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HEARING BEFORE THE SUBCOMMITTEE ON CRIME
of the
HOUSE COMMITTEE ON THE JUDICIARY
on
LEGISLATION ENACTED IN 1986
RELATING TO EXTRATERRITORIAL JURISDICTION
OVER TERRORISTS ACTS ABROAD
(18 U.S.C. §2331)

Wednesday, May 31, 1989
10:00 a.m.
2226 Rayburn House Office Building

WITNESSES:

1. Mr. Oliver B. Revell, Executive Assistant Director,
Investigations, Federal Bureau of Investigation, U.S.
Department of Justice
2. Mr. Ronald K. Noble, Special Counsel and Chief of Staff,
Criminal Division, U.S. Department of Justice
3. Mr. Alvin P. Adams, Associate Coordinator for Counter-
terrorism, U.S. State Department
4. Representatives of the Central Intelligence Agency



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

OPENING STATEMENT
OF
OLIVER B. REVELL
EXECUTIVE ASSISTANT DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
BEFORE AN
OPEN SESSION OF THE
SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
MAY 31, 1989

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I AM PLEASED TO APPEAR BEFORE YOU TO DISCUSS THE LEGISLATION ENACTED IN 1986 RELATING TO EXTRATERRITORIAL JURISDICTION OVER TERRORIST ACTS ABROAD AND THE FBI'S ENFORCEMENT ROLE IN THIS ARENA.

INTRODUCTION

THE U.S. GOVERNMENT'S RESPONSE TO ACTS OF TERRORISM IS BASED LARGELY ON THE LEAD AGENCY CONCEPT. THE U.S. DEPARTMENT OF STATE (USDS) HAS LEAD AGENCY RESPONSIBILITY FOR COORDINATING THE UNITED STATES' OVERALL RESPONSE TO TERRORIST INCIDENTS ABROAD AND THE FBI HAS RESPONSIBILITY FOR MANAGING THE RESPONSE TO INCIDENTS OCCURRING IN THE UNITED STATES. A VARIETY OF STATUTES GIVE THE FBI AUTHORITY TO INVESTIGATE TERRORIST CRIMES COMMITTED OVERSEAS. CHIEF AMONG THESE ARE TITLE 18, UNITED STATES CODE (USC), SECTION 1203, (HOSTAGE TAKING) WHICH BECAME EFFECTIVE IN 1985 AND DOES NOT REQUIRE SPECIFIC TERRORIST INVOLVEMENT, AND TITLE 18, USC, SECTION 2331, (TERRORIST ACTS ABROAD AGAINST U.S. NATIONALS) WHICH WAS ENACTED IN 1986 AND EXPANDS FEDERAL EXTRATERRITORIAL JURISDICTION TO ACTS OF VIOLENCE COMMITTED AS PART OF A TERRORIST ACT. THESE STATUTES WERE ENACTED TO PROTECT U.S. CITIZENS ABROAD FROM TERRORIST ATTACKS AND TO PROVIDE A LEGAL VEHICLE BY WHICH TERRORISTS COULD BE PROSECUTED IN THE UNITED STATES FOR CERTAIN CRIMES COMMITTED OVERSEAS. THESE STATUTES ALSO HAVE DEMONSTRATED OUR COUNTRY'S RESOLVE TO TREAT TERRORISM AS A CRIME.

THE FBI ALSO HAS EXTRATERRITORIAL JURISDICTION AS A RESULT OF OTHER CRIMINAL STATUTES THAT MAY BE APPLICABLE IN TERRORIST INCIDENTS. AMONG THESE STATUTES ARE TITLE 18, USC,

SECTION 32 (DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES); SECTION 1116 (MURDER OR MANSLAUGHTER OF FOREIGN OFFICIALS, OFFICIAL GUESTS, OR INTERNATIONALLY PROTECTED PERSONS); AND TITLE 49, USC, SECTION 1472 (CRIMINAL PENALTIES - AIRCRAFT PIRACY AND CRIMES ABOARD AIRCRAFT).

SECTIONS 1203 (HOSTAGE TAKING) AND 2331 (TERRORIST ACTS AGAINST U.S. NATIONALS ABROAD) HAVE LANGUAGE THAT FOCUSES ON TERRORISM. SECTION 1203 HAS AN EXTRATERRITORIAL EFFECT WHEN THE OFFENDER OR THE PERSON SEIZED OR DETAINED IS A NATIONAL OF THE UNITED STATES; OR THE OFFENDER IS FOUND IN THE UNITED STATES; OR THE GOVERNMENTAL ORGANIZATION SOUGHT TO BE COMPELLED BY THE PROSCRIBED ACTS IS THE GOVERNMENT OF THE UNITED STATES. UNDER SECTION 2331, PROSECUTION CAN ONLY BE SOUGHT AFTER THE ATTORNEY GENERAL, OR THE HIGHEST RANKING SUBORDINATE TO THE ATTORNEY GENERAL WITH RESPONSIBILITY FOR CRIMINAL PROSECUTIONS, CERTIFIES IN WRITING THAT, IN HIS JUDGMENT, THE VIOLATION OF THIS STATUTE WAS INTENDED TO COERCE, INTIMIDATE, OR RETALIATE AGAINST A GOVERNMENT OR CIVILIAN POPULATION.

THE FBI ROLE

THE ROLE OF THE FBI WHEN CONDUCTING OVERSEAS TERRORISM INVESTIGATIONS IS TO IDENTIFY SUBJECTS, INTERVIEW VICTIMS, AND COLLECT OTHER EVIDENCE THAT CAN BE USED FOR CRIMINAL PROSECUTION. WHEN SUBJECTS ARE IDENTIFIED AND LOCATED, ATTEMPTS ARE MADE TO OBTAIN THEIR PRESENCE IN THE UNITED STATES THROUGH LEGAL MEANS SUCH AS EXTRADITION. SUCCESSFUL PROSECUTION IS THE ULTIMATE GOAL.

