107TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
107–306

ANTI-HOAX TERRORISM ACT OF 2001

NOVEMBER 29, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3209]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3209) to amend title 18, United States Code, with respect to false communications about certain criminal violations, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Hoax Terrorism Act of 2001".

SEC. 2. HOAXES AND RECOVERY COSTS.

(a) PROHIBITION ON HOAXES.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1036 the following:

"§ 1037. False information and hoaxes

"(a) CRIMINAL VIOLATION.—Whoever engages in any conduct, with intent to convey false or misleading information, under circumstances where such information may reasonably be believed and where such information concerns an activity which would constitute a violation of section 175, 229, 831, or 2332a, shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) CIVIL ACTION.—Whoever engages in any conduct, with intent to convey false or misleading information, under circumstances where such information concerns an activity which would constitute a violation of section 175, 229, 831, or 2332a, is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

"(c) REIMBURSEMENT.—The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses. A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses. An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by adding after the item for section 1036 the following:

"1037. False information and hoaxes.".

PURPOSE AND SUMMARY

H.R. 3209, the "Anti-Hoax Terrorism Act of 2001" creates criminal and civil penalties for whoever engages in any conduct, with intent to convey false or misleading information, under circumstances where such information may reasonably be believed and where such information concerns an activity which would constitute a violation of title 18 U.S.C. § 175 (relating to biological weapons attacks), § 229 (relating to chemical weapons attacks), § 831 (nuclear attacks) or § 2232a (weapons of mass destruction attacks). This bill will help protect the public and our nation's security by deterring and punishing those who perpetrate such hoaxes.

BACKGROUND AND NEED FOR THE LEGISLATION

Since the September 11, 2001 attacks and the ongoing anthrax attacks against United States citizens on United States soil, the nation has been engaged in a war at home and abroad. At home, emergency responders, law enforcement and investigation officials have been working overtime to prevent terrorist acts and investigate suspicious events and actual terrorist acts. The efforts on the home front have understandably drained Federal, state and local resources.

Because of these tragic attacks, the public is alarmed and appropriately reporting suspicious activity. Our nation is on high alert and our law enforcement cannot afford to be distracted. Sadly, while law enforcement and emergency responders work tirelessly to prevent, respond, and investigate real cases of terrorism, some have played upon the public's apprehension with hoaxes.

H.R. 3209, "the Anti-Hoax Terrorism Act of 2001," addresses this growing phenomena of hoaxes that have further terrorized the American public into falsely thinking biological attacks have occurred. A hoax of terrorism is terrorism. Such a hoax is designed to instill fear into the public or its target. While such hoaxes may not be designed to influence public policy or governments, they are a serious threat to the public's safety on many levels. First, such a hoax distracts law enforcement from the actual threats or actual emergencies and, in effect, assists terrorists. Second, these hoaxes often cause buildings and businesses to be evacuated and closed. If a hoax causes a hospital to be evacuated, for instance, people could die.

The Department of Justice and the Federal Bureau of Investigation testified on November 7th, before the Subcommittee on Crime, and made it clear that these types of hoaxes threaten the health and safety of the American public and the national security of the nation.

Under current law, it is a felony to perpetrate a hoax such as falsely claiming there is a bomb on an airplane. It is also a felony to communicate in interstate commerce threatening personal injury to another. A gap exist, however, in the current law as it does not address a hoax related to biological, chemical, or nuclear dangers where there is no specific threat.

That gap needs to be closed. This legislation makes it a felony to perpetrate a hoax related to biological, chemical, nuclear, and weapons of mass destruction attacks.

HEARINGS

On November 7, 2001, the Subcommittee on Crime, held one hearing on H.R. 3209, the "Anti- Hoax Terrorism Act of 2001." Testimony was received from two witnesses. Invited witnesses included: Mr. James F. Jarboe, Section Chief, Counterterrorism Division, Domestic Terrorism, Federal Bureau of Investigation, and Mr. James Reynolds, Chief, Terrorism and Violent Crime Section, Criminal Division, U.S. Department of Justice.

COMMITTEE CONSIDERATION

On November 14, 2001, the Subcommittee on Crime met in open session and ordered favorably reported the bill, H.R. 3209, as amended, by a voice vote, a quorum being present. On November 15, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 3209, with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

No recorded votes were held on H.R. 3209.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

resentatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

The bill is intended to impose civil and criminal penalties to deter and punish a person or persons for perpetrating a hoax that others could reasonable believe under the circumstance is or may be a biological, chemical, nuclear or weapons of mass destruction attack. Such hoaxes diminish Federal law enforcement resources and divert Federal investigators attention away from actual threats or cases of terrorism. This legislation is intended to prevent such a drain and aberration of Federal resources that threaten the citizens and the national security of the United States.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2975, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 21, 2001.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3209, the Anti-Hoax Terrorism Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 3209—Anti-Hoax Terrorism Act of 2001.

CBO estimates that implementing H.R. 3209 would not result in any significant cost to the Federal Government. Because enactment of H.R. 3209 could affect direct spending and receipts, pay-as-you-go procedures would apply to the bill. However, CBO estimates that any impact on direct spending and receipts would not be significant. H.R. 3209 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

H.R. 3209 would establish a new Federal crime for the perpetration of hoaxes involving the threat of biological agents or other weapons of mass destruction. Offenders would be subject to imprisonment and criminal and civil fines.

