Action
OCA 86-0632

Office of Legislative Liaison

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TO:	ACTION	INFO
1. D/OLL		X
2. DD/OLL		X
3. Admin Officer		
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 3, 1986

LEGISLATIVE REFERRAL MEMORANDUM

SPECIAL

TO:

Department of State (Berkenbile 647-4463)
Department of the Treasury (Toth 566-8523)
Department of Defense (Windus 697-1305)
Central Intelligence Agency
Department of Transportation (Collins 426-4687)

SUBJECT: Department of Justice testimony on antiterrorism legislation

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

12:00 NOON -- FRIDAY -- MARCH 7, 1986

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

James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: John Cooney Karen Wilson Jim Barie Russ Neeley
Dave Hunn Jim Nix

DRAFT

Statement of Victoria Toensing

Deputy Assistant Attorney General

Criminal Division

U.S. Department of Justice

Before the Subcommittee on Crime

of the House Committee on the Judiciary

March 6, 1986

Mr. Chairman and Members of the Subcommittee, I am Victoria Toensing, Deputy Assistant Attorney General for the Criminal Division of the Department of Justice. In this position, I supervise the Criminal Division's efforts in the increasingly challenging task of combatting terrorism.

Inadequate time prevented full interagency coordination of these comments. Consequently, these views are not necessarily those of the Administration.

It is gratifying to those of us who work daily on terrorism and the inevitably intertwined issue of extradition to see Congress join the effort to defeat those who choose violence, and violence most frequently directed against the innocent, over the rule of law and democratic principles.

As Deputy Assistant Attorney General, I have come to know all too well the extraordinary difficulties we encounter investigating and prosecuting international terrorism. The Administration supports vigorously enactment of strong anti-terrorism legislation to counter the burgeoning threat of terrorism. Thus, the Administration has strongly supported two anti-terrorism measures approved in the Senate by overwhelming, bi-partisan votes. These measures are S. 1429, which provides federal jurisdiction and strict penalties for murders and serious assaults by terrorists against U.S. nationals overseas, and S. 274, which strengthens our ability to safeguard nuclear facilities from terrorist attacks.

We studied closely the provisions of H.R. ____, in the hope that it, too, would represent strong anti-terrorism legislation that provided much needed improvements in terrorism and extradition law. Unfortunately, it does not. Indeed, it is our conclusion that, on balance, this bill would make more difficult, rather than less, the task of federal prosecutors, particularly in extraditing terrorists and other international fugitives. We did not reach this conclusion lightly, for the need for strong anti-terrorism legislation is great. But in these critical times, we must move to strengthen our position; and thus we cannot support a measure which would, in our view, result overall in a net diminution of our effectiveness in the battle against international terrorism.

By far, the greatest part of H.R. ____ is devoted to revision of existing extradition statutes and an expansive codification of aspects of extradition not now addressed in our statutes. Assurance that we can meet our treaty obligations to other nations to return their fugitives is critical in this age in which offenders can easily flee from one country to another and in which serious crime has taken on international dimensions. In no instance is this truer than in the case of international terrorism. Yet it is in the very case of international terrorism that the problems in achieving extradition are most difficult and most complex.

Most of the extradition provisions of H.R. ____ are quite familiar to us, for they are either identical to, or substantially similar to, provisions of extradition bills on which the Department of Justice has offered extensive comments when those bills were considered by this Subcommittee and the full Judiciary Committee during the 97th and 98th Congresses.

LEGISLATION FAILS TO CLOSE THE POLITICAL OFFENSE LOOPHOLE FOR TERRORISTS

In my comments today, I will speak first to the provisions of H.R. ____ which deal with the political offense doctrine. 1/ But first let me explain the Administration's position in this area. In those countries where there is a stable democracy, we cannot permit terrorists to use their bullets and bombs in lieu of the ballot box. To that end, we have asked the Senate to ratify a Supplementary Treaty to the Extradition Treaty between the United States and the United Kingdom which would exclude

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1/ The right of a foreign sovereign to demand and obtain extradition of an accused criminal is created by treaty. Although the first known extradition treaty was in the 13th Century B.C., the political offense exception is more recent. It is one hundred and fifty years old.

