

RICHARD BURR WANTS TO LABEL PEOPLE WHO MAKE THREATS AND CARRY GUNS “TERRORISTS”

The bill Senate Intelligence Chair Richard Burr released last Friday is bad enough for the way it expanded the existing illegal dragnet. I argued here Burr's bill would give the Intelligence Community everything they lost in 2009 and 2011.

But there's something just as troubling in Burr's stack of additional goodies for the IC. As USA F-ReDux does, Burr's bill extends maximum sentences for material support for terrorism. Both bills increase the maximum sentence under 18 USC 2339B, which prohibits material support for a terrorist group formally designated as such by the government. Burr would also increase the maximum sentence under 18 USC 2339A, which prohibits material support for people who may not be formally designated as terrorists, but who violate one of a bunch of *other* laws that are deemed terrorist acts. (Burr also tweaks the penalty for getting military training from terrorists in ways that might actually lower the punishment.)

The shocking move came in Burr's proposal to add 18 USC 924(c) – which prohibits the “use, carrying, or possession of fire arms” during the commission of a crime of violence – among those crimes listed in 18 USC 2332b that make someone a terrorist.

Let me be clear: I'm in favor of doing whatever we can to keep guns out of the hands of terrorists and dangerous people, so much so my libertarian and gun activist friends surely consider me squishy on the Constitution.

But there are a number of reasons why making the

possession of gun while committing a crime of violence, "a terrorist act," is a dangerous idea.

It starts from the fact that the term "crime of violence" is horribly vague (so much so that SCOTUS is reviewing a similar designation right now). It "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." That is, the "violence" may all stem from that perceived threat of physical force, which in turn may stem from someone's possession of a gun (or, as often happens in our still very racially charged society, the possession of a gun by a particular kind of someone).

Then, to meet the terms of 18 USC 2332b that makes something a terrorist act, it may only involve a *threat* to "conspir[e] to destroy or damage any structure, conveyance, or other real or personal property within the United States." As with the crime of violence, it may be the perceived threat of a crime, rather than a committed crime. And one way to qualify under this provision, the act would be "calculate[] to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct."

Altogether, Burr's proposed change could – if the Federal Government pushed far enough – get people labeled as a terrorist for posing a threat or risk to the government while carrying a gun. The required element – beyond being or making a threat – is that gun, which, of course, is protected under the Constitution. The rest is just the risk to property in a way to influence politics. But ordinary dissidents and protestors intend to influence politics and have, at times, been called a threat to property, and looters who definitely (and indefensibly) destroy property have, throughout history, often been described as a "risk to the government" (and especially, a risk to law enforcement). Certainly dissidents should not be deemed terrorists because they carry guns and sit in

the wrong park. And while looting is wrong, it's not terrorism.

This might seem far-fetched, but one of the rare instances where non-Muslims have been charged as terrorists under a related provision – which deems even FBI-supplied bombs “Weapons of Mass Destruction” and therefore terrorist weapons – were three guys tied to Occupy Cleveland who were caught in an FBI-crafted sting.

As with that case, the effect of labeling someone's threat of violence a terrorist crime would involve expanding the potential sentences significantly, not to mention labeling someone a terrorist as they contemplated a jury trial. Since 9/11, jurors have been very credulous of evidence involving alleged terrorists, meaning it would become a lot easier for the government to win convictions even with dodgy evidence or (as in the Cleveland case) a plot invented by the FBI.

It probably, also, involves lots of extra investigative tools.

There are so many other ways to designate people who are really conspiring under the direction of actual terrorists as terrorists that this seems like dangerous overkill. It would invite Feds to label looters who happen to be armed or dissidents who mouth off and train with guns as terrorists – and thereby all their associates as material supporters of terrorism.

Richard Burr's bill is horrible, as it is, for how it would expand the dragnet. But that he is, at the same time, envisioning dangerously expanding the definition of “terrorist” in a way that could be badly abused is another reason to distrust Burr's effort to capitalize on fear-mongering around the PATRIOT reauthorization to expand the security state.