Under the provisions of H.R. 3209, the government would be able to pursue cases involving hoaxes that it otherwise would not be able to prosecute. Because there are similar prohibitions on hoaxes in current law, however, CBO expects that the bill's provisions would probably affect a small number of additional cases. Thus, any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 3209 could be subject to fines, the Federal Government might collect additional fines if the legislation is enacted. Collections of civil fines are recorded in the budget as governmental receipts (revenues). Criminal fines are deposited as receipts in the Crime Victims Fund and later spent. CBO expects that any additional receipts and direct spending would be negligible because of the small number of cases involved.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 1. Short Title.

This Act may be cited as the "Anti-Hoax Terrorism Act of 2001."

Sec. 2. Hoaxes and Recovery Costs.

Section 2(a) of the bill adds new section 1037 to title 18. This new code section provides for criminal and civil penalties.

New section 1037(a) of title 18 provides that whoever engages in any conduct, with intent to convey false or misleading information, under circumstances where such information may reasonably be believed and where such information concerns an activity which would constitute a violation of § 175 (biological attack), § 229 (chemical attack), § 831 (nuclear attack), or § 2332a (weapons of mass destruction attack), shall be fined up to $250,000 or imprisoned not more than 5 years or both.

This new provision is consistent with current provisions in the criminal code that treat hoaxes related to certain crimes as felonies. For example, 18 U.S.C. § 1365(c)(1) provides "whoever knowingly communicates false information that a consumer product has been tainted . . . shall be fined under this title or imprisoned not more than 5 years or both."

Similar to existing hoax provisions, the language of § 1037(a) includes a mens rea (intent) requirement. The language requires that the perpetrator have "the intent" to convey false or misleading information. The Committee believes that this mens rea requirement

will protect innocent individuals who have acted inadvertently. As an additional protection against prosecuting innocent or inadvertent behavior, the legislative language requires that the information be reasonably believable and concern activities that would constitute a violation of criminal law relating to biological, chemical, nuclear or weapons of mass destruction.

Some have argued that the legislative language should include the phrase "malicious intent" or similar language using the word malicious. The Committee rejected this suggestion and believes the inclusion of the term "malicious" or any derivative would render the legislation useless. The term "malicious" means that a person has the intent to harm another.

By its very nature, a hoax is not intended to physically harm or injure a person. If the person had the intent to harm, they would, use real weapons, such as anthrax instead of powdered sugar. By using powdered sugar instead of anthrax, the person engaging in the hoax can argue that it was a joke and no harm could come to anyone. Furthermore, it is the view of the Committee that the issue is whether the victims reasonably believed they were or could be harmed, not whether the criminal, while intending to convey false or misleading information about a biological, nuclear, or chemical attack also intended to physically harm people. Accordingly, the Committee believes adding the word malicious or a derivation of the word would gut the bill.

Section 1037(b) provides that whoever engages in such a hoax, may be liable in a civil action to any party incurring expenses incident to the emergency and investigative response.

Section 1037(c) requires any person convicted of a violation of subsection (a) to reimburse any party for expenses incurred in responding to the hoax. A person ordered to reimburse under this section would be jointly and severally liable for such expenses with any other person ordered to reimburse under this section for the same expenses. This section was amended to clarify that the reimbursement is a civil judgement.

Section 2(b) of the bill is a clerical amendment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

CHAPTER 47 OF TITLE 18, UNITED STATES CODE

* * * * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.
1001. Statements or entries generally.

* * * * * * *

1037. False information and hoaxes.

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§ 1037. False information and hoaxes

(a) CRIMINAL VIOLATION.—Whoever engages in any conduct, with intent to convey false or misleading information, under circumstances where such information may reasonably be believed and where such information concerns an activity which would constitute a violation of section 175, 229, 831, or 2332a, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) CIVIL ACTION.—Whoever engages in any conduct, with intent to convey false or misleading information, under circumstances where such information concerns an activity which would constitute a violation of section 175, 229, 831, or 2332a, is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(c) REIMBURSEMENT.—The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses. A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses. An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

MARKUP TRANSCRIPT

BUSINESS MEETING

THURSDAY, NOVEMBER 15, 2001

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

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

Chairman SENSENBRENNER. The Committee will be in order.

The next item on the agenda is H.R. 3209, the Anti-Hoax Terrorism Act of 2001. The Chair recognizes the gentleman from Texas, Mr. Smith, the Chairman of the Subcommittee on Crime.

[The bill, H.R. 3209, follows:]

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107TH CONGRESS
1ST SESSION

H. R. 3209

To amend title 18, United States Code, with respect to false communications about certain criminal violations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2001

Mr. SMITH of Texas (for himself, Mr. SENSENBRENNER, Mr. CONYERS, Mr. WOLF, Mr. SCOTT, and Mr. FERGUSON) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, with respect to false communications about certain criminal violations, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Anti-Hoax Terrorism Act of 2001''.

SEC. 2. HOAXES AND RECOVERY COSTS.

