

Actio
OCA 8c 1321

OFFICE OF CONGRESSIONAL AFFAIRS
Routing Slip

	ACTION	INFO
1. D/OCA		X
2. DD/Legislation	X	
3. DD/Senate Affairs		
4. Ch/Senate Affairs		
5. DD/House Affairs		
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		X
9. FOIA Officer		
10. Constituent Inquiries Officer		
11.		
12.		

*PA nuob.
to him
4/22/86*

SUSPENSE 22 Apr 86
Date

Action Officer: _____
Remarks: *ACTION COMPLETED PER MFR
DTD 22 APRIL 1986.*

STAT

GJ / 21 Apr 86
Name/Date



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

CONGRESSIONAL AFFAIRS
80-1321

April 21, 1986

LEGISLATIVE REFERRAL MEMORANDUM

SPECIAL

TO:

- Department of the Treasury - Carol Toth (566-8523)
- Department of State - Lee Ann Berkenbile (647-4463)
- Department of Defense - Werner Windus (697-1305)
- Central Intelligence Agency
- National Security Council
- Department of Transportation - John Collins (426-4694)
- Department of Energy - Bob Rabben (252-6718)

SUBJECT: Department of Justice proposed testimony on existing legal mechanisms available to combat international terrorism.

Handwritten notes:
W...
B...
J...

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 Circular A-19.

Please provide us with your views no later than

10:00 a.m. -- TUESDAY -- APRIL 22, 1986.

Direct your questions to Gregory Jones (395-3454), of this office.

Signature of James C. Murr
James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

- cc: Karen Wilson Ron Peterson
- Russ Neeley John Cooney

DRAFT

Mr. Chairman and members of the Subcommittee, my name is Lawrence Lippe. I am the Chief of the General Litigation and Legal Advice Section of the Criminal Division of the Department of Justice. I am pleased to be here today to discuss with you the existing legal mechanisms available to combat international terrorism, the use that the Department is making of these legal mechanisms to prosecute those responsible for several of the most recent tragic terrorist attacks against Americans and some of the areas in which additional legislation is needed to close gaps in our jurisdiction to prosecute terrorist atrocities abroad. In addition, I am happy to discuss the Department's extensive consideration of allegations that PLO leader Yassir Arafat was involved in the planning of the March 1973 seizure by members of the terrorist Black September Organization of the Saudi Arabian Embassy in Khartoum, Sudan and that he personally ordered these terrorists to savagely murder our ambassador, Cleo Noel, our Charge d'Affaires G. Curtis Moore and Belgian diplomat Guy Eid.

The Department of Justice has received a number of letters calling for the indictment of Arafat for the 1973 slayings and much has been alleged about the existence of evidence that might implicate Arafat in the operation. On the basis of such allegations, the Department conducted an extensive search, both within our government and from other sources, to determine if evidence admissible in any prosecution is available. Simultaneous with that search, the Department engaged in exhaustive legal research to determine whether the United States

WJ - Regis is
4/23/86

has jurisdiction to prosecute Arafat or anyone else for these reprehensible crimes. As a result of this research, it is the opinion of the Department of Justice that there is no statutory authority upon which to predicate a prosecution against any person for the 1973 murders of Ambassador Noel and Charge d'Affaires Moore.

In 1973, there was no federal criminal liability for the murder of United States diplomats abroad. It was not until 1976, when Congress amended 18 U.S.C. § 1116, that such attacks on our diplomats abroad became a federal crime. The 1976 amendments to § 1116 created a major substantive change in federal law: they enlarged the class of persons protected against deadly assaults, a class that had previously been limited to foreign officials or foreign guests attacked while in the United States. Moreover, these amendments created a major procedural change in our law: they established extraterritorial jurisdiction in the courts of the United States to prosecute the murderers of American diplomats wherever the crime occurs if the offender is found in the United States. Thus, while the murder of American diplomats abroad undeniably was a condemnable act in 1973, it was not a prosecutable crime in the United States at the time and did not become one until 1976. Prosecuting anyone in the United States for the 1973 Khartoum murders as a violation of 18 U.S.C. § 1116 as amended would amount to punishing persons for acts not punishable under our law at the time they were committed. Such a prosecution clearly would violate the ex post facto clause found in Article I, Section 9 of the United States Constitution.

