravating circumstances that involve terrorist acts that result in the death of a person. If our jurisdictional system is unable to have this tool at their disposal in order to meet the new threats that terrorism has brought upon us, then we will lose a critical opportunity to deter and prevent more terrorism from happening.

And fifth, my amendment protects all law enforcement, railroad carriers, and mass transportation providers from criminal liability if they are performing their duties in the course of lawful and authorized activities. In other words, my amendment protects conduct that should be protected, but does not protect conduct that should not be protected such as terrorist or imposters posing as rail or mass transportation employees.

Mr. Chairman, overall, Congress has taken dramatic steps in the last 3 years to improve our security here and abroad, but there is more work to be accomplished. I strongly urge passage of this amendment to H.R. 10.

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

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, this is a 10-page amendment with mandatory minimum sentences, mandatory sentences of life imprisonment, and a death penalty provision. It has not been considered by any subcommittee or the full Committee on the Judiciary, and I am not sure it has even been considered by the Committee on Transportation and Infrastructure. We have information that the Committee on Transportation and Infrastructure has not considered it and, in fact, may not support it.

It appears to make, but it is not clear whether conspiracies, attempts and threats are subject to the same penalties as the underlying offense. Not only have these provisions not been considered by the appropriate committees of jurisdiction, but because of the mandatory minimum sentences, neither sentencing experts nor judges on the U.S. Sentencing Commission who have the responsibility to assure a rational and proportional sentencing system, nor any Federal judge who would

review all the facts and circumstances of the case, will get to assess whether or not these sentences make any sense.

Mr. Chairman, I remind my colleagues that the Judicial Conference has written a letter saying that these mandatory minimums violate common sense, and yet here we are asked to decide in a 5-minute debate whether or not they are appropriate in this case.

Mr. Chairman, the author of the amendment indicates that we are trying to conform one code section to another. I would ask that we do that when we consider the code sections. We are going to consider the PATRIOT Act. That is one of the code sections involved. And the time to consider the PATRIOT Act and amending the PATRIOT Act is when we have the PATRIOT Act before us; not when we are doing a reorganization bill without any serious committee of jurisdiction considering the underlying amendment.

I say again, Mr. Chairman, when we have death penalty, that makes life complicated from an international point of view. We may have terrorists who are caught in another country. We cannot get them extradited because of all of these death penalties and we need to consider that.

We have heard that the Shoe Bomber was complicated as to which code section he was under. We have an easy case for attempted murder, plain and simple. It gives life imprisonment. Certainly the death penalty, if he had completed the act, would not have made any sense. The death penalty for a suicide bomber is obviously not going to be much of a deterrent.

Mr. Chairman, I would hope that we would consider all the implications and not adopt this amendment at this time.

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

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

Mr. Chairman, I appreciate the comments of the gentleman from Virginia (Mr. SCOTT). I would like to say that in working through this amendment, we did work with the Committee on the Judiciary and the Committee on Transportation and Infrastructure. We are also trying to reform an act here, the 1940 Wrecking Trains statute, that is sorely outdated and full of gaps. When it was conceived, there was no conception of a terrorist bombing on mass transportation. I think we know, obviously from the events in Spain, that that is a very real possibility in terms of acts of terrorism.

Mr. Chairman, the purpose of my amendment is to not only pull that 1940s Wrecking Train statute into the modern era, but also to combine it with other mass transportation sections so that not only the deterrent but the prosecutorial powers are available to our prosecutors to be able to use the most stringent and severe punishments that could possibly be available to try to use as a deterrent to terrorism.

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

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, in 2001, we considered this provision when we put it in the PATRIOT Act. It was inconsistent with an older version. We need to consider whether we want to conform the law to the newer version or to the older version. That is why we have committees, so we can assess what the appropriate punishment is.

Mr. Chairman, 5-minute debates on the floor without committee consideration does not give us that opportunity. I would hope that we would delay consideration of this by defeating the amendment and consider the issue when we do the PATRIOT Act.