(a) PROHIBITION ON HOAXES.—Chapter 41 of title 18, United States Code, is amended by inserting after section 880 the following:

"§ 881. False information and hoaxes

"(a) CRIMINAL VIOLATION.—Whoever engages in any conduct—

"(1) knowing that the conduct is likely to impart the false impression that activity is or will take place that violates section 175, 229, 831, or 2332a; and

"(2) that causes an emergency response by governmental agencies to that activity;

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

"(b) CIVIL ACTION.—Whoever engages in any conduct, knowing that the conduct imparts the false impression that activity is or will take place that violates section 175, 229, 831, or 2332a, is liable in a civil action to any party incurring expenses incident to the investigation of the conduct, for those expenses, including the cost of any response made by any military or civilian agency to protect public health or safety.

"§ 882. Reimbursement of costs

"(a) CONVICTED DEFENDANT.—The court, in imposing a sentence on a defendant who has been convicted of an offense under section 881(a), shall order the defendant to reimburse any party incurring expenses incident to the investigation of the offense, for those expenses, including

the cost of any response made by any military or civilian agency to protect public health or safety.

"(b) JOINTLY AND SEVERALLY LIABLE.—A person ordered to make reimbursement under subsection (a) shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under that subsection for the same expenses.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 41 of title 18, United States Code, is amended by adding after the item for section 880 the following:

"881. False information and hoaxes.
"882. Reimbursement of costs.".

○

Mr. SMITH. Mr. Chairman, the Subcommittee on Crime reports favorably the bill H.R. 3209 with a single amendment in the nature of a substitute and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and the Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as the original text for purposes of amendment and will be considered as read and open for amendment at any point.

[The amendment follows:]

SUBCOMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3209

(Ordered Reported on 14 Novemer 2001)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Anti-Hoax Terrorism Act of 2001''.

SEC. 2. HOAXES AND RECOVERY COSTS.

(a) PROHIBITION ON HOAXES.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1036 the following:

''§ 1037. False information and hoaxes

''(a) CRIMINAL VIOLATION.—Whoever engages in any conduct, with intent to convey false or misleading information, under circumstances where such information may reasonably be believed and where such information concerns an activity which would constitute a violation of section 175, 229, 831, or 2332a, shall be fined under this title or imprisoned not more than 5 years, or both.

''(b) CIVIL ACTION.—Whoever engages in any conduct, with intent to convey false or misleading information, under circumstances where such information con-

1 cerns an activity which would constitute a violation of sec-
2 tion 175, 229, 831, or 2332a, is liable in a civil action
3 to any party incurring expenses incident to any emergency
4 or investigative response to that conduct, for those ex-
5 penses.

6 ''(c) REIMBURSEMENT.—The court, in imposing a
7 sentence on a defendant who has been convicted of an of-
8 fense under subsection (a), shall order the defendant to
9 reimburse any party incurring expenses incident to any
10 emergency or investigative response to that conduct, for
11 those expenses. A person ordered to make reimbursement
12 under this subsection shall be jointly and severally liable
13 for such expenses with each other person, if any, who is
14 ordered to make reimbursement under this subsection for
15 the same expenses.''.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of chapter 47 of title 18, United States
18 Code, is amended by adding after the item for section
19 1036 the following:

''1037. False information and hoaxes.''.

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Texas to strike the last word.

Mr. SMITH. Thank you, Mr. Chairman. I do move to strike the last word.

Mr. Chairman, H.R. 3209, the Anti-Hoax Terrorism Act of 2001, addresses the hoaxes that have terrorized the American people into believing biological attacks have occurred.

However, hoaxes related to anthrax, for example, don't always contain specific threats and are, therefore, not covered by current law.

If someone places white powder on a computer with a note saying, "This is anthrax," or sends harmless white powder through the mail, such conduct may cause panic but violates no Federal law.

The Department of Justice and Federal Bureau of Investigation testified last week before the Subcommittee on Crime and made it clear that these types of hoaxes threaten public safety and health and the national security of our country.

Such hoaxes also drain law enforcement and other resources away from actual emergencies and terrorist threats.

If a hoax causes a hospital to be evacuated, people could die. If a hoax causes a business to close, people could lose their jobs. And if a hoax preoccupies law enforcement officials, the public could be denied protection from other crimes.

This legislation creates criminal and civil penalties for whoever engages in conduct with the intent to convey false or misleading information that may reasonably be believed to constitute a biological, chemical, or nuclear attack.

This bill makes it a felony to carry out such a hoax. Additionally, whoever engages in this crime will be subject to a criminal fine of up to $250,000 in civil penalties and will have to reimburse the victims of this crime for expenses incident to any emergency or investigative response.

Mr. Chairman, America is engaged in a war on terrorism. Those who prey on fear should be held responsible for their actions.

This bill will help protect the public and our Nation's security by deterring and punishing those who perpetrate such hoaxes. So I urge my colleagues to support this much-needed legislation and yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

And I am pleased to join the gentleman from Texas, the Chairman of the Subcommittee, in joining as an original cosponsor of the bill, because it addresses a real and serious problem.

In this climate of heightened alert and attention, necessitated by the events of September 11th, local emergency and first response operations are constantly overstrained. In a recent meeting with a group of officials representing such operations, I was told that enormous resources are already being expended to investigate suspected anthrax and other bio and chemical scares.

Officials in the City of Norfolk, a city of about 275,000 residents, estimated that it had spent over $70,000 in tracking down scares, all of which fortunately proved to be false alarms.