It was the French and American revolutions which promoted the development of this concept. It basically excepts from extradition those persons who commit "political" offenses. Although there is no international agreement about the definition of the term, it is fairly well accepted that there are two categories of political offenses: "pure political offenses" and "relative political offenses." "Pure political offenses" are those are aimed directly at the government and include such crimes as treason, sedition, and espionage. The "relative political offenses" usually include common crimes committed for political motives or in a political context.

crimes of violence from the category of "political offenses" which can be used to defeat extradition.

Cast in the simplest of terms, the political offense doctrine provides that a person may not be extradited for an offense determined to be of a "political" nature. Yet, as the political offense doctrine has come to be construed in our courts, it has become the most complex and disputed aspect of extradition law. Most importantly, it has become the terrorist's most valuable tool in unjustly defeating extradition.

While the term "political offense" has defied comprehensive definition, "American courts have uniformly construed 'political offenses' to mean those that are incidental to severe disturbances such as war, revolution, and rebellion." Sindona v. Grant, 619 F.2d 167 at 173 (2d Cir. 1980). This definition comes from a test first adopted by the British courts in In Re Castioni, [1891] Q.B. 149 and has been the litmus test in United States extradition jurisprudence since 1894. Moreover, in recent years the federal courts have appeared to expand this test so that terrorists have managed to avoid extradition by successfully arguing to the courts that their heinous crimes were political offenses.

For example, the fugitive whose extradition is sought in In Re Doherty, 599 F. Supp. 270 (S.D.N.Y. 1984), is a member of the Irish Republican Army (IRA) who, along with several of his IRA

associates, planned an ambush of a British army convoy. In furtherance of that scheme they commandeered the home of a Northern Irish family whose house overlooked the route to be followed by the convoy. Members of the family were in the house and were held hostage. Alerted to the proposed ambush, the British Security Forces stormed the house. During the ensuing melee Doherty shot and killed a British officer. Doherty was caught, convicted, and sentenced to life imprisonment. However, he became one of twelve jailed IRA members who somehow obtained weapons and escaped from H.M. Prison, Crumlin Road, Belfast. They left behind several severely wounded guards. Because the court determined that Doherty's crimes were political in nature, it denied his extradition.

The factors which gave rise to the political offense exception in the eighteenth century are hardly operative as we approach the twenty-first century. Our review of the political offense language proposed in this legislation leads us to believe that it would further hamper the already limited ability of the United States to extradite to foreign governments fugitives accused or convicted of having committed acts of terrorism. Though there are numerous problems with the proposed language, I shall focus on only a few of them today.

First, the list of offenses that would be excluded from the purview of the political offense exception is very limited, leaving many violent crimes that could be deemed by the courts to

be political in nature. For example, murder, manslaughter, kidnapping, bombings, and arson, some of the most common forms of terrorism, could still be considered political offenses. The recent events in Sweden provide us with an example of the legislation's limitations and benefits. Because Prime Minister Palme was within Sweden when murdered, he could not be defined as an internationally protected person under either Title 18, United States Code, Section 1116 or the Convention for the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, signed at New York December 14, 1973. Consequently, if his assassin(s) were to flee to the United States, it is conceivable that extradition could be denied on the basis of the political offense exception. On the other hand, if Prime Minister Palme had been assassinated outside of Sweden and if his murderer(s) were to flee to the United States, the legislation would not permit the fugitive(s) to claim the political offense exception. This heinous crime should be extraditable under all circumstances.

In short, some crimes could never be considered political offenses under the legislation. Those crimes are few in number. However, there are many other crimes . . . violent crimes . . . that terrorists could claim to be political in nature. The factors that the courts could use to determine whether crimes such as murder, kidnapping, bombings and arson are political offenses are so broad under this legislation, that a terrorist

having committed any such crime could almost be certain that he or she would never be extradited from the United States.