Mr. Chairman, I would ask the gentlewoman from West Virginia whether or not conspiracies, attempts, and threats are subject to the same penalties as the underlying offense.

□ 1000

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

Mr. SCOTT of Virginia. I yield to the gentlewoman from West Virginia.

Mrs. CAPITO. I think there is a lot of prosecutorial discretion in the bill, and I think that would probably be left up to the prosecutor.

Mr. SCOTT of Virginia. Reclaiming my time, I would say again, you have mandatory minimums in the bill which would not give anybody any flexibility, and if a conspiracy attempt and threat are subject to the same mandatory minimums as actually completing the crime, that would be something that we would want to consider. It is just not clear.

If the gentlewoman wants time to respond, I will give her time.

Mrs. CAPITO. In terms of the death penalty, I think that is definitely at the discretion of the prosecutor, and there are two sets of offenses there. One is a 20-year and one is a 30-year minimum, and I think that is also at the discretion of the prosecutors. That is my understanding.

Mr. SCOTT of Virginia. Reclaiming my time, I would hope we would defeat the amendment.

The CHAIRMAN pro tempore (Mr. KOLBE). All time has expired.

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

The amendment was agreed to.

Mr. HOEKSTRA. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mrs. CAPITO) having assumed the chair, Mr. KOLBE, Chairman pro tempore 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. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, had come to no resolution thereon.

# MAKING IN ORDER AMENDMENTS EN BLOC DURING FURTHER CONSIDERATION OF H.R. 10, 9/11 RECOMMENDATIONS IMPLEMENTATION ACT

Mr. HOEKSTRA. Madam Speaker, I ask unanimous consent that during further consideration in the Committee of the Whole of H.R. 10 pursuant to House Resolution 827 that it be in order at any time for the chairman of the Permanent Select Committee on Intelligence or a designee to offer amendments en bloc consisting of any of the amendments numbered 9, 16, 18, 20, and 22 printed in the House Report 108-751; that amendments en bloc pursuant to this order may be considered as read, be debatable for 10 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence or their designees, not be subject to amendment and not be subject to a demand for a division of the question in the House or in the Committee of the Whole; and that the original proponent of an amendment included in such amendments en bloc may insert a statement in the CONGRESSIONAL RECORD immediately before the disposition of the amendments en bloc.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

## 9/11 RECOMMENDATIONS IMPLEMENTATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 827 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 10.

□ 1002

### 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 further consideration of the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, with Mr. KOLBE (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the committee of the whole rose earlier today, amendment No. 7 printed in House Report 108-751 by the gentleman from West Virginia (Mrs. CAPITO) had been disposed of.

Pursuant to the order of the House of today, it shall be in order at any time for the chairman of the Permanent Select Committee on Intelligence or a designee to offer amendments en bloc consisting of any of the amendment numbers 9, 16, 18, 20, and 22 printed in House report 108-751.

The amendments en bloc shall be considered read, shall be debatable for

10 minutes, equally divided and controlled by the chairman and the ranking minority member of the Permanent Select Committee on Intelligence or their designees, shall not be subject to amendment, and shall not be subject to a demand for a division of the question.

The original proponent of the amendment included in the amendments en bloc may insert a statement in the Congressional RECORD immediately before disposition of the amendments en bloc.

It is now in order to consider amendment No. 8 printed in House Report 108-751.

#### AMENDMENT NO. 8 OFFERED BY MR. CARTER

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

#### Amendment No. 8 offered by Mr. CARTER:

At the end of title II insert the following:

#### Subtitle J—Terrorist Penalties Enhancement Act of 2004

##### SEC. 2221. SHORT TITLE.

This subtitle may be cited as the “Terrorist Penalties Enhancement Act of 2004”.

##### SEC. 2222. PENALTIES FOR TERRORIST OFFENSES RESULTING IN DEATH; DENIAL OF FEDERAL BENEFITS TO TERRORISTS.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

#### “§ 2339E. Terrorist offenses resulting in death

“(a) Whoever, in the course of committing a terrorist offense, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.