There are legitimate inquiries which are triaged between law enforcement, medical, and other appropriate personnel before committing investigatory resources, but with the limited resources available in most localities to conduct such investigations, even when they are based on legitimate reasons for concerns, the last thing we

need to do is waste such valuable time and resources on pranks or hoaxes.

It is my understanding that there are holes in our current ability at the Federal level to prosecute terroristic hoaxes. I don't know what the situation is on State laws, but we should certainly have the ability to go after such cases on the Federal level, and that's what the bill does.

There is one provision in the bill which I have a concern with, and that is the lack of discretion on the judge in setting the amount of the fine. I had an amendment that provided for such discretion. The amendment did not pass. However, the Chairman and I agreed on an amendment, which will be offered, which makes it clear that the reimbursement orders will be civil judgments in nature and, therefore, the defendant will not be subject to jail time for nonpayment.

Thank you, Mr. Chairman. I look forward to consideration of the legislation.

Chairman SENSENBRENNER. Without objection, the opening statements of all Members will be inserted into the record at this point.

[The statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

While I am an original cosponsor of this legislation and support the efforts the Subcommittee Chair and Ranking Member have made to narrow and clarify it since then, I do believe the bill should be narrowed in several respects.

It is unfortunate that some people have decided to take advantage of people's fears during this national crisis to perpetrate hoaxes regarding anthrax or other biological, chemical, or nuclear materials. It goes without saying that people who engage in such senseless behavior should be punished. While the bill before us accomplishes that goal, I believe it goes too far.

The climate we now live in has encouraged people to transmit warnings of every potential attack they hear about, and they should not be criminally penalized for their fears. Similarly, teenagers who have not learned better and engage in simple pranks should not be targeted by this legislation. That is why I hope the bill can be narrowed further so that only those who maliciously engage in such hoaxes are punishable.

Moreover, the bill requires convicted defendants to reimburse the government for any costs associated with investigations into the hoax. Cases should be decided on their individual merits; as such, I believe the judiciary should have the discretion to determine if and when a defendant should have to pay costs.

Thank you, Mr. Chairman.

[The statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I would like to thank Chairman Sensenbrenner and Ranking Member Conyers for convening this markup on H.R. 3209, the "Anti-Hoax Terrorism Act of 2001."

In light of the exponentially increasing amounts of bioterrorism threats that have occurred since September 11, a Federal anti-hoax provision is needed now more than ever. We must provide the resources and expertise that States and localities may not posses in order to respond to these hoaxes.

H.R. 3209 would make it a Federal crime for anyone who intentionally imparts false information and hoaxes. The defendant shall be fined or imprisoned not more than five years, or both.

Mr. Chairman, the purpose of this bill should not be to prosecute innocent mistakes or someone making a report concerning a suspected substance, but rather it would apply to deliberate and malicious hoaxes reported by individuals who know they are spreading false information. This legislation should ensure that a person who executes a hoax intends that the hoax result in severe consequences such as a response from emergency personnel.

The purpose of most common pranks is to embarrass, humiliate, frighten, or exploit without malicious intent. It is not intended to threaten mass destruction or elicit an emergency response. For example, in Anne Arundel County, MD, two juveniles were arrested after they placed powder in an envelope and did not even mail it, but the envelope was found by someone else and reported, causing an unintended emergency response. The Chairman of the Subcommittee on Crime, Mr. Smith, has reiterated that juveniles would not be prosecuted as adults under this bill. However, a local prosecutor in Chicago recently placed an envelope containing sugar on a colleague's desk. He was administratively punished by being forced to resign from his job. The current language still does not protect those who carry out practical jokes.

I offer an amendment today that would allow the prosecution of persons who execute hoaxes with the malicious intent to deceive the victim. By requiring the defendant to have acted "maliciously," juvenile pranks or the innocent spreading of rumors will not be federalized.

The language in my amendment would give prosecutors a means to distinguish between a person who is actually threatening to use anthrax on a victim on one hand, and a person who never intends to use it, but truly wants the victim or police to think they have done so. The latter is what we are trying to prevent.

Mr. Chairman, this legislation should punish hoaxes intending to cause a grave ands serious consequence. Malicious acts deserve Federal felony prosecution; innocent bad judgment and juvenile bad behavior do not. Let us work together towards that end.

Thank you.

Are there any amendments?

Ms. JACKSON LEE. Mr. Chairman?

Mr. SMITH. Mr. Scott has one, I know.

Ms. JACKSON LEE. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will——

Ms. JACKSON LEE. For H.R. 3209.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3209, offered by Ms. Jackson Lee of Texas. On page 1, line 12, insert "the malicious" after "with" and before "intent."

[The amendment follows:]

AMENDMENT TO H.R. 3209
OFFERED BY MS. JACKSON LEE OF TEXAS

On page one, line 12, insert " the malicious" after "with" and before "intent".

Chairman SENSENBRENNER. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, we turned a new page in history on September 11th, and I am well-aware of many of the important measures that this particular Committee has to address. And we have done so with an effort to be bipartisan.

This legislation is one that draws a great deal of support on the basis that these are serious times. And so I do not diminish that level of seriousness.

But we also know that this is a country that is used to freedom of expression, freedom of movement, and, as well, freedom of engagement. I want to make sure that as we prosecute those who would do harm through hoaxes that we have a clear definition, and so my amendment seeks to add the words "maliciously" and "know-

ingly" so that we can avoid the wide fishnet to those jokesters who have no mean intent.