One of the provisions attempts to remove crimes of violence from the political offense exception. It reads as follows:

* * * * *

> For the purposes of this section, a political offense does not include --
>
> . . . an offense that consists of intentional, direct participation in a wanton or indiscriminate act of violence with extreme indifference to the risk of causing death or serious bodily injury to persons not taking part in armed hostilities.

* * * * *

While to the lay person this language might sound helpful at first blush, to those of us experienced in the area of extradition and international law it is far too ambiguous to be of help in our fight against terrorism. Certain key phrases in the provision, including those such as "extreme indifference" and "armed hostilities," are so vague as to render the provision extremely difficult to apply. For instance, are we engaged in armed hostilities in Puerto Rico within the meaning of this provision, and would a foreign court, if it were applying this language with regard to our request to extradite an FALN terrorist whose bomb had killed a policeman and a civilian, come to the same conclusion as we?

Finally, it is important to note that a United States law has no effect on a foreign government's obligation to extradite fugitives to the United States. If we wish to enhance our ability to have our fugitives returned to the United States under extradition procedures, it is necessary to have bilateral extradition treaties which specify those offenses which are excepted from the purview of the political offense doctrine. Our legislation, which is necessarily unilateral, does not affect the obligations of other countries to honor our requests to them.

To summarize, the political offense portion of the legislation would, in some instances, make it even more difficult for the United States to extradite from this country fugitives accused or convicted of committing crimes of terrorism.

In addition to our serious reservations about the political offense provisions of Title I of the bill, it is our firm view that other aspects of its extradition sections create, rather than ameliorate, difficulties in meeting our solemn treaty obligations to extradite international fugitives. On many occasions during the last two Congresses, the Department has commented on the virtually identical provisions of prior extradition bills. On those occasions, we identified a number of serious problems with these provisions. Indeed, after careful analysis, the Department of Justice has concluded, as we did in the 98th Congress, that these problems are so serious that they

significantly outweigh whatever benefits might be obtained by the bill's other extradition provisions.

Since we have in the past extensively discussed our objections to various provisions of Title One, I will limit my testimony today to a discussion of those items that are most problematic.

LEGISLATION'S BAIL PROVISIONS WOULD MAKE IT EASIER FOR TERRORISTS TO BE FREE ON BOND

One of our gravest concerns with this bill is that, like its predecessors, it would reverse the current standard for bail. Under current law, a fugitive is to be detained pending extradition unless he shows "special circumstances" that justify his conditional release. This means that the fugitive must establish some exceptional factor, such as physical hardship or the prospect of a manifest injustice, in order to overcome the Government's motion for his detention.

The "special circumstances" test, established by the Supreme Court at the beginning of this century, has been applied wisely by the courts, and we have seldom been in the position of being unable to surrender a fugitive whose extradition has been ordered. Yet, at the same time, the courts have used this test to permit the conditional release of a fugitive when he has established that detention would be manifestly unfair and problems concerning flight, dangerousness and injury to our treaty relations are not present.

But this bill presumes that the fugitive should be free on bond. It would reverse the "special circumstances" test, and permit detention of an international fugitive only if the government met a heavy burden of proving by clear and convincing evidence that no form of conditional release would be adequate to assure the appearance of the fugitive or to assure the safety of another person or the community. In other words, this bill makes it easier for those who are fugitives from committing terrorist acts in another country and go on the lam again. This change in the law would seriously undermine our ability to meet our commitment to treaty partners to guarantee the surrender of fugitives found extraditable.

First and foremost, extradition, by definition, deals with a class of persons who are fugitives from justice in foreign countries. Most of them have fled from foreign countries knowing charges have been, or were likely to be, brought against them. Thus, the typical subject of an extradition request has demonstrated a propensity to flee rather than to face charges.

