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Collection Name DEGRAFFENREID, KENNETH: FILES

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SJW 2/29/2016

File Folder HOSTILE INTELLIGENCE THREAT: ~~NSDD~~-TERRORISM
1984: TERRORISM LEGISLATION

FOIA

F02-0083/01

Box Number RAC BOX 10

PRADOS

610

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
173424	FOLDER	MEMOS	53	ND	B1

The above documents were not referred for declassification review at time of processing

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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NATIONAL SECURITY COUNCIL

Tenouism

14 Dec 83

Ker,

Per your request,
attached is memo
to OMB
re Tenouism
Bills

Thanki: June
file Tenouism

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

North

December 12, 1983

MEMORANDUM FOR JAMES C. MURR

FROM:

ROBERT M. KIMMITT *Boh*

SUBJECT:

NSC Views on Five Terrorism Bills

NSC concurs in the five draft bills as forwarded by OMB. As indicated in our previous comments on counter-terrorism legislation, the NSC has long held that stand-alone legislation is more likely to be enacted and receive the support necessary for implementation.

The NSC staff is working actively through the interagency group on terrorism to develop an appropriate Presidential message of transmittal. OMB is to be commended on the development and coordination of this legislative package.

MEMORANDUM

NATIONAL SECURITY COUNCIL

ACTION

December 12, 1983

MEMORANDUM FOR JOHN M. POINDEXTER

FROM: OLIVER L. NORTH *N*

SUBJECT: NSC Views on Five Terrorism Bills

Attached at Tab A is an OMB legislative referral requesting our views on five draft bills which, if enacted, would improve our counter-terrorism programs. This package of legislation responds to our earlier initiatives to withdraw the omnibus counter-terrorism bill generated by Justice and replace it with five "stand-alone" bills.

At our request, OMB served as coordinator for developing this package. Working closely with MCT at State, DOJ, and the Enforcement Secretariat at Treasury they have done a remarkable job in short time.

Our goal is to forward this legislation under a Presidential letter of transmittal (which we are developing separately) and include mention of it in the State of the Union Address.

RECOMMENDATION

That you authorize Bob Kimmitt to sign and transmit the memo at Tab I.

Approve *RMK*

Disapprove _____

Attachments

Tab I - Kimmitt Memo to Murr

Tab A - OMB Legislative Referral Memorandum dtd
December 8, 1983



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

December 8, 1983

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

- Department of Justice
- Department of State
- Central Intelligence Agency
- Department of Defense
- Department of the Treasury
- Department of Energy
- Department of Transportation
- National Security Council

SUBJECT: 5 bills on terrorism

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

On October 26, a meeting was held at OMB to determine how to proceed with the development, clearance, and transmittal of anti-terrorism legislation. As a result of that meeting, the Interagency Group on Terrorism has developed the following bills (attached) for transmittal to Congress: (1) Terrorist Control Act of 1984; (2) Aircraft Sabotage Act; (3) Act for the Prevention and Punishment of the Crime of Hostage Taking; (4) Act for Rewards for Information Concerning Terrorist Acts; and (5) Prohibition Against the Training or Support of Terrorist Organization Act of 1983. (A draft Presidential message transmitting these bills to Congress will be made available for review at a later date.)

Please provide us with your views no later than December 16, 1983. NOTE: Since Presidential transmittal of this legislation is expected, a timely response is essential.

Direct your questions to Gregory Jones (395-3856), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

- cc: D. Taft A. Curtis K. Wilson J. Barie
 C. Horner, w/o Attachment R. Peterson/T. Lawler
 M. Uhlmann, w/o Attachment
 E. Strait, w/o Attachment

RECEIVED 09 DEC 83 11

TO MCFARLANE

FROM MURR, J

DOCDATE 08 DEC 83

KEYWORDS TERRORISM

LEGISLATIVE REFERRAL

SUBJECT: 5 BILLS ON TERRORISM

ACTION: PREPARE MEMO KIMMITT TO MURR DUE: 14 DEC 83 STATUS S FILES

FOR ACTION

FOR CONCURRENCE

FOR INFO

NORTH

LEHMAN, C

DEGRAFFENREID

FORTIER

THOMPSON

concurring + recommending that OMB

COMMENTS

REF# LOG NSCIFID (CB)

ACTION OFFICER (S) ASSIGNED ACTION REQUIRED DUE COPIES TO

DISPATCH _____ W/ATTCH FILE _____ (C)



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

December 8, 1983

LEGISLATIVE REFERRAL MEMORANDUM

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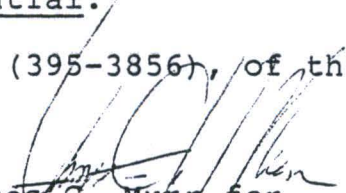
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 C. Horner, w/o Attachment R. Peterson/T. Lawler
 M. Uhlmann, w/o Attachment
 E. Strait, w/o Attachment

A bill to provide penalties for various acts of terrorism, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Terrorist Control Act of 1984".

SEC. 2. Chapter 51 of title 18, United States Code is amended by adding at the end thereof the following new section:

"1118. Conspiracy to kill, kidnap, or maim in a foreign country

"(a) Whoever conspires with one or more other persons to commit at any place outside of the United States an act that would constitute the offense of murder, kidnaping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if he or one of such other persons in fact commits any overt act within the United States with intent to effect any object of the conspiracy, be punished as provided in subsection (b).

"(b) The punishment for an offense under subsection (a) of this section is --

"(1) imprisonment for any term of years or for life or a fine of not more than \$250,000, or both, if the offense is conspiracy to murder;

"(2) imprisonment for not more than thirty years or a fine of not more than \$250,000, or both, if the offense is conspiracy to kidnap; and

"(3) imprisonment for not more than twenty years or a fine of not more than \$250,000, or both, if the offense is conspiracy to maim."

SEC. 3. The analysis of chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1118. Conspiracy to kill, kidnap, or maim in a foreign country."

SEC. 4. Subsection (a) of section 956 of title 18 is amended to read as follows:

"(a) Whoever within the jurisdiction of the United States conspires with one or more persons to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield or other public utility or public structure so situated, shall, if he or any such other person commits any act within the jurisdiction of the United States to effect the object of the conspiracy, be fined not more than \$50,000 or imprisoned not more than ten years, or both."

SEC. 5. Chapter 43 of title 18, United States Code, is amended by adding at the end thereof the following new section.

918. Agents of the United States Intelligence Community

"(a) Whoever pretends to be an officer or employee of, or pretends to be acting under the authority of or in concert with, an agency within the United States Intelligence Community and in such pretended character requests or induces any other person to commit an offense punishable by imprisonment for more than one year under the laws of the United States, a State of the United States, a foreign government or a political subdivision of a foreign government, or to do an overt act to facilitate the commission of any such offense shall be punished by imprisonment for not more than ten years or a fine of not more than \$50,000, or both.

"(b) It is not a defense to a prosecution under this section that

"(1) the offense or act requested or induced did not take place, or was not attempted, or

"(2) the agency in the United States Intelligence Community lacked the authority to request or induce such an act.

"(c) There is extraterritorial jurisdiction over an offense under this section.

"(d) For the purposes of this section the agencies within the United States Intelligence Community are:

"(1) The Central Intelligence Agency

"(2) The National Security Agency

"(3) The Defense Intelligence Agency

"(4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs

"(5) The Bureau of Intelligence and Research of the Department of State, and

"(6) The Intelligence elements of the Army, Navy, Air Force, Marine Corps, and Coast Guard, the Federal Bureau of Investigation, the Department of Treasury, and the Department of Energy."

SEC. 6. The analysis of chapter 43 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"918. Agents of the United States Intelligence Community."

Section-by-Section Analysis

The Terrorist Control Act of 1984

The bill covers three areas of activity common to terrorists. The first is conspiracy in the United States to murder, kidnap or maim a person outside of the United States. The second is conspiring in the United States to destroy certain critical types of property such as public buildings and airfields in foreign countries. The third is impersonating an officer or employee of a United States Intelligence Agency, such as the CIA, and in that capacity inducing another person to commit a felony.

Section two of the bill adds a new section 1118 to Title 18 to proscribe a conspiracy in the United States to murder, maim, or kidnap a person outside of the United States. The new section fills a void in the law that exists despite the provisions of 18 U.S.C. 956. That statute prohibits a conspiracy in the United States to commit certain types of property destruction in a foreign country with which the United States is at peace. It does not cover conspiracy to commit crimes against the person.

The new section 1118 expands on section 956 to cover conspiracy to commit one of the three listed serious crimes against any person in a foreign country or any place outside of the jurisdiction of the United States such as on the high seas.

This type of offense is often committed by terrorists and the new section is intended to ensure that we are able to punish those persons who use the United States as a base in which to plot such a crime to be carried out on foreign soil.

Section 1118 would apply to conspiracies to commit one of the enumerated offenses where at least one of the conspirators is inside the United States. The other member or members of the conspiracy would not have to be in the United States but the overt act to carry out the conspiracy would have to be committed in the United States. The section would apply, for example, to two individuals who consummated an agreement to kill a person in a foreign country where only one of the conspirators was in the United States and the agreement was reached by telephone conversations or letters, provided at least one of the overt acts were undertaken by the party in the United States. In such a case the agreement would be reached at least in part in the United States. The gist of the crime of conspiracy is, of course, the agreement to commit a crime plus an overt act in pursuance thereof. The overt act may be that of only one of the conspirators and need not itself be a crime.

Section four of the bill slightly revises subsection 956(a) of title 18 dealing with a conspiracy in the United States to destroy property in a foreign country. The revision adds the terms "airport" and "airfield" to the list of "public utilities" presently set out in section 956(a), the destruction of which must be the object of the conspiracy, since they are particularly

attractive targets for terrorists. Moreover, the phrase "public structure" is added to the list of targets to make it clear that the statute covers a conspiracy to destroy a structure where persons assemble for work -- such as a store, factory or office building -- or for purposes of government, education, religion, or entertainment, and that the phrase "public utility" does not limit the statute's application to a conspiracy to destroy such property as transportation lines or power generating facilities. The revision also increases the penalty from the present maximum of three years imprisonment and a \$5,000 fine to ten years imprisonment and a \$50,000 fine. The increased punishment more accurately reflects the harm done to our foreign relations from such an offense.

Section five of the bill adds a new section 918 to title 18 to create the offense of falsely posing as an officer of, employee of, or as a person otherwise acting in concert with, a United States intelligence agency, such as the CIA, and in that capacity inducing or persuading another person to commit a crime due to a belief that the act was a properly authorized intelligence operation. The important work and reputation of United States intelligence agencies is harmed by such false personation, and crimes committed in the belief that they were, in effect, ordered by the United States necessarily have a serious impact on our foreign relations. The existing personation statutes in chapter 43 of title 18 do not completely cover this offense. While 18 U.S.C. 912 proscribes pretending to be an officer or

employee of the United States if one "acts as such," this section is limited to officers and employees and may not cover persons claiming to be otherwise affiliated with an intelligence agency. Moreover, the penalty for a violation of present section 912 is only a \$1,000 fine and three years' imprisonment, which is not sufficient for the harm done by one who poses as a United States intelligence operative and in that capacity requests another person to commit a crime.