This language has been supported by the Senate. It gives prosecutors the means to distinguish between a person who is actually threatening to use anthrax or some other substance or some other act on a victim on one hand, and a person who never intends to use it but truly wants the victim or police to think they have done so.

It avoids federalizing of juvenile pranks. And I know there was a comment made that the bill does not indicate that it will be trying juveniles as adults, but it does not preclude such.

And I don't believe these hoaxes that are unintended is going to deserve lengthy Federal prison.

And if I can correct an earlier statement, this language adds the word "maliciously" since "knowingly" is already in the bill.

Malicious acts deserve Federal felony prosecution. But innocent bad judgment and bad jokes do not.

I would hope that we would give this legislation the strength that it deserves by adding this language and, as well, providing the clarity that I think criminal prosecutions need. This does not take away from the legislation's strength, because those people who are intent on doing evil will be captured by this legislation with this amendment. And I would hope that this would occur.

I do want to respond to the suggestion or the thought that in giving prosecutors discretion, we know that they will make the right judgment. And I respect prosecutors; I have served on a municipal court bench.

But in the course and the rapidness of the day's work, I don't think we can put justice and balance on the issue of hope. And I think prosecutors clearly appreciate distinctive standards by which they can make judgments in order to move forward on prosecution or to the grand jury.

That's all we're asking to do, is to realize that the jokesters of which we Americans have grown up with—the Will Rogers of the world—that we do not capture them—the late-night pranksters on late-night shows—that we really deal with those who are malicious.

And I would ask my colleagues to accept this amendment on the anti-hoax legislation.

Chairman SENSENBRENNER. The gentleman from Texas.

Mr. SMITH. Mr. Chairman, I oppose this amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, the phrase "malicious" has common law roots. In the criminal law in the English dictionary, malicious means intending to harm another person. But in this case, adding what appears to be a simple phrase actually would weaken the bill. Adding the term "malicious," in fact, would render the legislation useless.

The term "malicious" means that a person has the intent to harm another. By its very nature, a hoax is not intended to harm or injure another person.

If the person had the intent to harm, they would use real biological weapons, for example, such as anthrax, instead of powdered sugar. By using powdered sugar instead of anthrax, the person who

engages in the hoax can argue that it was a joke and that they did not intend to harm anyone.

The issue is not whether the criminal intended to physically harm the victims of the hoax, but whether the victims reasonably believed they might be harmed.

Furthermore, Mr. Chairman, the model penal code contends that there are only four separate recognizable states of mind: purposeful, knowing, reckless, and negligent. Malicious is not one of those four states of mind.

So I would urge my colleagues to oppose this amendment.

Chairman SENSENBRENNER. The question is on the adoption of the——

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, the adoption of the amendment would mean that bad jokes would not be criminalized. I think that's a good idea, and I would support the amendment.

We should not indict and arrest, try, and try to send to jail people who have bad judgment and make bad jokes.

I would hope we would adopt the amendment. I yield back.

Chairman SENSENBRENNER. The question is on the adoption of the amendment by the gentlewoman from Texas, Ms. Jackson Lee.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

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

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3209, offered by Mr. Scott. Page 2, line 15, after the first period, insert "an order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment."

[The amendment follows:]

AMENDMENT TO H.R. 3209

OFFERED BY Mr. Scott

Page 2, line 15, after the first period insert "An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.".

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, the amendment is self-explanatory.

Some of the judgment—some of the reimbursement orders that could be ordered could be much more than could ever reasonably be paid. The judgments will be joint and severable—the defendants will be jointly and severably liable. And if it is enforced as a civil judgment, you get just about everything the person has. You would not be able to throw them in jail, for example, for not going to work, as you could under a criminal fine.

And I would hope that we would adopt the amendment.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, the gentleman from Virginia, Mr. Scott, brought this concern out, both during the hearing and during yesterday's markup in the Subcommittee, and I agree that he makes a good point. There was never any intent in this legislation to put someone in jail for failure to pay this reimbursement.

And so I would like to urge my colleagues to support this amendment.

Chairman SENSENBRENNER. The question is on the amendment of the gentleman from Virginia, Mr. Scott.

Those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

Mr. BARR. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Georgia, Mr. Barr.

Mr. BARR. I would like to ask unanimous consent to engage in a brief colloquy with the Chairman of the Subcommittee.

Chairman SENSENBRENNER. The gentleman moved to strike the last word, and he's recognized for 5 minutes.

Mr. BARR. Thank you.

As the distinguished Chairman of the Subcommittee knows, based on both comments during our hearing and at yesterday's Subcommittee markup on this, I have expressed some concerns similar to those expressed by a couple of other learned Members of this Committee to try and ensure that what we are not doing here is federalizing with the full weight of the Federal criminal law apparatus bad jokes and juvenile behavior, while certainly recognizing also that, particularly in the climate engendered by recent terrorist activities, there is a very legitimate concern for the people of this country and for the Federal Government to stop serious hoaxes and to punish those, particularly when they result in very serious action and reaction on the part of government, emergency, and police, and national security personnel.