Second, unlike the situation in ordinary pretrial bail hearings, the Government does not have access to significant information about the accused or to law enforcement officials familiar with the accused and his criminal history, and thus would not be able, in many cases, to meet the proposed heavy burden for detention.

Third, traditional remedies for bail jumping -- forfeiture of bond or our own prosecution -- are wholly inadequate to redress the injuries to our treaty partners and to our own extradition relations with those treaty partners. Indeed, prosecuting a fugitive for bail jumping only further delays the his or her extradition.

The fact that this bill provides a ten-day "grace period" (with only limited opportunities for extension) during which the defendant would bear the burden of showing that he is neither a significant flight risk or danger to others, is inadequate to address the problems we have cited. First, this test for release is still more liberal than the current "special circumstances" test. Second, the extraordinary practical problems of the Government's coming forward with significant amounts of information about the offender are only delayed, even though neither our extradition treaties nor current international extradition practice contemplate such exacting burdens.

Moreover, it must be noted that extensive periods of pre-hearing detention are not the rule in current extradition cases. The United States reserves provisional arrest for those cases in which there is a real need to detain a fugitive pending presentation of formal extradition documents. Even when provisional arrest does take place, the period of provisional arrest is strictly limited by the terms of our extradition treaties.

LEGISLATION WOULD MAKE OBTAINING PROVISIONAL ARREST WARRANTS FOR TERRORISTS MUCH MORE DIFFICULT

Another very serious problem posed by this bill and its predecessors, is it would make it far more difficult, if not virtually impossible, to obtain a warrant for the provisional arrest of a fugitive. Provisional arrest is a well known and often used aspect of extradition law. It permits the immediate arrest of a fugitive on a certain standard of proof less than probable cause, if there is a promise that soon thereafter the foreign country will submit what are often voluminous documents which provide the evidence supporting the extradition request. 2/ The primary purpose of this documentary submission is to supply information necessary to meet the single most important criterion for extradition: full probable cause to believe that the person

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2/ In order to provisionally arrest a fugitive, the United States must receive a formal provisional arrest request from the foreign country and obtain an arrest warrant from a United States Magistrate or District Court Judge. In applying for the warrant, our prosecutor files a sworn complaint which provides specific information about the foreign charges, when and where the foreign arrest warrant was issued, and assertions (1) that there is a treaty in force between the foreign country and the United States and that the foreign country has requested provisional arrest pending extradition within the terms of that treaty; (2) that the offense is covered by the treaty and (3) that the foreign country will submit the required documents within whatever time period is specified by the treaty. In addition, we provide whatever additional information we may have about the details of the crime and the underlying evidence. If the foreign country does not submit these documents within the time specified by the treaty (generally between 30 and 60 days), the fugitive must be set at liberty.

It is not infrequent that we deny a foreign country's provisional arrest request, either because there is no urgent need to arrest the fugitive, or because of inadequate information.

before the court has committed the offense with which he has been charged in the foreign country.

Probable cause as we know it in the context of United States criminal law is very standard for ultimate determination of extraditablity. Yet, H.R. ____ would require that this same high standard be met in order to obtain a provisional arrest warrant. In effect, it requires that the Government meet its ultimate evidentiary burden for the extradition hearing at the preliminary stage of provisional arrest.

As a practical matter, we will rarely be in a position to meet this burden at the provisional arrest stage. To meet a full probable cause test, we must be able to produce a significant amount of information not only about the facts of the crime, but also, more importantly, about the evidence underlying the charges. In the fast-paced settings in which urgent provisional arrest requests are made, it will in many cases be impossible for foreign government treaty partners to produce quickly the same full range of information required for obtaining arrest warrants for crimes committed within the United States.

We all recall when we made a provisional arrest request to Italy for Abu Abbas after the Achille Lauro hijacking. Italy let him go in those 24 hours, saying that we had provided insufficient evidence, even though a United States District Court had ordered his arrest. Our two government have since resolved

the provisional arrest issues that brought about this most unfortunate result. We do not now want to be in a position where, under the provisions of this bill, we would have to refuse the request of a foreign country for a person like Abu Abbas.