There is no statutory authority besides 18 U.S.C. § 1116 upon which to predicate an American prosecution for the murder of American diplomats abroad. Criminal statutes are presumed to apply only domestically unless the language of the statute clearly demonstrates that Congress intended it to have extra-territorial effect. While several extraterritorial statutes exist, many are of rather recent vintage and all expressly reflect Congressional intent to prohibit acts occurring outside the territory of the United States. Upon review of these statutes, however, it is apparent that extraterritorial jurisdiction vests in United States courts only in the case of particular attacks against specially protected persons committed in certain locations. No extraterritorial statute besides 18 U.S.C. § 1116 as amended would cover the savage attacks against Ambassador Noel and Charge d'Affaires Moore.

Although the Department of Justice has determined that there is no federal jurisdiction to prosecute anyone for the 1973 Khartoum murders, we conducted an extensive search of agencies and departments within our government as well as outside our government to see if admissible evidence exists that could support an indictment against Arafat. We enlisted the assistance of the State Department and various components of the intelligence community to obtain and verify information alleging Arafat's complicity in the planning of the embassy takeover and the murder of our diplomats.

We reviewed extensive records and chronologies of the events of March 1-4, 1973, the dates of the incident, as well as records of events preceding the attack and following the surrender of the eight Black September Organization terrorists to Sudanese authorities. We even reviewed the available text of the Magisterial Inquiry held in the Sudan between November 15, 1973 and March 9, 1974 which resulted in referring the case for trial against the eight Black September Organization terrorists for the premeditated murders of our diplomats. In addition, we reviewed the embassy reporting of the trial itself, which lasted from June 2 until June 24, 1974.

The evidence currently available is plainly insufficient for prosecutive purposes even if there were a legal basis for instituting charges against Arafat. Notably, after reviewing all of this evidence, we have found no tape recording of Arafat ordering the murders of Ambassador Noel and Charge d'Affaires Moore, no transcript of any such tape recording and no record of transmission of any such order to kill during the seizure of the Saudi Arabian Embassy. Information concerning Arafat's direct involvement in this operation is, at best, hearsay and conjecture, much of which is entirely unverifiable. Thus, such information would never be admissible in any trial of Arafat and consequently, would serve no prosecutive purpose.

5

Although neither the law nor the evidence supports a prosecution for Arafat for the 1973 murders, the Department of Justice does have jurisdiction to prosecute the international terrorists responsible for many of the most recent brutal attacks on Americans abroad. Our extraterritorial jurisdiction has expanded greatly since 1973 and we are using our enhanced authority to investigate such barbaric attacks aggressively. We intend to ensure the identification, apprehension and effective prosecution of terrorists whose wanton violence targets Americans abroad. We have commenced investigations of those responsible for the hijacking of TWA 847, the piracy of the Achille Lauro, the hijacking of Egyptair 648 and the bombing of TWA 840 and we intend to prosecute them. The development of these cases has required substantial investigation abroad and unique cooperative initiatives with other countries that we hope share our commitment to bring the perpetrators to justice. With your permission, I would like to summarize our progress on each of these cases.

In the case of the June 1985 hijacking of TWA 847 and the cold-blooded murder of Robert Stethem, the Justice Department has charged the three hijackers with aircraft piracy and murder in the special aircraft jurisdiction of the United States. Complaints against and arrest warrants for the hijackers were filed under seal in the United States District Court for the District of Columbia within days of the release of all passengers and these complaints and warrants were unsealed on October 17, 1985. A reward of up to \$250,000 has been offered for

6

information leading to the apprehension, effective prosecution and punishment of those responsible for the hijacking. Witnesses to the hijacking continue to be interviewed by the FBI and a federal grand jury investigation remains open to receive evidence.