I would just like to have the distinguished Chairman of the Subcommittee explain in a little more detail his bill as proposed today, as has been redrafted, to ensure that we have legislative history indicating that it is not intended to reach simply a bad joke.

And I would yield to the Chairman.

Mr. SMITH. I thank the gentleman for yielding.

And I would like to reassure the gentleman from Georgia, as well as the gentlewoman from Texas, Ms. Jackson Lee, that it is certainly not the intent of this legislation to punish anyone who engages in a prank that lasts 5 minutes, for example.

The intent of the legislation is, in fact, to punish someone who, for example, engages in a hoax that perhaps shuts down a hospital and causes loss of life. A prank such as the gentleman described would not rise to the level of leaving the false impression that it would violate four sections of the criminal code.

So I would like to reassure the gentleman, I am happy to state for the record that that kind of short-term prank that would be over with in a couple of minutes and not create the harm or the injury or the danger that is anticipated with a real hoax would not be prosecuted.

The intent of the legislation, again, is only to punish those who engage in hoaxes that create a real threat and a serious and reasonable belief that a biological, chemical, or nuclear attack has occurred.

Mr. BARR. I thank the gentleman.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts.

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I'll be brief, Mr. Chairman. And I respect the concerns that have been articulated by my friend from Georgia and gentlelady from Texas.

But I just want to make two observations, because I think it's important that we understand, particularly as it relates to juveniles, that in those cases, if juveniles are charged with an offense under this particular proposal, they will be tried in the Federal courts as juveniles. And clearly, all of the protections afforded juveniles will pertain to them, given the distinctions made between juveniles and adults in our criminal jurisprudence.

There is, I suggest, no need to make any exception because it already exists.

And additionally, I would daresay that any prosecutor hopefully would exercise appropriate prosecutorial discretion when it came to the appropriate charge and appropriate recommendation in cases involving hoaxes. Clearly, there are differences in degree in terms of the harm that is inflicted.

At some point in time, we have to rely on individuals in our system of justice to exercise balanced and fair and appropriate judgment.

I think this is a very good piece of legislation. I think it makes sense. It's long overdue. And I hope that it passes.

Chairman SENSENBRENNER. Are there further amendments?

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I would like to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much.

I think this discussion is a very productive discussion, and I do thank Mr. Barr for his comments and colloquy with Mr. Smith, and the effort at the clarification that this is legislation, of which broadly I support, that intends to capture those who would do evil and would do wrong in that they wish to have a negative impact to create terror, to frighten people.

But I do want to add a note of caution and a caveat.

For all of my good friends who are here who are former prosecutors, I have the greatest respect for them and certainly have had the experience of presiding as they have made presentations in a local court scenario.

But let me be very clear that all cannot rest on our hope and good wishes for all prosecutors throughout the Nation.

Now, I will look at this bill more closely and determine whether or not the representations that have been made are accurate.

But in Houston, Texas, right now we have Vanessa Leggett, a young woman who has been held for more than 3 months, a journalist that U.S. prosecutors refuse to give even bail because they allege that she is interfering with a criminal prosecution, which is absolutely not accurate, in that she has cooperated and she has journalistic privileges. She is not the criminal; she has spoken in the context of writing a book.

That's poor judgment. And I think you can find poor judgment examples across the Nation.

Additionally, those of us who have dealt with racial profiling know there is a lot of poor judgment that goes on in the prosecutorial, in the criminal justice system. And, therefore, I think this Judiciary Committee, Republicans and Democrats alike, because there may be poor judgment on those who have avocations or advocate positions that I may disagree with, there may be those who are in the groups that I may have a difference of opinion, but they have a right to have access to a fair system.

I think when we write legislation, we should err on the side of being the fairest that we possibly can be and not yet suggest that the good judgment of prosecutors will be the rule of the day. We have had good judgment, and we've had judgment that has not been so good.

So I will be studying this legislation. But I frankly believe that the language was not language that would undermine the bill. I think it would help strengthen the bill. And, again, I think the merits of the bill are certainly warranting of this Committee's support.

And I thank the Chairman for yielding.

Chairman SENSENBRENNER. Are there further amendments?

Hearing none, the question occurs on the amendment in the nature of a substitute as amended.

Those in favor will say aye.

Opposed, no.

The aye has it. [Laughter.]

And the amendment in the nature of a substitute is agreed to.

The Chair notes the presence of a reporting quorum. The question now occurs on the motion to report the bill H.R. 3209 favorably as amended by the amendment in the nature of a substitute as amended.

Those in favor will say aye.

Opposed, no.

The ayes have it, and the motion to report favorably is adopted.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. And all Members will be given 2 days as provided by the rules in which to submit additional dissenting, supplemental, or minority views.

[Intervening business.]

The Chair thanks the Members for their indulgence and support. This concludes the business on the notice, and the Committee is adjourned.

[Whereupon, at 11:06 a.m., the Committee was adjourned.]

ADDITIONAL VIEWS

We support the effort to punish people who perpetrate hoaxes involving biological, chemical, or nuclear materials or other weapons of mass destruction; in this time of national crisis, it is outrageous for any individual to take advantage of our collective anxiety about terrorist acts.[1] Clearly, we must act to provide law enforcement with the tools it needs to address this problem.[2] For that reason, we support H.R. 3209, the "Anti-Hoax Terrorism Act of 2001," which creates a Federal criminal penalty and a civil cause of action to convey intentionally any false information about a threat involving biological, chemical, or nuclear weapons or weapons of mass destruction. We are submitting these additional views, however, because we believe H.R. 3209 is unintentionally drafted too broadly and because it imposes mandatory restitution in criminal cases. We hope these matters can be addressed as we move to the floor or resolve differences with the Senate.

