

Robert D. Novak

A Senate 'Terrorist Loophole'

Behind the Hearings On Border Reform

With their party sharply divided on immigration, House Republicans are launching an effort this week to transform this political liability into an asset by tying it to the war against terrorism. The House GOP's summer of hearings on the emotional issue is opening on the Mexican border with claims that the Senate-passed immigration bill would inhibit local law enforcement officers from preventing terrorist attacks.

Rep. Edward R. Royce's International Relations subcommittee on terrorism started hearings yesterday in San Diego (and continues tomorrow in Laredo, Tex.) on the subject of a "terrorist loophole" in the Senate measure. The subcommittee's testimony contends that a provision in the bill prohibiting local police officers from arresting illegal aliens for civil offenses deprives them of a law enforcement tool that might thwart terrorist assaults.

Democrats have been pummeling House Republican leaders for calling hearings instead of getting down to business in resolving differences between the border enforcement bill passed by the House on a mainly party-line vote and the bipartisan Senate measure providing for guest workers. This week's hearings make the point that the Senate bill is filled with details that have escaped wide attention.

The provision under scrutiny certainly escaped careful consideration by the Senate in late May, when it hurriedly passed a 796-page bill. Details were handled by the American Immigration Lawyers Association and Sen. Edward M. Kennedy's staff. But in recent weeks the bill has been scrubbed by outside experts — including Kris W. Kobach, who was then-Attorney General John Ashcroft's chief adviser on immigration law and now is a professor of law at the University of Missouri-Kansas City.

In a Heritage Foundation paper published one day before the Senate bill passed, Kobach exposed what he called the terrorist loophole. Section 240D would restrict local police from arresting aliens for civil violations, limiting them to apprehension for criminal offenses. That means a sheriff's officer on the border could not arrest someone whose papers showed he had overstayed his visa. "Afraid of arresting the wrong type of illegal alien — and getting sued as a result — many police departments will stop helping the federal government altogether," Kobach wrote.

Kobach and Royce point out that four of the Sept. 11, 2001, terrorists, all of whom had violated immigration laws, were stopped for speeding before their attack. Had the police officers asked the right questions, terrorists could have been arrested under current law — but not under the Senate bill. To Kobach, the "results would be disastrous."

The classic case is Ziad Samir Jarrah, who was at the controls of United Flight 93 when passengers fought the terrorists before the plane crashed in the Pennsylvania countryside. Jarrah was an illegal alien from Lebanon who had violated U.S. immigration laws but had avoided apprehension by authorities until he was stopped on Sept. 9, 2001, for speeding in Maryland on his way from Baltimore to join his confederates in Newark.

Nawaf al-Hazmi, the Sept. 11 plot's second-in-command, also had been stopped for speeding, on April 1, 2001. The visa on his Saudi passport had expired 8½ months earlier, but the Oklahoma patrol officer didn't ask to see it.

Had these local police officers been as well-briefed as law enforcement officers are now, Jarrah or Hazmi might well have been taken into custody. It is conceivable that the Sept. 11 conspiracy would have been uncovered and disaster averted. But that would not be possible under the Senate bill. In contrast, the House bill provides assistance to local police to encourage their help in immigration enforcement.

Kobach joined law enforcement officers to explain this situation at the San Diego hearing. In Laredo, the emphasis will switch to the Senate bill's restrictions on construction of a wall on the Mexican border. To Royce and the House Republican leadership, the entire Senate version is honeycombed with undigested provisions needing more debate.

The Senate bill is co-sponsored by Sen. John McCain, who may be the next Republican presidential nominee, and it is endorsed by President Bush. But the polls show clear public preference for the House bill — and make border protection a priority for most Republicans in Congress. The hearings in San Diego and Laredo only fortify that tendency.

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