Two additional important factors must be borne in mind. First, provisional arrest is permissible only if there is already in existence a valid warrant for the arrest of that fugitive in the country requesting extradition. (In the Achille Lauro case, I supervised our acquiring a warrant for the arrest of Abu Abbas in the District Court.) Second, probable cause is a concept unique to our legal system. Those experienced in extradition know it is a perplexing concept to most foreign law enforcement and judicial authorities. Thus, tasking foreign authorities to meet this alien, difficult standard in the emergency setting in which provisional arrests must be made, particularly when a valid warrant has already been issued in conformity with their own legal requirements, is unworkable and unwarranted.

LEGISLATION WOULD UNILATERALLY CHANGE OUR BILATERAL TREATIES

Another significant problem with this bill, like earlier bills considered by the Subcommittee, is that it would unilaterally revise substantive provisions of our existing extradition treaties in two areas: first, the minimum penalty by which an offense must be punishable before extradition may be granted, and second, the criteria to be used in resolving competing extradition requests from more than one country.

There is no need for codification in either of these areas. But more importantly, such a unilateral revision would justifiably be viewed as highly offensive by our treaty partners. Our obligation to abide by the terms of existing treaties is a very serious one. To abrogate unilaterally such treaty terms, absent the most compelling of reasons, is wholly unwarranted. There is no such compelling reason for the codification scheme set out in this bill.

LEGISLATION WOULD COMPLICATE AND DELAY SURRENDER OF FUGITIVES WAIVING EXTRADITION

Yet another serious concern we have with the extradition provisions of this bill lies in its treatment of waivers of extradition. Waivers of extradition occur quite frequently. They permit the immediate surrender of the fugitive after his or her execution of a judicially approved, knowing, and voluntary waiver of the procedures and rights provided under the extradition treaty. Waiver is the most satisfactory resolution of extradition cases from the perspective of both the United States and its treaty partners. This bill, however, would complicate current waiver practice and unnecessarily delay the surrender of the fugitive.

Under current law and practice, once a fugitive has executed a waiver, the court directs his or her surrender to the foreign country as soon as possible. The court's order is the final stage in the proceeding. Removal of the defendant is not contingent on issuance of a surrender warrant by the Secretary of

State, since the fugitive has waived this and other procedures applicable to the extradition processes.

H.R. ____ would revise the waiver procedure by requiring the court to certify and transmit to the Secretary of State a transcript of the proceeding. Surrender of the fugitive would then have to await a decision by the Secretary. These extra procedures will serve only to complicate and delay surrender of a fugitive who has willingly consented to an expeditious return. Current procedure is efficient, thorough, and fair. It need not be changed.

Moreover, the proposed changes raise disturbing ambiguities about the effect of a waiver. From a legal perspective, the distinction between extradition and surrender pursuant to a waiver of extradition can be an extremely important one. Because this bill's waiver provisions add an "order of extradition" and the issuance of a surrender warrant by the Secretary, and these procedures are now required only in the case of a full extradition proceeding, they suggest that surrender pursuant to waiver would now acquire all the same legal characteristics as extradition.

The most serious problem flowing from such an interpretation would be that persons waiving extradition would automatically, and in all cases, benefit from the rule of speciality. (This rule provides that a person may be prosecuted or punished only

for those offenses for which his extradition was granted.) Not only do we believe this results in a significantly qualified waiver in every case, which is inappropriate, but also certain of our treaties now specifically provide that the rule of speciality is not to apply in waivers of extradition.

LEGISLATION WILL FURTHER DELAY SURRENDER OF FUGITIVES BECAUSE OF INADEQUATE LIMITS ON COLLATERAL REVIEW

A final serious problem we have cited in the past concerns collateral review of extradition decisions. Under current law, a person found extraditable may seek review of the court's decision only through the filing of a habeas corpus petition. In cases of decisions adverse to the Government, our only remedy is to refile the extradition case. In other words, the government cannot appeal an adverse decision.