Subsection 918(a) sets out the new offense. It prohibits any person from falsely posing as an officer or employee of, or falsely claiming he is acting under the authority of or in concert with an agency of the United States Intelligence Community and in such a false role requesting or inducing any other person to commit a felony against the United States an offense against a state of the United States punishable by imprisonment for more than one year, an offense against a foreign government punishable by imprisonment for more than one year under foreign law, or an overt act to facilitate the commission of such an offense. The gist of the offense is posing as an intelligence operative to induce or persuade another person to commit an act that would constitute an offense punishable by imprisonment for more than one year under any law -- federal, state, or foreign -- applicable at the place where it is committed or intended to be committed, or an overt act to facilitate the commission of such an offense. The overt act itself need not be an offense. For example, the subsection would cover the actions of X in New York

City who falsely claimed he was a CIA agent in an attempt to get Y to steal or lawfully rent a car to use in a kidnaping plot in Mexico. The penalty is imprisonment for up to ten years and a fine of up to \$50,000.

Subsection (b) prohibits two defenses. First, it is not a defense that the offense or act requested or induced did not actually take place or was not even attempted. The offense is complete when the person posing as an intelligence operative requests another person to commit the offense or an overt act to facilitate its commission, or acts in any manner to persuade him to do so. Second, it is not a defense that the intelligence agency that the person falsely claims to be acting for or in concert with had no authority to order, induce, or otherwise participate in the requested crime.

Subsection (c) provides that there is extraterritorial jurisdiction over a violation of subsection (a). Thus, any person, including a foreign national who falsely claims to be an officer or employee of or affiliated with one of the United States intelligence agencies for the purpose of inducing one of the described offenses, whether in this country or abroad, would be subject to the section.

Subsection (d) lists the agencies within the United States Intelligence Community whose integrity from interlopers is covered by this section. They are the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the offices within the Department of Defense for the

collection of specialized national foreign intelligence through reconnaissance programs; the Bureau of Intelligence and Research of the Department of State; and the intelligence elements of the Army, Navy, Air Force, Marine Corps, and Coast Guard, the Federal Bureau of Investigation, the Department of the Treasury, and the Department of Energy. This list of agencies is the same, except for the addition of the Coast Guard, as that set forth in Part 3.4 (f) of Executive Order 12333 of December 4, 1981, 3 CFR p. 200, 215, providing for the effective conduct of United States intelligence activities.

17

A bill to implement the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and for Other Purposes.

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

SHORT TITLE

SEC. 1. This Act shall be cited as the "Aircraft Sabotage Act."

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. The Congress hereby finds that:

(a) The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (ratified by the United States on November 1, 1972) requires all States party to it to establish jurisdiction over certain offenses affecting the safety of civil aviation;

(b) Such offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, gravely affect interstate and foreign commerce, and are offenses against the law of nations;

(c) The purpose of this Act is to implement fully the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and to expand the protection accorded to aircraft and related facilities.

SEC. 3. (a) Section 31 of Title 18, United States Code, is amended --

(1) in the first paragraph by

(A) striking out "and" before the term "spare part" and inserting "and 'special aircraft jurisdiction of the United States'" after the term "spare part"; and

(B) striking out "Civil Aeronautics Act of 1938" and inserting in lieu thereof "Federal Aviation Act of 1958";

(2) by striking out "and" at the end of the third undesignated paragraph thereof;

(3) by striking the period at the end thereof and inserting in lieu thereof"; "; and

(4) by adding at the end thereof the following new paragraphs:

"'In flight' means any time from the moment all the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing the flight shall be deemed to continue until competent authorities take over the responsibility for the aircraft and the persons and property on board; and

"'In service' means any time from the beginning of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight.".

(b) Section 32 of Title 18, United States Code, is amended to read as follows:

"§32. Destruction of aircraft or aircraft facilities

"(a) Whoever willfully --

"(1) sets fire to, damages, destroys, disables, or interferes with the operation of or makes unsuitable for use any aircraft in the special aircraft jurisdiction of the United States or any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce;

"(2) places or causes to be placed a destructive device or substance in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any such aircraft, or any part or other materials used or intended to be used in connection with the operation of such aircraft;

"(3) sets fire to, damages, destroys, or disables any air navigation facility, or interferes with the operation of such facility, if such fire, damaging, destroying, disabling, or interfering is likely to endanger the safety of any such aircraft in flight;

"(4) with the intent to damage, destroy, or disable any such aircraft, sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any appliance or structure, ramp, landing area, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection

with the operation, maintenance, loading, unloading or storage of any such aircraft or any cargo carried or intended to be carried on any such aircraft;

"(5) performs an act of violence against or incapacitates any individual on any such aircraft, if such act of violence or incapacitation is likely to endanger the safety of such aircraft;

"(b) communicates information, knowing the information to be false, thereby endangering the safety of any such aircraft in flight; or

"(7) attempts to do anything prohibited under paragraphs (1) through (6) of this subsection --

shall be fined not more than \$100,000 or imprisoned not more than 20 years or both.

"(b) Whoever willfully -

"(1) performs an act of violence against any individual on board any civil aircraft registered in a country other than the United States while such aircraft is in flight, if such act is likely to endanger the safety of that aircraft;

"(2) destroys a civil aircraft registered in a country other than the United States while such aircraft is in service or causes damage to such an aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight;

"(3) places or causes to be placed on a civil aircraft registered in a country other than the United States while such aircraft is in service, a device or substance which is likely to destroy that aircraft, or to cause damage to that aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight; or

"(4) attempts to commit an offense described in paragraphs (1) through (3) of this subsection -- shall, if the offender is later found in the United States, be fined not more than \$100,000 or imprisoned not more than 20 years, or both."

(c) Section 101(38)(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(38(d))), relating to the definition of the term "special aircraft jurisdiction of the United States", is amended --

(1) in clause (i), by striking out "; or " and inserting in lieu thereof a semicolon;

(2) at the end of clause (ii), by striking out "and" and inserting in lieu thereof "or;" and

(3) by adding at the end thereof the following new clause:

"(iii) regarding which an offense as defined in subsection (d) or (e) of Article 1, Section 1 of the Convention for the Suppression of Unlawful Acts against

the Safety of Civil Aviation (Montreal, September 23, 1971) is committed if the aircraft lands in the United States with an alleged offender still on board; and".

(d)(1) Chapter 2 of Title 18, United States Code, is amended by adding at the end thereof the following new section:

"§36. Imparting or conveying threats

"Whoever imparts or conveys any threat to do an act which would be a felony prohibited by section 32 or 33 of this chapter or section 1992 of chapter 97 or section 2275 of chapter 111 of this title with an apparent determination and will to carry the threat into execution shall be fined not more \$25,000 or imprisoned not more than five years, or both."

(2) The analysis of chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"36. Imparting or conveying threats."

SEC. 4. (a)(1) Section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471) is amended by adding at the end thereof the following new subsections:

"(c) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (l) of section 902 of this Act, shall be

subject to a civil penalty of not more than \$10,000 which shall be recoverable in a civil action brought in the name of the United States.

"(d) Except for law enforcement officers of any municipal or State government or officers or employees of the Federal Government, who are authorized or required within their official capacities to carry arms, or other persons who may be so authorized under regulations issued by the Administrator, whoever while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight shall be subject to a civil penalty of not more than \$10,000 which shall be recoverable in a civil action brought in the name of the United States."

(2) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 901. Civil penalties." is amended by inserting at the end thereof:

"(c) Conveying false information.

"(d) Concealed weapons."

(b) Section 901(a)(2) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)(2)) is amended by inserting the words: "subsections (c) and (d) of this section or" after the words "Secretary of Transportation in the case of violations of".

(c)(1) Section 902(1)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(1)(1)) is amended by striking the term "\$1,000" and inserting in lieu thereof the term "\$10,000".

(2) Section 902(1)(2) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(1)(2)) is amended by striking the term "\$5,000" and inserting in lieu thereof "\$25,000".

(d)(1) Section 902(m) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(m)) is amended to read as follows:

"FALSE INFORMATION AND THREATS

"(m)(1) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a felony prohibited by subsection (i), (j), (k), or (l) of this section, shall be fined not more than \$25,000 or imprisoned not more than five years, or both.

"(2) Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by section (i), (j), (k), or (l) of this section with an apparent determination and will to carry the threat into execution shall be fined not more than \$25,000 or imprisoned not more than five years, or both."

(2) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1956 which appears under the side heading "Sec. 903. Criminal penalties." is amended by striking out

"(m) False information."

and inserting in lieu thereof

"(m) False information and threats."

(e) Subsection (a) of section 1395 of Title 28, United States Code, is amended by striking the period at the end of such subsection and adding the following at the end thereof: ", and in any proceeding to recover a civil penalty under section 35(a) of Title 18 of the United States Code or section 901(c) or 901(d) of the Federal Aviation Act of 1958, all process against any defendant or witness may be served, regardless whether authorized under the Federal Rules of Civil Procedure, in any judicial district of the United States upon an ex parte order for good cause shown."

(f) The second sentence of section 903(b)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1473(b)(1)) is amended by striking out "Such" and inserting in lieu thereof "Except with respect to civil penalties under sections 901(c) and (d) of this Act, such".

SEC. 5. This Act shall become effective as enactment.

Section-by-Section Analysis

The Aircraft Sabotage Act

The bill is designed to implement the provisions of the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. The Convention deals with such common terrorist acts as aircraft piracy and aircraft sabotage. It was ratified by the United States in November of 1972. Under its terms the contracting countries are obliged to establish criminal jurisdiction over certain aircraft-related offenses, including extraterritorial jurisdiction over some offenses involving aircraft or air navigation facilities of other contracting countries if the perpetrator is found in a signatory country.

Section two is a statement of findings and purpose of the Congress. It indicates that enactment of the title is an exercise of the treaty power, of the power to regulate interstate and foreign commerce, and of the power to punish offenses against the laws of nations.

Section three sets forth amendments to sections 31 and 32 of title 18, section 1301(38) of title 49, and adds a new section 36 to title 18, to ensure that these laws dealing with aircraft destruction, hijacking, and related offenses, are in conformity with our obligations under the Montreal Convention.

Subsection 3(a) contains a number of technical amendments to 18 U.S.C. 31, a definitional section for the chapter concerned with crimes against aircraft and motor vehicles, and adds to it the definitions of "in flight" and "in service." These definitions are necessary because the terms have specific meanings in the Montreal Convention and are used in 18 U.S.C. 32 as amended in the next subsection.

Subsection 3(b) amends 18 U.S.C. 32, "Destruction of aircraft or aircraft facilities," in order to comply fully with Article 5, section 1(a) of the Montreal Convention which requires that a country party to the treaty establish jurisdiction over the offenses listed in Article 1 when they are committed in the territory of that country. Current federal law generally covers the Article 1 offenses which involve such things as destroying an aircraft, committing an act of violence against a person on board an aircraft in flight if the act is likely to endanger its safety, and conveying false information about a bomb threat against an aircraft. The proposed amendments provide extra-territorial jurisdiction over these offenses and do not lessen the scope of present law.