In the case of the October 1985 piracy of the cruise ship Achille Lauro and the cowardly murder of Leon Klinghoffer, the Department of Justice obtained a complaint and arrest warrant in the United States District Court for the District of Columbia for Abu el-Abbas, the mastermind of the attack, even before the ship's American passengers returned to the United States after their release from captivity. Abbas has been charged with hostage-taking, piracy and conspiracy. The United States issued provisional arrest requests for Abbas to Italy and Yugoslavia in efforts to capture him before he departed those countries after the apprehension on Sicily of the four terrorists who carried out the piracy. The Department of Justice also obtained complaints against and arrest warrants for these four terrorists, charging them with hostage-taking, piracy and conspiracy. As you know, the Egyptian aircraft carrying these terrorists to safety out of Egypt was diverted by United States aircraft to Sigonella, Sicily on October 11, 1985 to ensure the apprehension of the terrorists. A reward of up to \$250,000 has been offered by the United States for information leading to the apprehension, effective prosecution and punishment of Abbas, who remains at large. A federal grand jury investigation is continuing into the matter. Meanwhile,

the four terrorists apprehended on Sicily are in Italian custody. Last fall, they were tried and convicted by the Italian authorities for weapons offenses related to the piracy. They have been sentenced to between four and nine years for those crimes alone. They are in prison awaiting trial in Italy on charges of piracy and murder. At this time, the trial against the four terrorists in custody and ten other persons not in custody is anticipated to begin in June.

In the case of the November 1985 hijacking of Egyptair 648 and the brutal murder of Scarlett Rogenkamp and the attempted murders of Scott Patrick Baker and Jackie Pflug, the Department of Justice has obtained a complaint against and an arrest warrant for the hijacker who survived the Egyptian rescue mission conducted in Malta to end the crisis. Based upon this complaint, the United States submitted a request to Malta for the provisional arrest of that hijacker currently in custody and awaiting trial there. This request was submitted to ensure that if he ever becomes eligible for release from Maltese custody, he can be placed in our custody. A federal grand jury investigation into this case is continuing. The Maltese authorities began a "compilation of evidence" procedure in their courts in January. This procedure is similar to an American preliminary hearing and has thus far included the live testimony of members of the Egyptair flight crew as well as the live testimony of Mr. Baker, who travelled to Malta specifically for that purpose. The

8

Department of Justice is monitoring the Maltese proceedings and has been informed that the trial of the hijacker will commence at the conclusion of the "compilation of evidence" procedure, perhaps as early as next month.

Finally, the Department of Justice has been aggressively involved in the investigation of the savage bombing of TWA 840 earlier this month, which killed four Americans: Alberto Ospina, Maria Klug, her baby, Demetra Klug and her mother, Demetra Stylian. A federal grand jury investigation has commenced to receive evidence concerning this attack. In its efforts to preserve and obtain evidence located abroad and to track down the perpetrators, the United States has prepared requests for judicial assistance to transmit to Greece and Egypt seeking all relevant evidence and information. FBI agents have conducted preliminary interviews of key witnesses in Athens and Cairo and are continuing to gather critical investigative data.

Thus, as you can see from the foregoing, the United States does have adequate legal mechanisms by which to prosecute these recent terrorist acts. We are, however, very grateful for the efforts of this Subcommittee, its Chairman, and the full Senate for the attention they have given and continue to give to several legislative efforts that are needed to confront terrorism. While there are numerous matters presently pending in the Congress relating to terrorism, I will comment only upon those in the Senate which we believe will be the most beneficial.