H.R. _____ would provide for direct appeal of extradition decisions by either the fugitive or the Government. We would welcome that provision if it stopped there. However, by permitting direct appeal, we should then strictly limit collateral review. Even under current law, where the habeas corpus process is the sole means of review, it is not uncommon for exhaustion of this process to delay surrender for a year or more.

Finality of judgment is a critical principle in all criminal proceedings, but in the context of extradition, it has extraordinary importance. Not until the surrender of the

fugitive are our treaty obligations fulfilled and the interests of our treaty partner in prosecuting or punishing the offender met. Extensive delays arising during the current habeas review process are already a major source of friction with our treaty partners. To permit yet further delays by providing less than the most stringent standards for access to habeas relief following an opportunity for direct appeal would be most detrimental to our interests.

This bill provides that collateral review may be sought only when all appellate remedies are exhausted. This concept is significantly flawed: the exhaustion requirement can be circumvented through application of the bill's overly broad "good cause" exception. 3/ In our view, collateral review should be permitted only if the fugitive demonstrates that the issue he is advancing is one that could not have been raised at an earlier stage.

3/ The bill would permit a defendant who has foregone his opportunity for direct appeal to pursue habeas corpus relief on the eve of his surrender upon a mere "good cause" showing. This sort of disruption of the extradition process and the prospect of lengthy delays while the habeas process is exhausted, should be permitted only in those rare cases in which the defendant can make a compelling showing that he could not have raised his current claim for review during the appellate process provided in the bill. Other criteria encompassed by the bill's broad "good cause" exception, are not, in our view, sufficient to justify what should be, in this setting, the extraordinary remedy of collateral review.

Because of these major problems, H.R. _____ would make it more difficult for us to extradite terrorists and other international fugitives. These serious concerns led us, in the 98th Congress, to oppose virtually identical extradition legislation approved by the House Judiciary Committee. Since that time, the difficulties in addressing international terrorism and meeting our extradition treaty obligations have only increased. Consequently, our grave concerns about these measures, which we view as potentially hindering our efforts against terrorists, have similarly increased. In sum, we should not make it more difficult to extradite terrorists; we should make it less difficult.

I will now comment briefly on the remaining three Titles of the this bill.

Title II - Presidential Report on Bomb Detection

The Department of Justice supports this provision. Detection of bombs and other weapons before they explode or are used is important not only to the police and security officials but also to the general public who utilize the facilities under attack. Because many federal agencies investigate crime employing such devices and/or are already researching this area, it is fitting that the overall responsibility for preparing the report be vested in the President. However, we believe that the 180 days time period may be too short. While much research has been done, none of it, according to our understanding, has been

as comprehensive as contemplated by this bill. Accordingly, we would recommend that the time period be expanded to 12 or 18 months. In addition, any meaningful study in this area will probably require additional funds not currently available to federal agencies. Adequate authorization and appropriation is necessary. The exact amount of money needed can be worked out as the scope of this measure is fully developed by the Subcommittee.

Title III - Terrorism Crime

Title III would create a new crime of "international terrorism" in section 971 of chapter 45 of title 18, United States Code. While proposed section 971 appears to be a simple provision, it is fraught with problems, some constitutional and many practical.

Instead of proposed section 971, we would prefer H.R. 4288 introduced on Friday, February 28, 1986, by Congressman Ronald Wyden. H.R. 4288 is identical to S. 1429, sponsored by Senator Arlen Specter, which passed the Senate on February 19, 1986, by a vote of 92 to 0. I have attached a copy of S. 1429 to my statement. In our judgement H.R. 4288 and S. 1429 best close the major gap in current federal law concerning overseas terrorism directed against United States interests. While admittedly overseas terrorism is a difficult area in which to legislate, H.R. 4288 and S. 1429 minimize the prosecutive burdens while protecting all the valid national interests.