The first paragraph of new subsection 32(a) essentially incorporates the first paragraph of existing 18 U.S.C. 32 -- which now covers the destruction of civil aircraft used in

interstate, overseas, or foreign air commerce -- and expands its scope to include any civil or military aircraft in the "special aircraft jurisdiction of the United States".^{1/}

The second paragraph of new subsection 32(a) incorporates portions of the second, third, and fourth paragraphs of the current section 32 to prohibit the placing of a destructive device or substance in or near an aircraft or any part or

^{1/} The term "special aircraft jurisdiction of the United States is defined in 49 U.S.C. 1301(38) as follows:

"(38) The term 'special aircraft jurisdiction of the United States' includes --

"(a) civil aircraft of the United States;

"(b) aircraft of the national defense forces of the United States;

"(c) any other aircraft within the United States;

"(d) any other aircraft outside the United States --

"(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

"(ii) having "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

"(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a force landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard."

material used in connection with the aircraft. The new provision does not contain the requirement that the proscribed act be done with intent to damage or disable the aircraft, a requirement of current law. Rather it requires only that the placing of the destructive device or substance in such a location where if the device explodes it is likely to damage or destroy the aircraft or any part or other materials used with it. The omission of the intent element is necessary to avoid a requirement of proof of those offenses which would be greater than that required by the Montreal Convention. ^{2/} The phrase "any part or other materials used or intended to be used in connection with the operation of such aircraft" is meant to include liquids and lubricants which might be damaged by a destructive substance. These materials, such as fuel and hydraulic fluid, are individually listed in the current statute.

The third paragraph of new subsection 32(a) is a new provision which encompasses acts against air navigation facilities such as landing areas or lights now mentioned in paragraph 4 of current section 32. The element of intent to damage or disable an aircraft is also omitted from this paragraph.

The fourth paragraph of new subsection 32(a) essentially incorporates the second, third, and fourth paragraphs of current section 32 (except for the provisions mentioned in paragraphs two

^{2/} Article 1 of the Convention describes a person as committing an offense if he places a device or substance on an aircraft which is likely to destroy it or damage it to the extent it is either incapable of flight or dangerous to safety while in flight.

and three of new subsection 32(a)) to prohibit destructive acts affecting property such as machinery and ramps used in association with aircraft on the ground. The phrase listing all of the various types of property including "other material used, or intended to be used in connection with the operation, maintenance, or loading or unloading or storage of any such aircraft ..." is meant to include all of the various types of property and material which are individually listed in the current statute. The element of intent to affect an aircraft is retained in this paragraph.

The fifth paragraph of new subsection 32(a) replaces paragraph 5 of current section 32 to prohibit acts against individuals. It adds passengers to the protected category of persons as required by Article 1, section 1(a) of the Montreal Convention. Since the conduct proscribed by this paragraph could likely endanger the safety of the aircraft at times prior to and after the time such aircraft is "in flight", the jurisdictional base has been extended to cover not only those times when the aircraft is "in flight" but also the period of time while the aircraft is "in service". Although paragraph 5 of the current statute requires that the conduct be accompanied with an intent to damage, destroy, disable, or wreck any such aircraft, the substituted paragraph omits this element of proof because it would establish an offense requiring proof exceeding the requirements established by the Convention.

The sixth paragraph of new subsection 32(a) has been added to meet the requirements of article 1, section 1(e) of the convention that a person commits an offense if he intentionally "communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight." Currently, the only statutory provisions covering false information are 18 U.S.C. 35(a) and (b) with regard to bomb hoaxes and 49 U.S.C. 1472(m) with regard to hijacking hoaxes. However, neither of these provisions has a requirements of endangering the safety of an aircraft while "in flight" as does Article 1, section 1(e) of the Convention. Currently, 18 U.S.C. 35(b) and 49 U.S.C. 1472(m) carry maximum jail terms of only five years and fines of \$5,000, but do not require a showing of endangering the safety of the aircraft. Where the additional element of endangering the aircraft is present, increased sanctions are appropriate.

The seventh paragraph of new subsection 32(a) contains the attempt provision and replaces the sixth paragraph of current 18 U.S.C. 32. The authorized fine for a violation of the amended statute is increased from \$10,000 to \$100,000 which more adequately reflects the gravity of the offense, as required under the Convention. The authorized term of imprisonment for a violation remains at twenty years.

Subsection 3(b) also adds a new subsection 32(b) to title 18 of the United States Code which is designed to implement Article 5, section 1(c), in part, and Article 5, section 2. Article 5, section 1(c) requires each contracting country to establish

jurisdiction over the offenses of Article 1 "when the aircraft on board which the offense is committed lands in its territory with the alleged offender still on board." This was accomplished to some extent by adding the term "special aircraft jurisdiction of the United States" to the scope of new subsection 32(a).

Article 5, section 2 also requires each contracting State to establish jurisdiction over the offenses listed in Article 1, sections 1(a), (b) and (c), and in Article 1, section 2 insofar as that section^{3/} relates to offenses listed in sections 1(a), (b) and (c), "where the alleged offender is present in the country's territory and the country does not extradite ..."

Normally the United States would lack jurisdiction to bring such individuals to trial. Thus, jurisdiction is established in new subsection 32(b) over anyone who commits one of the offenses listed in the subsection -- such as aircraft destruction or acts of violence -- on or against a civil aircraft registered outside of the United States and who is afterwards found in this country. Obviously this includes those rare instances where the alleged offender would still be on board the aircraft when it lands in the United States, as well as those instances where the offender would subsequently enter the United States and be found here.

New subsections (b)(1), (2) and (3) of section 32 enumerate the offenses of Article 1, section 1(a), (b) and (c) as required by Article 5, section 2. It should be noted that Article 5,

^{3/} Article 1, section 2 provides that a person commits an offense if he attempts to commit an offense in section 1 or is an accomplice of a person who commits an offense in section 1.

section 2 of the Convention does not require that the offenses of section 1(d) and 1(e) of Article 1 be covered, so the obligations of Article 5, section 1(c) are met in the new subsection only to the extent of covering the offenses of Article 1, sections 1(a), (b) and (c). Subsection (b) (4) of new section 32 covering attempts to commit the proscribed acts is required by Article 5, paragraph 2 of the Convention.

Subsection 3 (c) implements Article 5, section 1(c) to the extent that it is not implemented in the new subsection 32(d) discussed above. This is accomplished by an amendment to the definition of "special aircraft jurisdiction" as set forth in section 101(38) of the Federal Aviation Act of 1958 by adding the new subsection (d)(iii).

Subsection 3(d) adds a new section 36 to chapter 2 of Title 18, United States Code. This new addition prohibits the conveyance of threats to destroy, damage or disable aircraft or related facilities by creating a felony offense where the threatening words or actions are delivered with an apparent determination and will to perform the threatened act. Presently, only the conveyance of false information regarding attempts violative of section 32 is proscribed. Thus, the amendment corrects a lapse in present law by including within the prosecutorial sphere such conduct or words which do not constitute an attempt but nevertheless are menacing and disruptive. Because of the serious nature of such conduct the maximum penalty is five years imprisonment and a \$25,000 fine.

Section four sets forth amendments to existing law to facilitate civil and criminal prosecutions for certain offenses committed aboard aircraft.

Subsection 4(a)(1) amends section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471) by adding a new subsection (c) which contains a proscription, enforceable by a civil penalty, against the conveyance of false information when such information is known to be false regarding any attempt to commit a violation of section 902(i), (j), (k), or (l) of the Act, (49 U.S.C. 1472 (i)-(l)). The conduct aimed at includes an aircraft passenger's statement, perhaps intended in jest but understandably not so taken by the aircraft's crew, that he might like to hijack the plane or that he is carrying a weapon.

The new subsection 1471(c) restates the language found currently in section 902(m)(1) of the Act and provides for a maximum fine of \$10,000 to be recoverable in a civil action. Currently, only a criminal misdemeanor offense exists for the hoax or conveyance in jest of false information regarding aircraft hijacking offenses. Past attempts at prosecution have encountered a reluctance either by prosecutors themselves or the courts to process these offenses for criminal penalties. Provision for a civil penalty provides a more appropriate vehicle to assure enforcement of violations in this area.

The new subsection 1471(d) authorizes a maximum fine of \$10,000 recoverable in a civil action where an unauthorized person attempts to board or boards an aircraft while carrying a

concealed deadly or dangerous weapon. This new subsection allows for the sanction of conduct which, under certain extenuating circumstances, would not warrant criminal prosecution but should, nevertheless, warrant an action for the recovery of a civil penalty. This section responds to unique problems arising from the boarding area discovery of weapons by providing an alternative to the criminal prosecution which is presently authorized by 49 U.S.C. 1472(1).

Subsection 4(b) of the bill allows the Secretary of Transportation to compromise civil penalties established by section 4(a).

Subsection 4(c) of the bill amends 49 U.S.C. 1472(1)(1) and (1)(2) by increasing the fines authorized for cases in which criminal prosecution is deemed appropriate for a person who has a gun or other dangerous weapon on his person while aboard or while attempting to board an aircraft. The fine for the basic offense is increased from \$1,000 to \$10,000 and the fine for the aggravated offense of carrying a gun or other dangerous weapon on an aircraft willfully and without regard for the safety of human life or with reckless disregard for the safety of human life is increased from \$5,000 to \$25,000.

It should be noted that, taken together, subsections 4(a) and 4(c) of the bill increase the range of punishments available for a person who boards or attempts to board an aircraft with a firearm or other dangerous weapon. At the lower end of the spectrum is a civil penalty of up to \$10,000. A civil penalty of

some amount could be appropriate, for example, for a businessman who has a firearm in his briefcase but, in spite of signs clearly reminding him to do so, forgets to declare it and turn it over to the airline for shipment as is required by 18 U.S.C. 922(e). At the opposite end of the scale is a criminal penalty of up to five years' imprisonment and a \$25,000 fine for a person who willfully or recklessly carries a weapon aboard a plane. Such a penalty would be appropriate if the person, for example, displayed the weapon in the course of an altercation with a fellow passenger or with a flight attendant. In between is a criminal misdemeanor penalty of a \$10,000 fine and one year's imprisonment which might be an appropriate level of punishment for a person's second offense of "forgetting" to transfer his personal firearm to the flight crew for shipment with him or for a person who consciously decided to carry a firearm with him in the cabin of a plane with no intention of using it but merely to see if he is clever enough to defeat the airport security system.

Section 4(d) of the bill amends section 902(m) of the Federal Aviation Act of 1958 by replacing the misdemeanor offense of conveyance of false information concerning air piracy and other related offenses with the offense of willful and malicious conveyance of false information concerning such offenses as presently set forth in section 902(m)(2) of the Act. This retains the felony hijack hoax offense as described above while

removing from the ambit of criminal prosecution in favor of a civil penalty the type of conduct presently encompassed by the misdemeanor hijack hoax provisions. This change parallels the provisions for bomb hoaxes under 18 U.S.C 35.