1. The reinstitution of capital punishment in the federal system for crimes relating to murder, espionage, and treason is a priority of this Administration. The full Senate now has S. 239, which was reported favorably by the Judiciary Committee, pending before it. While the full Senate will likely consider floor amendments to S. 239, -- one of which we anticipate will be an amendment to add the death penalty to 18 U.S.C. 1203 if the death of any person results from a hostage-taking situation -- we are confident that the Senate will produce a bill that contains the necessary procedures that will permit the constitutional imposition of a death sentence. Unfortunately, prior bills which have passed the Senate to constitutionally impose the death sentence have languished in the House. Accordingly, we urge that the Senate give serious consideration to include the substance of S. 239, as it is finally passed, in a relevant measure upon which the full House is likely to vote.

2. The murder of and serious assaults upon United States nationals overseas by terrorists remains the area where the biggest gap in current federal criminal jurisdiction exists. Under current law, we cannot prosecute someone for the murder of Americans who are not internationally protected, unless the murder takes place in our special maritime, territorial, or aircraft jurisdiction. Senator Specter and this Subcommittee recognized this serious gap and led the effort in the Senate's passage of S. 1429 by a vote of 92 to 0 on February 19, 1986.

10

Unfortunately, the House Judiciary Committee is not disposed to act upon S. 1429. We believe that the arrangement taken by S. 1429 is the most productive and workable arrangement in this difficult area. As with the death penalty, we urge the Senate take steps to include the substance of S. 1429 measure likely to reach the full House for a vote.

3. On March 18, 1986, the House passed H.R. 4151, the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986. Presently, the Senate is carefully reviewing this measure. H.R. 4151 has many sections that the Administration believes will be beneficial to fight terrorism. One such is Section 508 which creates a mechanism to control the provision of certain services to the military, police, and intelligence agencies of certain designated countries that support international terrorism. This measure is the essence of "services" bills submitted to the 98th Congress (i.e., H.R. 5612 and H.R. 5613) by the President to close the gaps in federal law that came to light in the Wilson-Terpil investigations. Section 508 has somewhat limited the scope of the provisions of the 98th Congress, we believe it represents the broadest coverage likely to be granted by the Congress. We would suggest, however, that Section 508 include appropriate language clearly indicate that authorized undercover activities of the States Government personnel and their agents are not encompassed within the scope of the provision and that investigative authority for any

11

offenses be vested in both the Attorney General and the Secretary of the Treasury. Because the prohibited services would involve regulatory, export-type violations, which are more within the investigative expertise of the U. S. Customs Service, and could at times involve known terrorists, which is the primary responsibility of the FBI, it is essential that both agencies have the necessary authority to investigate these cases either jointly or separately, depending upon the circumstances. We anticipate that investigative understandings between both agencies will be readily reached to ensure a coordinated law enforcement response.

(4) As you well know, recent decisions of U. S. courts have blocked the extradition of persons accused or convicted of terrorist acts abroad on the ground that their violent crimes, including murder, were political offenses. Moreover, similar provisions in foreign extradition laws have frustrated efforts to bring accused terrorists to this country for trial. To correct this situation, the United States has begun negotiations with selected countries to revise our extradition treaties to preclude the use of the political offense exception in cases involving violent crime. The first country with which we have concluded such a revision is the United Kingdom. The Supplemental United States-United Kingdom extradition treaty has been submitted to the Senate for ratification and is pending before the Senate Committee on Foreign Relations. We are hopeful of favorable consideration of this important anti-terrorism measure by the Senate within the near future.

12

There are, of course, other important anti-terrorism matters of a preventive nature such as S. 274, the Nuclear Power Plant Security and Anti-Terrorism Act of 1985, which was drafted and sponsored by the Chairman of this Subcommittee and which was overwhelmingly passed by the Senate last October. The Administration has also submitted a bill to further improve airport security. These important measures, if enacted, will help to further protect Americans from possible terrorist attacks, especially attacks here in the United States.