We have numerous concerns about proposed section 971 as drafted, including its breadth, its possible vagueness, and its penalty structure. Our major concern, however, is its inclusion

of motive as an element of the offense. Motive is often an extremely difficult element to prove. The fact that the proposed criminal conduct would occur overseas will only compound the difficulty. Moreover, the motive required to be proven beyond a reasonable doubt is a political one. As such, it needlessly raises first amendment concerns in what should really and solely be treated as a prosecution for violent acts, not political ideas. Proposed section 971 will give the terrorist a showcase at the expense of the American taxpayer. This is precisely what the terrorist craves - a highly visible platform from which to expound on the aims and purposes of his/her group. Regrettably, the inclusion of a political element in the actual offense will most likely make extradition more difficult if not impossible.

For all these reasons, we strongly urge the Subcommittee to substitute the language of H.R. 4288 and S. 1429 for proposed section 971. S. 1429 had strong bipartisan support in the Senate. It has no constitutional problem and it has been drafted in a manner so that the practical problems in effectively prosecuting overseas terrorist conduct are reduced.

Title IV - International Terrorism Convention

The Department of Justice fully supports efforts to combat terrorism at all levels. International cooperation is a crucial aspect. The President has already undertaken steps to implement Section 507 of the International Security and Development Cooperation Act of 1985, Pub. Law 99-83, August 8, 1985, 99 Stat. 222, calling for the development of an international terrorism control treaty. The evolution of international law to encompass

under the law of nations more of the crimes committed by terrorists is an admirable goal. While we realize that progress will come in small steps, we must still push ahead. Governments alone, however, must not pursue the development of international law relating to terrorism. The private legal bar and the schools of law and political science in the world's universities also must join this effort. Accordingly, we endorse the purposes of title IV and urge that the necessary funding for this effort be authorized and appropriated. As with the study on bomb detection the exact amount of the money needed can be worked out as the scope of this measure is fully developed by the Subcommittee.

This completes my prepared remarks. I would be happy to answer any questions you may have.

these days of a shrunken world made small by modern science and technology.

Mr. President, the United States, if it is to be at all successful in combating the terrorist threat, must put its words into deeds. This is the only way to serve notice on terrorist offenders that the United States will no longer allow them to escape the consequences of their bloody acts. How we obtain or apprehend the terrorist offenders is another question. I note that many of my colleagues, and the administration also, will not rule out abduction. Nor do I, Mr. President, if that is the only way to get these vile murderers to American shores.

One thing is clear. We cannot afford the further shedding of innocent blood or to allow political fanatics to make civilization itself their hostage. S. 1429 is a good bill because it enhances the reach of the American criminal justice system in its attempts to bring these barbaric criminals to justice. Mr. President, I urge support of S. 1429. It is a first step toward restoring legal sanity in a world reeling from terror-violence. It serves notice on terrorists and violent-wrongdoers abroad that American justice will not be denied.

Mr. SPECTER. Mr. President, I believe we are ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

I also announce that the Senator from Maryland [Mr. MATHIAS] is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota [Mr. DURENBERGER] would vote "yea."

Mr. CRANSTON. I announce that the Senator from Ohio [Mr. GLENN], the Senator from Maine [Mr. MITCHELL], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I further announce that the Senator from Hawaii [Mr. INOUYE] is absent because of illness in the family.

I also announce that the Senator from Nebraska [Mr. EXON] is absent because of illness.