Subsection 4(e) of the bill amends 28 U.S.C. 1395(a) to facilitate the enforcement of the civil penalty provisions contemplated in 18 U.S.C. 35 (a) and proposed sections 901 (c) and (d) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(c) and (d)). The change would permit process against any defendant or witness to be served in any judicial district of the United States upon an ex parte order for good cause shown. Thus, civil proceedings may be instituted not only at the place of residence of the defendant as presently authorized under existing law, but also at the place where the violation occurred.

Subsection 4(f) of the bill amends section 903(b)(1), (49 U.S.C. 1473(b)(1)) of the Federal Aviation Act of 1958 by inserting certain exclusionary words to remove the collection of any civil penalties imposed under proposed section 901(c) and (d) of the Act from conformance with the procedures utilized in civil suits in admiralty. This subsection allows a greater flexibility in the prosecution of these civil violations and the collection of judgments therefrom. In effect, the venue provision for collection proceedings is expanded in consonance with the broadened scope for enforcement of the legislation to ensure that all actions related to sections 901(c) and (d) are swiftly processed at the location most conducive to the efficient and

economical handling of the case.

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A Bill to Implement the International Convention Against the Taking of Hostages.

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

SHORT TITLE

SEC. 1. This Act may be cited as the "Act for the Prevention and Punishment of the Crime of Hostage-Taking".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. The Congress hereby finds that:

(a) the International Convention Against the Taking of Hostages (adopted by the United Nations, December 17, 1979) requires all States parties to it to prohibit the offense of hostage-taking as defined in the Convention;

(b) hostage-taking affects domestic tranquility, interstate and foreign commerce, and foreign relations, endangers national security, and is an offense against the law of nations;

(c) the purpose of this title is to fully implement the International Convention Against the Taking of Hostages.

SEC. 3. (a) Section 1201 of title 18, United States Code, is amended --

(1) by deleting in subsection (a)(3) the words "section 101(36) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(36))" and inserting in lieu thereof "section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38))";

(2) by deleting "or" at the end of subsection (a)(3);
(3) by deleting the comma at the end of subsection (a)(4) and inserting "; or" in lieu thereof;

(4) by adding a new subsection (a)(5) after subsection (a)(4) as follows:

"(5) a threat is made to kill, injure or to continue to detain the person in order to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the person,";

(5) by amending subsection (d) to read as follows:

"(d) Whoever attempts to violate subsection (a)(4) or subsection (a)(5) shall be punished by imprisonment for not more than twenty years.";

(b) by amending subsection (e) to read as follows:

"(e) If the victim of an offense under subsection (a) is an internationally protected person, or if a threat is made to kill, injure, or to continue to detain the victim in order to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the victim, the United States may exercise jurisdiction over the offense if the offense was committed within the United States; the alleged offender is a national of the United States; the victim or purported victim was a national of the United States; or the offender is

present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the term "United States" includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38)) and the term "national of the United States" has the meaning given to it in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).";

(7) by amending subsection (f) to read as follows:

"(f) In the course of enforcement of subsection (a)(4) or subsection (a)(5), and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4) or subsection (a)(5), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, Marine Corps, and Air Force, any statute, rule or regulation to the contrary notwithstanding."; and

(8) by inserting a new subsection (g) to read as follows:

"(g) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, commonwealth, territory or possession of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law, nor shall anything in subsection (a)(5) of this section be construed as authorizing the United States to exercise jurisdiction over an offense occurring in the United States in which the alleged offender is the parent, child, spouse, brother or sister of any victim or in which the alleged offender and any victim live in the same household and are related by blood or marriage."

(b)(1) The heading of section 1201 of title 18, United States Code, is amended to read as follows:

"§1201. kidnaping and hostage-taking".

(2) The analysis for chapter 55 of title 18, United States Code, is amended by deleting the item relating to section 1201 and inserting in lieu thereof the following new item:

"1201. kidnaping and hostage-taking."

EFFECTIVE DATE

SEC. 4. Sections 2 and 3 of this Act shall become effective only when the International Convention Against the Taking of Hostages has come into force and the United States has become a party to it.

SECTION-BY-SECTION ANALYSIS

An Act for the Prevention and Punishment
of the Crime of Hostage-Taking

This bill is intended to implement the International Convention Against the Taking of Hostages, a Convention transmitted to the Senate on August 4, 1980. The Senate gave its advice and consent to the Convention's ratification on July 30, 1981 and the President signed the instrument of ratification on September 4, 1981. However, such instrument has not been filed pending passage of the implementing legislation. When the United States becomes a party to the Convention, we will have incurred an obligation to have enacted domestic laws to provide sanctions against those who commit the offense of hostage taking. Thus, this title amends the federal kidnaping statute (18 U.S.C. 1201) to provide for federal jurisdiction over any kidnaping in which a threat is made to kill, injure, or continue to detain the victim in order to compel a third party to do or abstain from doing something, a common ploy of terrorists.

Section one of the bill provides that, on enactment, the title may be cited as the "Act for the Prevention and Punishment of the Crime of Hostage-Taking."

Section two of the bill is a statement of the findings and purposes of the Congress in enacting the legislation. It is based on an exercise of the treaty power and of the power to punish offenses against the law of nations, as well as on the power of Congress under the commerce clause and other provisions of the Constitution.

Section three of the bill amends the federal kidnaping statute (18 U.S.C. 1201) to create federal jurisdiction over those kidnapings that also constitute hostage-taking. Section 1201 now prohibits kidnaping when the victim is transported in interstate commerce or is an internationally protected person or when the offense is committed in the special maritime, territorial, or aircraft jurisdiction of the United States. These existing offenses have been left unchanged.

The present federal kidnaping statute creates a rebuttable presumption that a victim who has not been released within twenty-four hours is presumed to have been transported in interstate commerce. The primary purpose of this provision is to allow the Federal Bureau of Investigation to investigate cases in which it is not known whether the victim has been transported in interstate commerce. It should be noted that, under the proposed legislation, the FBI would have the authority to act once a ransom or other demand were received. The rebuttable presumption provision is left in effect, however, in order to allow FBI

jurisdiction in kidnaping cases in which no ransom or other demand is made and it is not known whether the victim has been transported in interstate commerce.

Subsection 3(a)(1) first makes a technical change in the statute not directly related to the central purpose of the bill but rather designed to remove an obsolete reference to a section of the Federal Aviation Act of 1958. As presently written, 18 U.S.C. 1201(a)(3) proscribes kidnapings that occur in the special aircraft jurisdiction of the United States "as defined in section 101(36) of the Federal Aviation Act of 1958." The definition of the term "special aircraft jurisdiction" is now found in section 101(38) of the Act and subsection 3(a)(1) merely reflects this.

Subsection 3(a)(2) through 3(a)(4) add a new subsection (5) to 18 U.S.C. 1201(a) which sets out the offense of hostage taking. In substance the subsection's definition of the offense tracks its definition in the Hostage Convention, that is, any seizure or detaining of a person, coupled with a threat to kill, to injure or to continue to detain the victim "in order to compel a third party to do or abstain from doing any act." The Convention's description of a third party, namely, "a State, an international inter-governmental organization, a natural or juridical person, or a group of persons," is omitted from the legislation. This was done in order to make clear that attempts to influence third parties not expressly listed in the definition, such as U.S. state governments and unincorporated local governments, would violate the statute. There is no need to

define "third parties" in the legislation, since the phrase speaks for itself and is intended to have the broadest possible meaning.

The penalty for the new offense of hostage taking is the same as that now prescribed in 18 U.S.C. 1201 for other federal kidnaping offenses, imprisonment for any term of years or for life. Attempted hostage taking is also made an offense by subsection 3(a)(5) of the bill which amends 18 U.S.C. 1201(d) which already covers attempted kidnaping of internationally protected persons. The punishment may extend to imprisonment for up to twenty years.

Subsection 3(a)(b) of the bill amends 18 U.S.C. 1201(e) to provide for extraterritorial jurisdiction over the offense of hostage-taking similar to that already provided in section 1201 for kidnaping an internationally protected person. Congress's power to assert such jurisdiction derives from Article 5 of the Convention and utilizes the well accepted territorial, personal, and passive personality bases for the exercise of legislative jurisdiction under international law.

Subsection 3(a)(7) amends 18 U.S.C. 1201(f) to give the Attorney General the authority to ask for assistance from other civilian and military agencies when necessary to enforce the hostage-taking statute. The Attorney General may request assistance, notwithstanding any statute, rule, or regulation to the contrary, including the Posse Comitatus Act (18 U.S.C. 1385). This authority parallels the authority already existing for other

exceptionally grave offenses, such as attacks on diplomats (18 U.S.C. 1201(f)), Members of Congress, Cabinet officers and Supreme Court Justices (18 U.S.C. 351 (g)), the President, the Vice President, and high level White House staff members (18 U.S.C. 1751). This authority is not necessary to implement the Convention, and it would, of course, not be used in most situations. Nevertheless, there may be exceptional circumstances, such as mass hostage-takings, in which the Department of Justice would need assistance.

Subsection 3(a)(8) inserts a new subsection (g) at the end of 18 U.S.C. 1201 to make it clear that the new provision on hostage taking is not intended to usurp the authority of state and local law enforcement authorities. It is expected that most kidnappings and hostage-takings will continue to be handled by those authorities and that the federal government will not unnecessarily intervene in situations that local authorities can handle. In addition, the subsection specifically prevents the use of federal investigative and prosecutorial resources in domestic altercations that are traditionally the responsibility of the states. In the unlikely event that terrorists were to take their own relatives hostage in the United States, the exercise of state jurisdiction would satisfy our obligations under the Convention.

Section four of the bill provides that the Act will not become effective until the Hostages Convention comes into effect for the United States. This is because much of the authority of Congress to prohibit hostage-taking flows from the Convention and the purpose of this act is to implement it.

A BILL TO PERMIT THE PAYMENT OF REWARDS FOR INFORMATION
CONCERNING TERRORIST ACTS

Be it enacted by the Senate and the House of
Representatives of the United States of America in Congress
assembled, That this Act may be cited as the "Act for Rewards
for Information Concerning Terrorist Acts".

SEC. 2(a) Title 18 of the United States Code is amended by
adding the following new chapter:

"Chapter 204 - Rewards for Information
Concerning Terrorist Acts .

"Sec. 3071. Information for which rewards authorized;
maximum amount.

"Sec. 3072. Determination of entitlement; consultation;
Presidential approval; conclusiveness.

"Sec. 3073. Aliens; waiver of admission requirements.

"Sec. 3074. Hearings; rules and regulations.

"Sec. 3075. Protection of identity.

"Sec. 3076. Authorization for appropriations.

"Sec. 3077. Exception of governmental officials.

"Sec. 3078. Eligibility for witness security programs.

"Sec. 3079. Definitions.

"Sec. 3071. Information for which rewards authorized; maximum amount

"Any individual who furnishes information--

"(a) leading to the arrest or conviction, in any country, of any individual or individuals for the commission of an act of terrorism against a United States person or United States property; or

"(b) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of terrorism against a United States person or property; or

"(c) leading to the prevention, frustration or favorable resolution of an act of terrorism against a United States person or property

--may be rewarded in an amount not to exceed \$500,000.