The bill, as currently drafted, would make it a Federal crime to engage in "any conduct" (1) "with the intent to convey false or misleading information under circumstances where such information may reasonably be believed," and (2) where the information concerns an activity which would violate Federal law with respect to chemical weapons, biological weapons, nuclear materials, or weapons of mass destruction. This offense would be punishable by a fine, imprisonment of up to five years, or both. In addition, the bill makes the individual who conveys such information subject to a civil action for emergency or investigative responses incurred as a result of responding to the false information. Finally, the bill requires the court to order a person convicted of this Federal crime to pay restitution. The person would be jointly and severally liable for restitution, and the restitution would be treated as a civil, rather than a criminal, fine. The following is a description of the concerns we would hope could be addressed before the bill is signed into law.

I. OVERBREADTH

Whenever we create new criminal penalties, we must do so in a measured and reasonable manner. That is why Rep. Sheila Jackson

[1] There has been a recent rash of anthrax hoaxes, where one or more persons have decided to intimidate others by sending powder through the mail purporting to be anthrax, but later determined to be harmless. A large portion of recipients of such letters have been abortion clinics and pro-choice groups; in fact, over 280 clinics have been threatened since the initial outbreak. Dennis B. Roddy, *Anthrax Threats Target 2 Abortion Providers Here, Others in East*, PITTSBURGH POST-GAZETTE, Nov. 9, 2001, at A11. In a recent incident, a perpetrator used Federal Express to send powder and a threatening note to a pro-choice group and went so far as to forge the billing numbers and return addresses of the groups themselves. *Id.*

[2] While Federal authorities do have some tools available against such offenders, see 18 U.S.C. § 876 (penalties for mailing threatening communications), we have heard the call of clinics and other targets that additional legislation is needed to fill gaps. *See, e.g., Planned Parenthood Voices Support for Anti-Terrorism Bill*, Press Release (Nov. 15, 2001) ("We are pleased to see Congress is considering stiffer penalties for people who commit such acts.").

Lee (D-TX) offered an amendment at the Committee's markup to require the government to prove that the hoax was perpetrated with "malicious" intent.[3]

We believe that the bill as written could go too far because it does not require that the offenses be committed with such intent. First, the legislation could result in Federal prosecutions of individuals who simply disseminate erroneous information about potential acts of terrorism. For example, a chain e-mail recently was circulated that purported to contain credible information that terrorist acts involving anthrax would occur in shopping malls on October 31, 2001. Such acts did not occur. Under a strict reading of this bill, an individual who forwarded that e-mail knowing it to be false, but could reasonably be believed, would be subject to Federal prosecution.

Also subject to Federal prosecution would be incidents that amount to nothing more than mere jokes. It has been reported that there is almost a national "epidemic" of people who are sending or giving powder to friends or coworkers to give a temporary scare about anthrax but not intending ill will.[4] Furthermore, it should come as no surprise that there are teenagers out there who have not learned better and engage in simple pranks just to scare friends.[5] While we believe that this demonstrates poor taste and bad judgement, we do not believe it should be subject to Federal prosecution.

The Majority's response essentially has been to concede that this reading of the bill is correct but we should simply trust that Federal prosecutors will exercise their discretion and avoid prosecuting such cases. While it is true that most prosecutors will refrain from prosecuting incidences involving misguided pranks or bad jokes, we already are seeing that, in the current atmosphere, there are prosecutors who will bring such cases.[6] Congress should preclude such overzealous prosecutions through more narrowly-tailored language in this bill.

Third, despite the gaps we acknowledge exist in current Federal law, there are some remedies available to law enforcement against serious offenses. For instance, some state authorities already have begun criminal investigation and prosecutions against persons whose hoaxes were so egregious that they crossed the line.[7] In ad-

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[3] Requiring the government to prove the conduct was intended maliciously would have provided a parallel with the mens rea requirement of similar legislation introduced in the Senate by Sen. Patrick Leahy (D-VT), Chairman of the Senate Committee on the Judiciary. *See* S. 1666, the "Anti-Terrorist Hoax and False Report Act of 2001," 107th Cong., 1st Sess. § 2 (2001). Unfortunately, the Jackson Lee amendment was defeated by voice vote.

[4] Susan Levine, *Disseminating Dread; Pranksters, Disgruntled Americans Perpetrate Hoaxes*, WASH. POST, Oct. 26, 2001, at A1.