I further announce that, if present and voting, the Senator from Maine [Mr. MITCHELL] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—92

Abdnor	Gore	Metzenbaum
Andrews	Gorton	Moynihan
Armstrong	Graham	Murkowski
Baucus	Gramley	Nickles
Bentsen	Harkin	Nunn
Biden	Hart	Packwood
Bingaman	Hatch	Pell
Boren	Hatfield	Pressler
Boschwitz	Hawkins	Proxmire
Bradley	Heinz	Pryor
Brampton	Helms	Quayle
Burdick	Hollings	Riegle
Byrd	Humphrey	Rockefeller
Chafee	Inouye	Roth
Chiles	Jepsen	Rudman
Cochran	Johnston	Sarbanes
Cohen	Kassebaum	Sasser
Cranston	Kasten	Simon
D'Amato	Kennedy	Simpson
Danforth	Kerry	Specter
DeConcini	Lautenberg	Stafford
Denton	Laxalt	Stevens
Dixon	Leahy	Symms
Dodd	Levin	Thurmond
Dole	Long	Tribble
Domenici	Lugar	Wallop
Eagleton	Matsunaga	Warner
East	Mattingly	Weicker
Evans	McClure	Wilson
Ford	McConnell	Zorinsky
Garn	Melcher	

NAYS—0

NOT VOTING—8

Durenberger	Goldwater	Mitchell
Exon	Inouye	Stennis
Glenn	Mathias	

So the bill (S. 1429), as amended, was passed, as follows:

S. 1429

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 Prosecution Act of 1985".

SEC. 2. (a) Part I of title 18, United States Code, is amended by inserting after chapter 113 the following:

"CHAPTER 113A—TERRORIST ACTS AGAINST UNITED STATES NATIONALS ABROAD

"2331. Findings and purpose.
"2332. Terrorist acts against United States nationals abroad.

"SEC. 2331. FINDINGS AND PURPOSE.

"The Congress hereby finds that—

"(a) between 1968 and 1984, there were over eight thousand incidents of international terrorism, over 50 per centum of which were directed against American targets;

"(b) it is an accepted principle of international law that a country may prosecute crimes committed outside its boundaries that are directed against its own security or the operation of its governmental functions;

"(c) terrorist attacks on Americans abroad threaten a fundamental function of our Government: that of protecting its citizens;

"(d) such attacks also threaten the ability of the United States to implement and maintain an effective foreign policy;

"(e) terrorist attacks further interfere with interstate and foreign commerce, threatening business travel and tourism as well as trade relations; and

"(f) the purpose of this chapter is to provide for the prosecution and punishment of persons who, in furtherance of terrorist activities or because of the nationality of the victims, commit violent attacks upon Americans outside the United States or conspire outside of the United States to murder Americans within the United States.

"SEC. 2332. TERRORIST ACTS AGAINST UNITED STATES NATIONALS ABROAD.

"(a) Whoever outside the United States commits any murder as defined in section 1111(a) of this title or manslaughter as defined in section 1112(a) of this title, or attempts or conspires to commit murder, of a national of the United States shall upon conviction in the case of murder be punished as provided in section 1111, for manslaughter be punished as provided in section 1112, for attempted murder be imprisoned for not more than twenty years, and for conspiracy be punished as provided by section 1117 of this title, notwithstanding that the offense occurred outside the United States.

"(b) Whoever outside the United States, with intent to cause serious bodily harm or significant loss of liberty, assaults, strikes, wounds, imprisons, or makes any other violent attack upon the person or liberty of any national of the United States or, if likely to endanger his person or liberty, makes violent attacks upon his business premises, private accommodations, or means of transport, or attempts to commit any of the foregoing, shall be fined not more than $5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(c) Whoever, outside of the United States, conspires to commit murder, as defined in section 1111(a) of this title, within the United States of any national of the United States, shall be punished as provided in section 1117 of this title notwithstanding that the offense occurred outside the United States.

"(d) As used in this section, the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

"(e) No indictment for this section can be returned without the written approval of the Attorney General or his designee.".

(b) The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113, the following:

"113A. Terrorist acts against United States nationals abroad ..... 2331".

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCONNELL. Mr. President, I am pleased the Senate voted by such a wide margin to support this legislation. I commend the dedicated effort of my colleague, Senator SPECTER, in shepherding this bill through the Judiciary Committee and to the floor.

I think it was surprising to many of us that there was this open window in our law. It is difficult to imagine why the murderers of U.S. citizens travel-