"Sec. 3072. Determination of entitlement; consultation; Presidential approval; conclusiveness

"The Attorney General shall with respect to acts of terrorism primarily within the territorial jurisdiction of the United States, and the Secretary of State shall with respect to acts of terrorism primarily outside the territorial jurisdiction of the United States, determine whether an individual furnishing information pursuant to section 3071 is entitled to a reward and the amount to be paid. Before making a reward under this chapter in a matter over which there is

federal criminal jurisdiction, the Secretary of State shall advise and consult with the Attorney General. A reward of \$100,000 or more may not be made without the approval of the President or his designee. A determination made by the Attorney General, the Secretary of State, or the President under this chapter shall be final and conclusive and no court shall have power or jurisdiction to review it.

"Sec. 3073. Aliens; waiver of admission requirements

"If the information which would justify a reward under this chapter is furnished by an alien, the Attorney General, after consulting with the Secretary of State, may determine that the entry of such alien into the United States is in the public interest and, in that event, such alien and the members of his immediate family may receive immigrant visas and may be admitted to the United States for permanent residence, notwithstanding the requirements of the Immigration and Nationality Act [8 U.S.C. sec. 1101 et seq.].

"Sec. 3074. Hearings; rules and regulations

"The Attorney General and the Secretary of State, respectively, are authorized to hold such hearings and make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this chapter. The provisions of subchapter II, chapter 5 of title 5 United States Code do not apply to this chapter.

"Sec. 3075. Protection of identity

"If it is determined that the identity of the recipient of a reward or of the members of the recipient's immediate family must be protected, the Attorney General or the Secretary of State, respectively, may take such measures in connection with the payment of the reward as deemed necessary to effect such protection.

"Sec. 3076. Authorization for appropriations

"Such sums as necessary are authorized to be appropriated for the purpose of this chapter.

"Sec. 3077. Exception of governmental officials

"No officer or employee of any governmental entity who, while in the performance of his official duties, furnishes the information described in section 3071 shall be eligible for any monetary reward under this chapter.

"Sec. 3078. Eligibility for witness security programs

"Any individual who furnishes information which would justify a reward under this chapter and his immediate family may, in the discretion of the Attorney General, participate in the Attorney General's witness security program authorized under Title V of the Organized Crime Control Act of 1970.

"Sec. 3079. Definitions

"As used in this chapter the term--

"(a) 'Act of terrorism' means an activity that--

"(1) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and

"(2) appears to be intended--

"(A) to intimidate or coerce a civilian population;

"(B) to influence the policy of a government by intimidation or coercion; or

"(C) to affect the conduct of a government by assassination or kidnaping.

"(b) 'United States person' means--

"(1) a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(22)];

"(2) an alien lawfully admitted for permanent residence in the United States as defined in section 101(a)(20) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(20)];

"(3) any person within the United States;

"(4) any employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

"(5) a sole proprietorship, partnership, company, or association composed principally of nationals or permanent resident aliens of the United States; and

"(6) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States and a foreign subsidiary of such corporation.

"(c) 'United States property' means any real or personal property which is within the United States or, if outside the United States, the actual or beneficial ownership of which rests in a United States person or any federal or State governmental entity of the United States.

"(d) 'United States'--

"(1) when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States; and

"(2) when used in the context of section 3073 shall have the meaning given to it in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

"(e) 'State' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

"(f) 'government entity' includes the government of the United States, any State or political subdivision thereof, any foreign country, and any state, provincial, municipal or other political subdivision of a foreign country.

"(g) 'Attorney General' means the Attorney General of the United States or that official designated by the Attorney General to perform his responsibilities under this chapter.

"(h) 'Secretary of State' means the Secretary of State or that official designated by the Secretary of State to perform his responsibilities under this chapter."

(b) The chapter analysis of Part II of title 18, United States Code, is amended by adding after the item relating to chapter 203 the following new item:

"204. Rewards for information concerning terrorist acts....3071".

Section-by-Section Analysis

Act for Rewards for Information Concerning Terrorism

This bill deals with rewards for persons who provide information concerning acts of terrorism. It adds a new chapter 204 to title 18 entitled "Rewards for Information Concerning Terrorist Acts." The new chapter consists of nine sections, 3071-3079. The chapter is closely related to and patterned after a similar reward provision for persons who provide information concerning the unauthorized acquisition or manufacture of atomic weapons and special nuclear materials, 50 U.S.C. 47a-47f. It provides for a determination by the Attorney General or the Secretary of State that certain persons are entitled to rewards for furnishing information about specific acts of terrorism. Rewards would be paid out of funds appropriated either for the Department of Justice or the Department of State depending upon which Department approved the reward.

Section 3071 provides that any person who furnished information of one of three types may be given a reward of up to \$500,000. Whether a reward is paid is totally discretionary with the Attorney General or the Secretary of State although in certain cases involving large rewards the President or his designee must make the final determination. The three types of information that may warrant the payment of a reward are, first, that which leads to the arrest or conviction in any country of any person for the actual commission of an act of terrorism against a United States person or United States property; second, information leading to the arrest or conviction in any country of

any person for a conspiracy or an attempt to commit an act of terrorism against a United States person or United States property, and third, information leading to the prevention, frustration, or favorable resolution of an act of terrorism against a United States person or property

Section 3072 provides that the Attorney General shall make the determination as to whether a particular person is entitled to a reward when the act of terrorism is primarily within the territorial jurisdiction of the United States. The Secretary of State shall make the determination when the act of terrorism is primarily outside the territorial jurisdiction of the United States, but if such activity is subject to federal criminal prosecution the Secretary is required to advise and consult with the Attorney General. Rewards of \$100,00 or more may only be made after the Attorney General or the Secretary of State respectively, receives the approval of the President. a feature also found in the Atomic Weapons and Special Nuclear Materials Act. The president is authorized to delegate his authority.

Section 3073 is included because an alien who provides information concerning terrorism may be in severe danger of retaliation in his own country. Hence, this section provides that if the information for which a reward is authorized is furnished by an alien, the Attorney General, after consulting with the Secretary of State, may admit the alien and members of his immediate family into the United States as permanent resident aliens notwithstanding the requirements of the Immigration and

Nationality Act. It is anticipated that not many individuals will be admitted under this provision and that the Attorney General will use extreme caution in exercising this authority.

Section 3074 authorizes the Attorney General and the Secretary of State, respectively, to hold hearings and make necessary rules for carrying out the provisions of the chapter. However, neither is required to establish set rules or to follow such rules in all cases but may decide appropriate cases on an ad hoc basis. The provisions of the Administrative Procedure Act, the Privacy Act, and the Freedom of Information Act are specifically made inapplicable to this chapter.

Section 3075 provides that if necessary to protect the recipient and his family, any necessary protective action may be taken in connection with the paperwork necessary to accomplish the payment of the reward. For example, information concerning his identity may be sealed and withheld from public and unnecessary internal disclosures.

Section 3076 authorizes the appropriation of funds necessary for purposes of the chapter.

Section 3077 provides that government employees who furnish information concerning terrorism in the performance of their official duties are not eligible for a monetary reward under this chapter. They would, however, be eligible for the provisions allowing admission into the United States (Section 3073) and participation in the Witness Security Program (Section 3078).

Section 3078 provides that an individual who furnishes information which would justify a reward under this chapter may be given the benefit of the Witness Security Program in the discretion of the Attorney General.

Section 3079 contains definitions that apply to the new chapter. The definition of "terrorism" is taken from the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801(c)(1) and (2). As in that act, the definition of "terrorism" is cast in terms of violent or dangerous acts that would be crimes if committed in the United States and that are committed to intimidate or coerce a civilian population or to influence the policy or conduct of a government or political subdivision of a government by intimidation or coercion.

The term "United States person" is defined to include citizens, persons owing permanent allegiance to the United States, any person in the United States permanent resident aliens, United States government employees or contractors who are victims or intended victims of terrorism because of their employment, various business entities consisting in whole or in part of United States nationals and permanent resident aliens and United States corporations and their foreign subsidiaries.

The term "United States property" is defined to include all real or personal property within the United States regardless of ownership, and any real or personal property outside of the

United States, the actual or beneficial ownership of which rests in a federal or State governmental entity of the United States or in a United States person.

The Attorney General and the Secretary of State are defined to include their respective designees.

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A bill to prohibit the training, supporting, or inducing of terrorism, and for other purposes.

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

That this Act may be cited as the "Prohibition Against the Training or Support of Terrorist Organizations Act of 1983".

SEC. 2. Title 18 of the United States Code is amended by adding the following new chapter after chapter 113:

CHAPTER 113A -- TERRORISM

SEC. 2331. Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups.

§2331. Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups

"(a) Except as provided in subsections (h) and (i), it shall be unlawful for any national of the United States, any permanent resident alien of the United States, or any United States business entity to willfully perform or attempt to perform any of the following acts:

"(1) serve in, or act in concert with, the armed forces or any intelligence agency of any foreign government, faction, or international terrorist group which is named in a proclamation in effect under subsection (d);

"(2) provide training in any capacity to the armed forces, any intelligence agency, or their agents of any foreign government, faction, or international terrorist group named in a proclamation in effect under subsection (d);

"(3) provide any logistical, mechanical, maintenance, or similar support services to the armed forces, any intelligence agency, or their agents of any foreign government, faction, or international terrorist group named in a proclamation in effect under subsection (d); or

"(4) recruit or solicit any person to engage in any activity described in subparagraphs (1) through (3) of this paragraph.

There is extraterritorial jurisdiction over a violation of this subsection.

"(b) Except as provided in subsections (h) and (i), it shall be unlawful for any person or entity within the boundaries of the United States, its territories or possessions, to willfully perform or attempt to perform any of the following acts:

"(1) provide training in any capacity to the armed forces, any intelligence agency, or their agents of any foreign government, faction, or international terrorist group named in a proclamation in effect under subsection (a);

"(2) provide any logistical, mechanical, maintenance, or similar support services to the armed forces, any intelligence agency, or their agents of any foreign government, faction, or international terrorist group named in a proclamation in effect under subsection (d); or

"(3) recruit or solicit any person to engage in any activity described in subparagraphs (1) or (2) of this paragraph.

"(c) whoever violates this section shall be fined not more than five times the total compensation received for such violation, or \$100,000, whichever is greater, or imprisoned for not more than ten years, or both, for each such offense.

"(d) Whenever the President finds that the acts or likely acts of international terrorism of a foreign government, faction, or international terrorist group are such that the national security, foreign relations, or the physical security of the person or property of a private entity of the United States warrant a ban on the foreign government's, faction's or international terrorist group's receipt of services or other assistance in support of such acts as described in subsections (a) or (b), he may issue a proclamation naming such foreign government, faction, or international terrorist group for which such finding has been made. If the President finds that the conditions which were the basis for any proclamation issued under this section have ceased to exist, he may revoke such proclamation in whole or in part. Any such revocation shall not affect any action or

proceeding based on any act committed prior to the effective date of such proclamation. Any proclamation or revocation thereof issued pursuant to this section shall be published in the Federal Register and shall become effective immediately on publication.