[5] *Id.*

[6] *Id.*

[7] In one case, a firefighter in Lycoming County, Pennsylvania, told his colleagues that powder had spilled from an envelope he had opened at home; a few weeks later, he was in court facing the felony criminal charge of creating a disturbance. Martin Kasindorf & Toni Locy, *Anthrax Hoaxes Persist Despite Arrests*, USA TODAY, Nov. 6, 2001, at 1A. In addition, state prosecutors have filed felony disorderly conduct charges against a Cook County, Illinois prosecutor who put on a colleague's desk an envelope filled with sugar and bearing the return address of a defendant in that colleague's case. Richard Roeper, *Anthrax-Joke Epidemic is Real National Illness*, CHICAGO SUN-TIMES, Nov. 5, 2001, at 11. Finally, Kentucky State Police are conducting a criminal investigation of Bourbon County Sheriff John Ransdell, who "slipped envelopes containing crushed aspirin onto courthouse employees' desks," purportedly to test employee preparedness. Laura Yuen, *Sheriff Target of Criminal Inquiry over Aspirin He Put in Envelopes*, LEXINGTON HERALD LEADER, Nov. 1, 2001, at A1.

dition, numerous employers have fired employees who engaged in such acts.[8] These examples show that the congressional response to the hoax epidemic does not need to address each and every scare; instead, it can and should be narrowly tailored to the most egregious cases.

Unfortunately, the Majority opposed the amendment on the grounds that it would render the legislation meaningless. The rationale was that "malicious" means "intending to cause harm" and that perpetrators could argue it is clear they did not intend to cause harm because they did not send real anthrax. This argument is flawed, however, because the term "malicious" does not mean "intent to cause harm;" instead, it has been defined as "characterized by, or involving, malice; having, or done with, wicked, evil or mischievous intentions or motives; wrongful and done intentionally without just cause or excuse or as a result of ill will."[9] As such, the amendment would have clarified that the legislation would apply only to persons who are conveying ill will, not simply those joking in bad taste.

Another problem with the existing intent standard is that it does not require the defendant to know that the information conveyed was false or misleading. As it is written, the bill could lead to the prosecution of a person who intended to convey information but did not intend for it to be "false or misleading." For that reason, we hope the bill can be clarified to state that the person must know the information is false or misleading.

II. MANDATORY RESTITUTION

We also are concerned that because the bill imposes mandatory restitution for criminal violations and, therefore, eliminates judicial discretion in making sentencing decisions and discriminates against those with lower incomes. More specifically, H.R. 3209 requires judges to order those convicted of a criminal hoax offense to reimburse any party—likely to be the government—for any expenses incurred due to the hoax.[10]

The first problem with this provision is that, as with mandatory minimum penalties, it removes judges from the sentencing process and thereby strips their discretion. Under current law, whether a defendant should be required to make restitution generally is left to the discretion of the sentencing judge.[11] In fact, leaving judges the discretion to make sentencing decision has been a prized characteristic of our judicial system and prior congressional actions to strip that away have been criticized.[12] Unfortunately, this provi-

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[8] Roeper, *supra;* Valerie Schremp, *Fired Worker at GM Plant is Charged in Prank Involving the Anthrax Scare*, ST. LOUIS POST-DISPATCH, Oct. 24, 2001, at A4.

[9] BLACK'S LAW DICTIONARY 958 (6th ed. 1990).

[10] H.R. 3209 § 2(a) ("[t]he court, in imposing a sentence on a defendant who has been convicted of a [criminal hoax offense], shall order the defendant to reimburse any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses. A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.") (emphasis added). The provision was tempered by an amendment offered by Rep. Bobby Scott (D-VA) ensuring that reimbursement orders would be civil, not criminal, judgments, so that those unable to pay would not go to jail.

[11] *See*, e.g., 18 U.S.C. § 3663.

[12] *See, e.g.*, Lucy Quinlivan, *Judge Quits Case over Sentencing; Federal Mandate Cited in Drug Case*, SAINT PAUL PIONEER PRESS, Jan. 20, 2001, at 1B (Federal judge removes himself from

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sion prohibits judges from making case-by-case determinations about whether an individual should be required to reimburse the government or any other party, thus subjecting all defendants to a one-size-fits-all punishment scheme.

Moreover, mandatory restitution discriminates on the basis of economic status, in that those with lower incomes would be less likely to be able to comply with reimbursement orders.[13] As a result, defendant with lower incomes would be more likely to fall irreversibly into the justice system, from the initial criminal conviction to a reimbursement order and then possibly to a contempt of court citation for not providing reimbursement.[14]

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case rather than complying with U.S. Court of Appeals order to impose harsher sentence in line with Federal Sentencing Guidelines); Michael R. Bromwich, *Put a Stop to Savage Sentencing*, WASH. POST., Nov. 22, 1999, at A23 (op-ed); Linda Greenhouse, *Guidelines on Sentencing Are Flawed, Justice Says*, N.Y. TIMES, Nov. 21, 1998, at A12 (Supreme Court Justice Stephen G. Breyer criticizing the Federal Sentencing Guidelines and "calling for Federal judges to regain some of their traditional discretion to make the punishment fit the crime."); Benjamin Weiser, *Judge Has His Own Take on Sentencing Formulas*, N.Y. Times, Sept. 14, 1997, at 1–39 (Federal judge sometimes imposes lighter or harsher sentences than the Federal guidelines call for depending on the circumstances of each case).

[13] *See, e.g.*, Letter from Ira Glasser & Laura Murphy Lee, ACLU, to the Honorable Henry Hyde, Chairman, House Comm. on the Judiciary (Jan. 27, 1995).

[14] Pursuant to an amendment adopted at the Committee markup and offered by Reps. Bobby Scott (D-VA) and Lamar Smith (D-TX), the reimbursement order would be treated as a civil, not criminal, judgment.