“(b) As used in this section, the term ‘terrorist offense’ means—

“(1) a Federal felony offense that is—

“(A) a Federal crime of terrorism as defined in section 2332b(g) except to the extent such crime is an offense under section 1363; or

“(B) an offense under this chapter, section 175, 175b, 229, or 831, or section 236 of the Atomic Energy Act of 1954; or

“(2) a Federal offense that is an attempt or conspiracy to commit an offense described in paragraph (1).

#### “§ 2339F. Denial of Federal benefits to terrorists

“(a) An individual or corporation who is convicted of a terrorist offense (as defined in section 2339E) shall, as provided by the court on motion of the Government, be ineligible for any or all Federal benefits for any term of years or for life.

“(b) As used in this section, the term ‘Federal benefit’ has the meaning given that term in section 421(d) of the Controlled Substances Act, and also includes any assistance or benefit described in section 115(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, with the same limitations and to the same extent as provided in section 115 of that Act with respect to denials of benefits and assistance to which that section applies.”.

(b) CONFORMING AMENDMENT TO TABLE OF SECTIONS.—The table of sections at the beginning of the chapter 113B of title 18, United States Code, is amended by adding at the end the following new items:

“2339E. Terrorist offenses resulting in death.

“2339F. Denial of federal benefits to terrorists.”.

(c) AGGRAVATING FACTOR IN DEATH PENALTY CASES.—Section 3592(c)(1) of title 18, United States Code, is amended by inserting “section 2339E (terrorist offenses resulting in death),” after “(destruction),”.

#### SEC. 2223. DEATH PENALTY IN CERTAIN AIR PIRACY CASES OCCURRING BEFORE ENACTMENT OF THE FEDERAL DEATH PENALTY ACT OF 1994.

Section 60003 of the Violent Crime Control and Law Enforcement Act of 1994, (Public Law 103-322), is amended, as of the time of its enactment, by adding at the end the following:

“(c) DEATH PENALTY PROCEDURES FOR CERTAIN PREVIOUS AIRCRAFT PIRACY VIOLATIONS.—An individual convicted of violating section 46502 of title 49, United States Code, or its predecessor, may be sentenced to death in accordance with the procedures established in chapter 228 of title 18, United States Code, if for any offense committed before the enactment of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), but after the enactment of the Antihijacking Act of 1974 (Public Law 93-366), it is determined by the finder of fact, before consideration of the factors set forth in sections 3591(a)(2) and 3592(a) and (c) of title 18, United States Code, that one or more of the factors set forth in former section 46503(c)(2) of title 49, United States Code, or its predecessor, has been proven by the Government to exist, beyond a reasonable doubt, and that none of the factors set forth in former section 46503(c)(1) of title 49, United States Code, or its predecessor, has been proven by the defendant to exist, by a preponderance of the information. The meaning of the term ‘especially heinous, cruel, or depraved’, as used in the factor set forth in former section 46503(c)(2)(B)(iv) of title 49, United States Code, or its predecessor, shall be narrowed by adding the limiting language ‘in that it involved torture or serious physical abuse to the victim’, and shall be construed as when that term is used in section 3592(c)(6) of title 18, United States Code.”

Conform the table of sections accordingly.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Texas (Mr. CARTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas (Mr. CARTER).

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

Mr. Chairman, today I offer an amendment, the Terrorist Penalties Enhancements Act, which will provide new and expanded penalties to those who commit fatal acts of terrorism.

Since September 11, Federal and State officials continue to work hard to prevent further terrorist attacks on U.S. soil. However, despite some changes to the law to increase penalties after deadly terrorist attacks, a jury is still denied the ability to consider a death sentence or life imprisonment for a terrorist in many cases, even when the attacks result in death and the court believes it is necessary to prevent further harm to our citizens.

For example, in the case in which a terrorist causes massive loss of life by sabotaging a nuclear power plant or a national defense installation, there would be no possibility of imposing the death penalty under the statutes defining these offenses because they contain