"(e) For the purposes of this section, any finding of fact made in any proclamation issued pursuant to subsection (d) shall be conclusive. No question concerning the validity of the issuance of such proclamation may be raised by a defendant as a defense in or as an objection to any trial or hearing if such proclamation was issued and published in the Federal Register in accordance with subsection (d).

"(f) An affirmative defense shall exist with respect to any act committed outside of the United States within thirty days after the effective date of any proclamation affecting such person if the act was performed pursuant to an agreement or contract entered into prior to the effective date of the proclamation.

"(g)(1) Whoever has been convicted of a violation of this section, in addition to any other penalty prescribed by this section, shall forfeit to the United States --

"(A) any property constituting, or derived from, any proceeds he obtained, directly or indirectly, as a result of such violation; and

"(B) any of his property used, or intended to be used, to commit, or to facilitate the commission of, such violation.

"(2) The procedures in any criminal forfeiture under this section, and the duties and authority of the courts of the United States and the Attorney General with respect to any criminal forfeiture action under this section or with respect to any property that may be subject to forfeiture under this section, are to be governed by the provisions of section 1963 of this title.

"(h) This section shall not be construed to prohibit the provision of medical services or medical training for humanitarian purposes, or the recruitment or solicitation thereof.

"(i) Nothing in this section shall be construed to create criminal liability for the conduct of United States intelligence activities which are properly authorized and conducted in accordance with federal statutes and Executive orders governing such activities.

"(j) for the purposes of this section--

"(1) the term 'foreign government' has the meaning given it in section 1116(b) (2) of this title;

"(2) the term 'armed forces' includes any regular, irregular, paramilitary, guerrilla, or police force;

"(3) the term 'faction' includes any political party, body of insurgents, or other group which seeks to overthrow the government of, become the government of, or otherwise assert control over or influence any foreign country or

territory, possession, department, district, province, or other political subdivision of any such foreign country through the threat or use of force of arms:

"(4) the term 'group' means an association of persons, whether or not a legal entity;

"(5) the term 'international terrorist group' means a group which engages in international terrorism;

"(6) the term 'international terrorism' has the meaning given to it in section 101(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(c));

"(7) the term 'intelligence agency' means any entity which engages in the collection, analysis, or dissemination of information concerning the activities, capabilities, plan or intention of governments, organization, or persons, in whole or in part by covert means;

"(8) the term 'United States business entity' means any sole proprietorship, partnership, company, or association composed in whole or in part of nationals or permanent resident aliens of the United States or any corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States,"

"(9) the term 'national of the United States' has the meaning given to it in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(10) the term 'permanent resident alien of the United States' means an alien lawfully admitted for permanent residence in the United States as defined in Section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C.1101(a)(20)); and

"(11) the term 'private entity of the United States' means

"(A) an individual who is

"(i) a national of the United States; or

"(ii) a permanent resident alien of the United States;

"(B) an employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

"(C) a sole proprietorship, partnership, company or association composed in whole or in part of nationals or permanent resident aliens of the United States; or

"(D) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States and any foreign subsidiary of such corporation."

SEC. 3. The chapter analysis of part I of title 18 is amended by adding the following new item after the item relating to chapter 113:

"113A. Terrorism.....2331".

SEC. 4. Section 3238 of title 18, United States Code, is amended by --

(1) striking out "The" and inserting in lieu thereof "(a) Except as provided in subsection (b), the"; and

(2) adding at the end the following new subsection:

"(b) The trial of any offense under section 2331 of this title which is committed out of the jurisdiction of any particular State or district may be in any district.

Nothing contained in this subsection may be construed to restrict any right of a defendant under any rule in effect under section 3771 of this title."

SEC. 5. Section 11 of title 18 is amended by striking out the phrase "as used in this title except in sections 112, 878, 970, 1116, and 1201," and inserting in lieu thereof: "as used in this title except in sections 112, 878, 970, 1116, 1201, and 2331,".

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Section-by-Section Analysis

The Prohibition Against Training or Support of Terrorist Organizations Act of 1983

The bill adds a new chapter 113A to title 18 to insert a new section 2331 entitled "Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups." This section is designed to prevent the harming of our foreign relations by United States nationals or businesses, or by other persons within the United States, who seek to provide training and technology to certain governments that support terrorism or to international terrorist groups. The President is given the authority to name the forbidden recipients of such training and technology by proclamation if he determines that their acts or support for international terrorism are such a threat to our national security, foreign relations, or the physical security of the persons or property of private United States entities that they should not benefit from American expertise used for such reprehensible ends. It is expected that few governments or groups will be named and the section is not intended to interfere with the legitimate international trade in which many United States suppliers of services and technology engage. Rather, it is intended to complement the provisions of the Arms Export Control Act (AECA), 22 U.S.C. 2778, which

authorize the President to control the importation and exportation of "defense articles and defense services" and to provide foreign policy guidance to United States persons involved in such importing and exporting.

Pursuant to the AECA, and comparable authority previously granted to the President under section 414 of the Mutual Security Act of 1974, the Department of State promulgated the International Traffic in Arms Regulations (ITAR) 22 CFR subchapter M. While the regulations specify a number of articles and technical data in relation thereto which are subject to control, the provisions in the ITAR do not generally encompass the "mercenary" type of activities such as the providing of training, logistical, and support services which would be covered by the new section.

Subsection (a) of the new section 2331 makes it unlawful for any United States national, permanent resident alien, or business entity to perform any of several enumerated acts in aid of a foreign government, foreign faction, or international terrorist groups named in a Presidential proclamation. The prohibited acts are to serve in or to act in concert with the armed forces or an intelligence agency of one of the named governments, factions, or groups; to provide training for their armed forces or intelligence agencies; to provide logistical, mechanical, maintenance or similar services for their armed forces or intelligence agencies; or to recruit or solicit any person to do any of the above. The subsection also provides for extraterritorial jurisdiction over a

violation inasmuch as harm to our foreign relations or world peace can occur when Americans provide such aid overseas as well as domestically.

Subsection (b) is designed to cover persons who are not United States nationals or permanent resident aliens but who use the United States as a base from which to supply the technology of terrorism to certain other countries, foreign factions or international terrorist groups. It makes it unlawful to provide training in the United States to the armed forces or an intelligence agency of a foreign government, foreign faction, or international terrorist group named in a Presidential proclamation; to provide in the United States logistical, mechanical, maintenance or similar support services to their armed forces or intelligence agencies; or in the United States to recruit or solicit any person to do any of the above acts.

Subsection (c) sets out the penalty for a violation of the new section. It would extend to a fine of \$25,000 or an amount five times the total compensation received, whichever is greater, or imprisonment for up to ten years, or both, for each offense.

Subsection (d) is the triggering mechanism to implement the prohibitions of subsections (a) and (b). It provides that the President may, when he determines that it is warranted in the interests of national security, foreign relations, or the physical security of the person or property of United States private entities, issue a proclamation naming a foreign government, foreign faction, or terrorist group as one for which there

is a ban on the provision of services described in subsections (a) and (b). Any proclamation is to be published in the Federal Register and becomes effective immediately. Actual knowledge of the proclamation is not, however, an element of the offense and need not be proven. This subsection also provides for Presidential revocation of the proclamation by similar publication in the Federal Register.

As indicated, it is expected that few governments, factions or terrorist groups will be named pursuant to this section, which is limited to addressing the problems of United States nationals or business entities providing the technology of terrorism for use abroad and of the United States being used by foreigners for such a purpose. The fact that a foreign government, faction, or terrorist group is not listed in a proclamation under this section is of no significance in other contexts. For example, the fact that a government, faction, or group is not named in, or is removed from, a Presidential proclamation under the new section 2331 of title 18 would have no bearing on whether an Executive Branch official could certify under the provisions of the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801 et seq., that it was a proper target for surveillance under the terms of the Act, nor would the omission or removal of such a group from a proclamation in any way affect any order of the Foreign Intelligence Surveillance Court authorizing surveillance of it.

Subsection (e) provides that any finding of fact made in a Presidential proclamation under subsection (d) shall be conclusive and no question concerning the validity of the proclamation may be raised by a defendant at a trial or hearing.

Subsection (f) provides for an affirmative defense for any act committed by a person outside of the United States within thirty days of a proclamation affecting his activities if the act is performed pursuant to an agreement or other contractual relationship entered into prior to the effective date of the proclamation. This underscores the fact that the section is not designed to interfere with legitimate overseas business interests and that there are persons who make their livings by exporting military and intelligence training and expertise. Moreover, the failure of these persons to perform services already agreed upon could, in certain overseas situations, expose them to physical danger. Therefore, once the President determines that such activities with respect to a particular country or group adversely affect our national security or foreign relations, or the physical security of the person or property of United States private entities, a provider of such services would have thirty days to terminate this overseas activity and must cease affected operations in the United States at once.

Subsection (g) provides for the criminal forfeiture of property constituting or derived from the proceeds obtained as a result of a violation of the section and of property used or intended to be used in the commission of a violation. The

procedures used in the forfeiture action are to be governed by the provisions of 18 U.S.C. 1963, the RICO forfeiture provisions.

Subsection (h) provides that the section shall not be construed to prohibit the providing of medical supplies or medical training for humanitarian purposes.

Subsection (i) provides that properly authorized and conducted intelligence activities of the federal government are excluded from the section's coverage.

Subsection (j) provides definitions for such items as "foreign government," "faction," "international terrorist group," "international terrorism," "national of the United States," and "permanent resident alien of the United States." Where possible, existing statutory definitions for these terms are employed. For example, "foreign government" is defined by reference to 18 U.S.C. 1116(b)(2) which defines the term as the "government of a foreign country, irrespective of recognition by the United States." Because the focus of the new section is on international terrorism, an "international terrorist group" is defined as one which engages in "international terrorism," which term in turn is defined by reference to the Foreign Intelligence Surveil-

lance Act of 1976 (50 U.S.C. 1801 (c)).^{1/} That section casts the definition in terms of violent acts or acts dangerous to human life that would be a criminal violation if committed within the jurisdiction of the United States or of any state and are intended to intimidate or coerce a civilian population or influence or affect the policies of a government by intimidation, coercion, kidnaping or murder.

The term "United States business entity" defines those American business groups which cannot furnish services or training proscribed by section 2331 to a foreign government, foreign faction, or international terrorist group listed in a Presidential proclamation issued pursuant to subsection (d). It does not include the foreign subsidiary corporations of U.S.

1/ 50 U.S.C. 1801 (c) provides:

"(c) 'International terrorism' means activities that --

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended --

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnaping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum."

corporations. It is thus limited to those business entities which the United States has the ability to control directly and avoids the delicate issue of interference in the domestic affairs of foreign countries. American nationals and permanent resident aliens who work for foreign corporations would, however, still be personally precluded from furnishing such services on behalf of their employer to any named country, faction, or group.

"Private entity of the United States" is defined so as to include as the possible victims of terrorist attacks any national or permanent resident alien of the United States, any employee or contractor of the United States Government (regardless of nationality) if the act of terrorism is brought about by virtue of such relationship to the United States, any unincorporated association of United States nationals or permanent resident aliens, and any corporation incorporated within the United States and its foreign subsidiaries. Thus the term "private entity" is intended to protect the commercial, religious, educational, and recreational activities and interests engaged in by the American people outside the United States. Where the "victim" of the terrorist activity overseas is the U.S. Government, its property, or its officials, such coverage is primarily encompassed within the terms "national security" or "foreign relations" of the United States. The three criteria, however, are not totally separate and overlap in many respects. Together, however, they are intended to describe the totality of the overseas interests

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of both the nation and its people. Foreign subsidiaries of U.S. corporations are specifically covered because they are often the targets of terrorist attacks.

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WHITE HOUSE STAFFING MEMORANDUM

47704 AS. 21

DATE: 3/12/84 ACTION/CONCURRENCE/COMMENT DUE BY: 3/14/84

SUBJECT: PROPOSED ANTI-TERRORISM LEGISLATION

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	McFARLANE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input type="checkbox"/>	McMANUS	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
JENKINS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide comments/recommendations by Wednesday, March 14th.
Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702

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TO THE CONGRESS OF THE UNITED STATES:

I am sending to the Congress today five separate bills to attack the pressing and urgent problem of international terrorism.

In 1983 more than 250 American citizens were killed in terrorist attacks, the largest number in any year of record. In the wake of the tragic deaths of our diplomats and Marines, as well as French and Israeli soldiers in Lebanon, in light of the cynical murder of four South Korean cabinet officers and many others by North Korean terrorists in Burma, and as a result of the attack on our embassy in Kuwait, it is essential that we act immediately to cope with this menace and to increase cooperation with other governments in dealing with this growing threat to our way of life.

In the past fifteen years, terrorism has become a frightening challenge to the tranquility and political stability of our friends and allies. During the past decade alone, there have been almost 6,500 terrorist incidents. Over 3,500 people have been killed in these incidents, and more than 7,600 people have been wounded. American citizens have been the victims of more than 2,500 terrorist incidents. Of special concern to me has been the toll inflicted on our diplomats and members of the Armed Forces. I am also deeply concerned, however, about attacks

against other American citizens, who have been the victims of forty percent of the terrorist incidents over the past decade.

In recent years, a very worrisome and alarming new kind of terrorism has developed: the direct use of instruments of terror by foreign states. This "state terrorism," starkly manifest in the recent dreadful spectacles of violence in Beirut, Rangoon, and Kuwait, accounts for the great majority of terrorist murders and assassinations. Also disturbing is state-provided training, financing, and logistical support to terrorists and terrorist groups. These activities are an extremely serious and growing source of danger to us, our friends and our allies, and are a severe challenge to America's foreign policy.

The protection of our citizens, our official personnel, and our facilities abroad, requires the close cooperation and support of other governments. We depend on other governments to provide security protection to more than 250 United States diplomatic and consular posts abroad. We look to other governments to maintain the normal protections of law in their countries for our citizens living and traveling abroad and for our business representatives and business properties.

In 1983, this Administration sent to the Congress legislation to enable us to provide adequate protection for foreign officials in the United States. Not only is their protection essential to meet the obligations of the United States under international treaties, it is equally important to demonstrate to officials of

other governments that they can count on full protection while they are in the United States.

I also asked the Congress to provide legislative authority for anti-terrorism training, and in some cases equipment, to foreign governments in order to enhance cooperation with governments on whom we must depend for protection abroad. In my view, the more effective and knowledgeable local law enforcement officials and officers are, the greater will be their ability to provide the kind of security both they and we need. I commend the Congress for providing a two-year authorization for this program and an appropriation of \$2.5 million for 1984.

I am determined that my Administration will do whatever is necessary to reduce the incidence of terrorism against us anywhere in the world and to see that the perpetrators of terrorist acts are brought to justice. I believe it is essential, however, that the Executive branch, the Congress and the public clearly understand that combatting terrorism effectively requires concerted action on many different fronts. With trained personnel, effective laws, close international cooperation, and diligence, we can reduce the risks of terrorism to our people and increase the deterrent to future acts of terrorism.

Dealing with the immediate effect of terrorist violence is only part of the challenge, however. We must also assure that the states now practicing or supporting terrorism do not prosper

in the designs they pursue. We must assure that international forums, such as the United Nations, take a balanced and practical view of who is practicing terrorism and what must be done about it. We must assure that governments that are currently passive -- or inactive -- respecting this scourge understand the threat that terrorism poses for all mankind and that they cooperate in stopping it. We must work to assure that there is no role in civilized society for indiscriminate threatening, intimidation, detention, or murder of innocent people. We must make it clear to any country that is tempted to use violence to undermine democratic governments, destabilize our friends, thwart efforts to promote democratic governments, or disrupt our lives that it has nothing to gain, and much to lose.

The legislation I am sending to the Congress is an important step in our war against terrorism. It will send a strong and vigorous message to friend and foe alike that the United States will not tolerate terrorist activity against its citizens or within its borders. Our legislative package consists of five separate bills, each of which is outlined below.

o Terrorist Control Act of 1984

Over the past decade, more than one hundred groups have engaged in terrorist activity throughout the world. These groups move freely across international boundaries. They find

safe haven and support in many widely dispersed locations. While many of the acts that these groups commit are now subject to Federal criminal prosecution, some are not. Recognizing this, the Terrorist Control Act of 1984 would make certain conspiracies to commit acts of terrorism abroad a violation of United States criminal statutes, enabling our Department of Justice more effectively to attack the problem of terrorism at the planning stage. By passing this legislation, the Congress can make it plain to terrorists and to other governments that the United States is not a place where individuals or groups are free to mount acts of terrorism, either against our own citizens or against citizens of other countries.

o Act for the Prevention and Punishment of the
Crime of Hostage-Taking

In September 1981, I signed the instrument ratifying the International Convention Against the Taking of Hostages, which was adopted by the United Nations on December 17, 1979. The convention has not been implemented domestically through enabling legislation, however. This legislation would implement the 1979 convention. It would amend the Federal kidnapping statute to provide for Federal jurisdiction over any kidnapping in which a threat is made to kill, injure, or

continue to detain a victim in order to compel a third party to do or to abstain from doing something. This is a common ploy of terrorists. At the time I signed the instrument of ratification, the Congress was informed that the instrument of ratification would not be deposited with the United Nations until enabling legislation had been enacted. To demonstrate to other governments and international forums that the United States is serious about its efforts to deal with international terrorism, it is essential that the Congress provide the necessary enabling legislation, so that we may fully implement the Hostage-Taking Convention.

o Aircraft Sabotage Act

The United States became a party to the Tokyo Convention, which covers certain offenses or acts committed aboard aircraft, in 1969 and the Hague Convention, concerning the suppression of unlawful seizure of aircraft, in 1971. The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation was adopted at Montreal in 1971 and ratified by the United States in November 1972. The Montreal Convention requires all states party to it to establish jurisdiction over certain offenses affecting the safety of civil aviation.

The Congress has approved enabling legislation for the first two of these conventions but not for the Montreal Convention. This means that certain criminal acts related to aircraft sabotage or hijacking are not adequately covered by United States law. This gap in the law sends a false signal to terrorists, and it also indicates to other governments that we may not be as serious as we should be, and as in fact we are, in our efforts to combat international terrorism. Action by the Congress now would provide the basis for long-overdue implementation of this convention.

o Act for Rewards for Information Concerning Terrorist Acts

Current law authorizes the payment of rewards for information concerning domestic crimes but is outdated. Maximum rewards are inadequate, and terrorism is not specifically included as a basis for paying a reward. Moreover, there is no authority for the payment of rewards for information on acts of terrorism abroad.

The proposed legislation, which is modelled on an existing statute that allows payment of rewards for information concerning the unauthorized manufacture of atomic weapons, recognizes that payment of a reward in connection with acts of domestic terrorism raises a matter of law enforcement that is

properly within the jurisdiction of the Attorney General, but that the payment of a reward in connection with an act of terrorism abroad poses a political and foreign relations problem within the jurisdiction of the Secretary of State. By increasing the amounts of fines that may be paid, and by authorizing rewards for information concerning terrorist acts committed abroad, this Act would markedly improve the ability of the Departments of Justice and State to obtain information leading to the freeing of hostages or the capture of the perpetrators of acts of terrorism. In passing this legislation, the Congress can further underscore the intent of the United States to take every appropriate and necessary step to protect its citizens and property from terrorist acts.

o Prohibition Against the Training or Support of Terrorist Organizations Act of 1984

The training and support of terrorist groups and activities by a number of countries has reached alarming proportions. In addition, the number of states now using terrorism as an instrument of foreign policy is both increasing and highly disturbing. The provision of assistance to countries that support terrorism and use terrorism as a foreign policy tool has thus become a matter of grave concern to national security. This Act, together with revised and strengthened

regulations that the Department of State intends to issue shortly, would enhance the ability of the Department of Justice to prosecute persons involved in the support of terrorist activities and of States using terrorism. Enactment of this legislation would be a strong contribution to the effort to combat terrorism.

We must recognize that terrorism is symptomatic of larger problems. We must dedicate ourselves to fostering modernization, development, and beneficial change in the depressed areas of the world. We must renew our commitment to promoting and assisting representative and participatory governments. We must attack the problem of terrorism as a crime against the international community whenever and wherever possible, but we must strive to eradicate the sources of frustration and despair that are the spawning places and nutrients of terrorism.

The legislative proposals that I am sending to Congress today will, when approved, materially benefit our Nation and help us to assist friendly countries. I believe that they are extraordinarily important, and I strongly urge that the Congress undertake their timely consideration and speedy passage.

THE WHITE HOUSE

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

April 26, 1984

FACT SHEET

PRESIDENT'S ANTI-TERRORISM LEGISLATION

The President has sent a message to Congress with a package of four separate bills to support a more systematic and strengthened effort to combat international terrorism. The President's message underscores the high priority his Administration places on actions to reduce the incidence of international terrorism, to protect Americans and American property from acts of terrorism, and to ensure that perpetrators of terrorist acts are brought to justice.

The four separate bills are highlighted below.

- o Act for the Prevention and Punishment of the Crime of Hostage-Taking. This bill would amend the Federal kidnapping statute to provide for Federal jurisdiction over any kidnapping in which a threat is made to kill, injure or continue to detain a victim in order to compel third parties to do or abstain from doing something. The bill is enabling legislation for the International Convention Against the Taking of Hostages, which was adopted by the United Nations on December 17, 1979. At the time the President signed the instrument of ratification, the Congress was informed that the instrument would not be deposited with the United Nations until such time as enabling legislation had been obtained to permit full implementation of the convention.
- o Aircraft Sabotage Act. This bill provides enabling legislation for the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. The convention was adopted in Montreal in 1971 and ratified by the United States in November 1972. The legislation deals with certain criminal acts relating to aircraft sabotage or hijacking and would help the United States to satisfy its obligations under international law.
- o Act for Rewards for Information Concerning Terrorist Acts. This bill would authorize the payment of a reward for information regarding acts of terrorism in the United States or abroad.
- o Prohibition Against the Training or Support of Terrorist Organizations Act of 1984. This bill would enhance the ability of the Department of Justice to prosecute persons involved in the support of groups and states engaging in terrorism. The bill would prohibit firms or individuals from supporting or cooperating with such groups or states, as well as recruiting, soliciting, or training individuals to engage in terrorist activities.

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FROM MURR, J

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LEGISLATIVE REFERRAL TOENSING, V

SUBJECT: JUSTICE TESTIMONY ON HR-5690 / HR-5689 & HR-5612 RE ANTI-TERRORISM
LEGISLATIVE MEASURES

ACTION: MEMO KIMMITT TO MURR

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 13, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

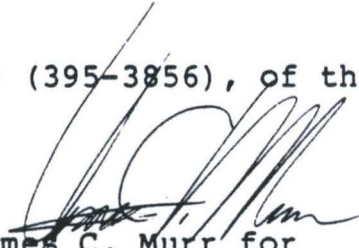
- Department of State
- Department of the Treasury
- Department of Defense
- National Security Council
- Department of Transportation

SUBJECT: Justice testimony on three bills regarding anti-terrorism legislative measures

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than
July 18, 1984

Direct your questions to Gregory Jones (395-3856), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

- cc: S. Galebach A. Curtis
- J. Barie R. Neeley



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Testimony

by

*Terrorism
Legislation*

Victoria Toensing
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice

before the

Subcommittee on Crime
Committee on the Judiciary
House of Representatives

Concerning

H.R. 5690
(Aircraft Sabotage Act)

H.R. 5689
(Act for the Prevention and Punishment
of the Crime of Hostage-Taking)

H.R. 5612
(Act for Rewards for Information
Concerning Terrorist Acts)

July 25, 1984

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My name is Victoria Toensing. I am a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice.

It is a pleasure for me to testify today on three of the President's anti-terrorism legislative measures. We believe that the entire legislative package will close several loopholes in existing law and give us new and needed tools to combat international terrorism. We believe that enactment of H.R. 5612, H.R. 5689, and H.R. 5690 is important and that speedy action upon them should be taken by the Congress. These three bills are non-controversial and have evoked no visible opposition.

As you know, during the past decade terrorist acts have become an ever increasing threat. Especially alarming is the degree to which some bandit states or organizations have engaged in heinous terrorist actions aimed at innocent victims. State supported terrorism has become a low cost method of wreaking havoc upon one's opponents. The President's package addresses some of the risks caused by the growing worldwide terrorism problem, especially state-supported terrorism. The threat of terrorism is ever present, and one must ensure that our legal arsenal is sufficiently capable of responding to the problem. Our efforts must be strong, but they must also preserve the constitutional values and liberties which are so dear to our society. The President's package comports fully with these goals. We look forward to working with your

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Subcommittee and the other interested Congressional Committees to bring all these bills to passage.

When the President transmitted his legislative package to the Congress, he included a section-by-section analysis of each bill. Hence, we will not describe each bill in specific detail.

H.R. 5690

I turn first to H.R. 5690, the "Aircraft Sabotage Act." This is one piece of legislation that is long overdue. For nearly a decade it has been before the Congress in one fashion or another. The primary purpose of the bill is to implement fully the international obligations we assumed when we ratified the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation ("Montreal Convention") on November 1, 1972. A major obligation of the Convention is the requirement that Parties to the Convention assume criminal jurisdiction over persons who are found within their territory after having destroyed a civil aircraft. Jurisdiction would attach even when the act was committed elsewhere and not against that country's aircraft. Current United States law does not permit such a prosecution. For example, under this bill, if a terrorist blows up a British airliner in Madrid, the United States would be able to prosecute him if he is apprehended in the United States.

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While present domestic law meets the vast majority of our obligations under the Montreal Convention (which may explain the inertia in enacting the predecessors of H.R. 5690) the time is now ripe for Congressional action on this non-controversial measure. In addition to plugging the gaps in existing laws relating to our treaty responsibilities, the bill also makes several minor, but desirable, changes in the statutes relating to aircraft piracy and the destruction of aircraft offenses.

The need for passage of this legislation goes beyond filling these gaps in our present law. Its passage will send an international message of the United States' commitment to combat terrorism. Our failure to implement the Montreal Convention has been an impediment to our diplomatic efforts to encourage further concerted international action against terrorism.

H.R. 5689

I will now discuss H.R. 5689, which is directed against hostage-taking. Hostage-taking is defined as kidnapping coupled with a "threat . . . to kill, injure or continue to detain the person in order to compel a third party" to act or refrain from action. As defined, the term covers hostage-taking whether or not perpetrated by terrorists.

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The international community strongly condemned hostage-taking on December 17, 1979, when the International Convention Against the Taking of Hostages was adopted by the United Nations. The United States has signed the treaty, and the Senate has given its advice and consent. However, before the United States can file its formal adherence to the treaty, implementing legislation must be enacted. H.R. 5689 is the necessary legislation.

H.R. 5689 amends the current federal kidnapping statute, 18 U.S.C. 1201, to implement these treaty responsibilities fully. The bill provides broad jurisdiction over the hostage-taking offense. It is predicated on recognized extraterritorial principles of international law to provide for punishment of any United States national who takes hostages anywhere in the world, as well as of any perpetrator who takes a United States national hostage anywhere in the world.

Of course, as you well know, before there can be any prosecution one must also obtain personal (i.e., physical) jurisdiction over the perpetrator. Most perpetrators of hostage-taking outside of the United States will and should be dealt with by the courts of the country where the crime occurred. This bill is written to create United States federal criminal jurisdiction in the event the perpetrator evades the jurisdiction of such court, or the court fails to mete out justice in vindication of our interests. Of course, we could

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not proceed to trial unless we obtained personal jurisdiction over the perpetrator and sufficient evidence to sustain a successful prosecution.

Where the hostage-taking occurs within the United States, the bill, while providing for federal jurisdiction where appropriate, specifically states that state and local jurisdiction is not preempted. Although the bill is not limited to hostage-taking by terrorists, in keeping with the purpose of the international Convention it is intended to implement, we do not intend to assume jurisdiction where there is no compelling federal interest.

H.R. 5689 also amends current subsection (f) of 18 U.S.C. 1201 (the kidnapping law) to allow the Attorney General to request assistance in hostage-taking situations from any Federal, State or local agency notwithstanding any statute, rule, or regulation to the contrary. This authority presently exists under Section 1201 only where "internationally protected persons" are kidnapped. Like authority is also found in other federal statutes, such as 18 U.S.C. 112(f) (assaults on protected foreign officials), 351(g) (assault and kidnapping of high federal officials), and 1751(i) (assaults on or assassination of the President and his staff). The authority is intended for use in those rare situations where the law enforcement resources normally available to the Attorney General, such as the FBI and the United States Marshals

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Service, are not sufficient. In keeping with the historical precedent and current practice, the request for additional assistance would normally be directed first toward civilian authorities. Only when other civilian authorities are unable to provide the necessary assistance would the request be made to the military. Requests to the military would follow the procedures already established in this area between the Secretary of Defense and the Attorney General.

H.R. 5612

I would now like to turn to H.R. 5612, the bill that provides for payment of rewards in coping with terrorism.

As you well know, the clandestine nature of terrorist activity makes it difficult to prevent or suppress. It is essential that law enforcement obtain intelligence information concerning terrorist operations. The rewards and other features of this bill will encourage law-abiding persons (especially overseas) to overcome their reluctance and fear, and reveal what they know to the authorities.

Additionally, in the past, terrorist groups were composed primarily of hard-core ideological zealots who would never have informed upon their cohorts. In recent years, however, there are indications that violent criminal types have become

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associated with some terrorist groups. Because of their prior criminal experiences they are more likely to talk when caught or to inform when they feel betrayed. H.R. 5612 provides the Secretary of State and the Attorney General a new tool to exploit this weakness, thereby hindering terrorist activity.

The reward provisions of H.R. 5612 are broad. They apply to terrorist activity directed at the nation's interests, people, and property anywhere in the world. The Secretary of State has primary responsibility for rewards relating to such activity outside the United States; the Attorney General is responsible for that which occurs within the United States. The bill reaches domestic terrorism which may not be itself a federal crime and it also covers overseas terrorism over which there might be no federal criminal jurisdiction.

The size of the potential rewards creates a new risk to terrorist groups, especially when their activities involve individuals removed from the hard-core ideological center of the group. While, as a matter of policy this Department does not favor publicly announced rewards, the threat of terrorism warrants the use of any legal tool to combat it. Unlike some reward measures, H.R. 5612 is not limited to information leading only to the conviction or the arrest of the perpetrator. It covers all valuable information that can lead

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to the prevention, frustration, or favorable resolution of the terrorist's activities. For example, information on the location of an American hostage would be covered. Likewise covered is information on command centers and safe-houses of terrorist groups. While a reward of \$500,000 is possible, any reward of \$100,000 or more requires the approval of the President or his designee.

The bill also permits the Attorney General, where warranted, to grant an alien recipient permanent resident status and to place the recipient in the Witness Protection Program operated by the United States Marshals Service. No domestic or foreign public official may receive a monetary reward for any information provided, but they, too, would be eligible for admission to the United States, if an alien, and to the Witness Protection Program, when appropriate. Because of the need to protect the identity and location of the recipients, the Secretary of State or the Attorney General is authorized to take the steps necessary to provide appropriate safeguards in the disbursement of such rewards to avoid harmful disclosures.

H.R. 5612 appropriates no funds, but upon its enactment both the Department of State and the Department of Justice will seek the necessary appropriation from the Congress. This statute, even if seldom utilized, may be just the means to the prevention of deadly attacks upon American nationals or to their successful rescue if they have been kidnapped.

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H.R. 5613

Though H.R. 5613 is not assigned to this Subcommittee, it is a very important aspect of the President's anti-terrorism legislative effort and I would like to say a few words about it. The primary purpose of H.R. 5613, the Prohibition Against the Training or Support of Terrorist Organizations Act of 1984, is to deny valuable services from American nationals to those groups which practice terrorism against this nation's interests, people, and property.

We have testified on H.R. 5613 and its identical Senate version, S. 2626, before the House Foreign Affairs Committee and two of its Subcommittees and the Subcommittee on Security and Terrorism of the Senate Judiciary Committee. It is my understanding that we may be testifying early next month on H.R. 5613 before Congressman Edwards' Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary. Pursuant to the request of the House Foreign Affairs Committee, the Administration is considering modifying the approach taken in H.R. 5613. Instead of designating specific countries, factions and groups that support or conduct international terrorism for which services may not be performed, the Administration is considering the feasibility of a statute-based licensing system for American individuals and business entities that provide services to the military or intelligence

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agencies of foreign governments. The exact framework of this alternative approach, however, has not yet been fully worked out.

While it may not be possible to enact legislation dealing with "services" this year, we do believe that action upon the other three bills, H.R. 5690, H.R. 5689, and H.R. 5612, is both possible and highly desirable. Hence, we urge that this Subcommittee favorably report these three bills.

This concludes my prepared remarks. I would be happy to answer any questions the Subcommittee may have.