INTERAGENCY COOPERATION

THE LEAD AGENCY CONCEPT PRESUPPOSES THAT THE LEAD AGENCY WILL COORDINATE AND FACILITATE AN APPROPRIATE U.S. GOVERNMENT RESPONSE TO ACTS OF TERRORISM AND RECOGNIZES THAT MANY FEDERAL AGENCIES, AND SOMETIMES LOCAL AND STATE AUTHORITIES, HAVE RESPONSIBILITIES IN THE COUNTERTERRORISM AREA. U.S. GOVERNMENT POLICY ON COUNTERTERRORISM IS ESTABLISHED THROUGH THE MEDIUM OF SEVERAL DIFFERENT COMMITTEES SUCH AS THE POLICY COORDINATING COMMITTEE ON TERRORISM.

IN RESPONSE TO TERRORIST INCIDENTS, THE STRATEGY CALLS FOR THE LEAD AGENCY TO ESTABLISH AND MAINTAIN A WORKING GROUP ENVIRONMENT TO DISCHARGE ITS PRIMARY RESPONSIBILITIES AND ALSO TO COORDINATE THE EFFORTS OF ALL OTHER AGENCIES INVOLVED IN THE RESPONSE. ACCORDINGLY, THE USDS AND THE FBI, AS WELL AS VARIOUS OTHER AGENCIES, MAINTAIN STRATEGIC OPERATION CENTERS THAT ENABLE COMMUNICATION AMONG THE AGENCIES DURING OVERSEAS CRISIS INCIDENTS.

FBI PROCEDURES

THE FBI'S NORMAL PROCEDURES IN THESE INVESTIGATIONS ARE AS FOLLOWS: UPON RECEIPT OF INFORMATION THAT A POSSIBLE TERRORISM ACT IN VIOLATION OF AN EXTRATERRITORIAL CRIMINAL STATUTE HAS OCCURRED, A DETERMINATION IS MADE WHETHER THE FBI HAS JURISDICTION TO CONDUCT AN EXTRATERRITORIAL INVESTIGATION. DETAILS OF THE INCIDENT ARE PRESENTED TO THE DEPARTMENT OF JUSTICE (DOJ) FOR A PROSECUTIVE OPINION. ONCE IT IS DETERMINED THAT THE VIOLATION IS WITHIN FBI JURISDICTION, FBI HEADQUARTERS

DETERMINES IF THE EXTRATERRITORIAL INVESTIGATION WILL BE HANDLED SOLELY BY OUR LEGAL ATTACHES OR WHETHER ADDITIONAL FBI PERSONNEL WILL BE SENT ABROAD TO ASSIST IN THE INVESTIGATION.

THE FBI'S WASHINGTON METROPOLITAN FIELD OFFICE IS GENERALLY DESIGNATED AS THE LEAD FBI FIELD OFFICE WHICH MEANS IT HAS PRIMARY FIELD INVESTIGATIVE RESPONSIBILITY. THIS IS BECAUSE PROSECUTIVE VENUE WILL USUALLY BE IN THE DISTRICT OF COLUMBIA. INVESTIGATIVE AND LABORATORY PERSONNEL AS WELL AS LANGUAGE SPECIALISTS ALSO ARE AVAILABLE FROM FBI HEADQUARTERS AND OTHER FIELD OFFICES IF NEEDED FOR QUICK DEPLOYMENT TO THE CRIME SCENE.

THE FACT THAT THE UNITED STATES HAS LAWS GRANTING EXTRATERRITORIAL JURISDICTION DOES NOT IMPLY THAT THE FBI CAN BECOME OPERATIONAL IN A FOREIGN COUNTRY WITHOUT THAT COUNTRY'S PERMISSION. THE FBI WILL DEPLOY A TEAM OF INVESTIGATORS ONLY AFTER COORDINATION WITH USDS. IN EXTRATERRITORIAL CASES, THE FOREIGN ASPECTS OF OUR INVESTIGATIONS ARE CONDUCTED WITH THE APPROVAL AND COOPERATION OF THE HOST GOVERNMENT.

SINCE 1985, IN 22 FBI INVESTIGATIONS, INVESTIGATIVE PERSONNEL HAVE BEEN DISPATCHED ABROAD AS A RESULT OF A U.S. CITIZEN OR INTEREST BEING TARGETED BY TERRORISM. FOR EXAMPLE, THE INVESTIGATION OF THE PAN AM FLIGHT 103 AIR DISASTER IS CURRENTLY BEING CONDUCTED BY FBI PERSONNEL IN CONJUNCTION WITH GERMAN, SCOTTISH AND ENGLISH LAW ENFORCEMENT AUTHORITIES. ADDITIONALLY, PERSONNEL AT FBI HEADQUARTERS AND IN VIRTUALLY ALL OF OUR 58 FIELD OFFICES AS WELL AS MANY OF OUR LEGAL ATTACHES

ABROAD HAVE PARTICIPATED IN THIS WORLDWIDE INVESTIGATION. IN ANOTHER CASE, BASED UPON THE CONCURRENCE OF THE PHILIPPINE GOVERNMENT AND WITH USDS COUNTRY CLEARANCE, ON APRIL 21, 1989, THE FBI DISPATCHED PERSONNEL TO THE PHILIPPINES. THEY ARRIVED ON APRIL 23, 1989, AND ARE INVOLVED IN THE INVESTIGATION OF THE ASSASSINATION OF COLONEL ROWE. FINALLY, ON MAY 26-27, 1989, THE FBI DISPATCHED PERSONNEL TO LA PAZ, BOLIVIA, TO INVESTIGATE THE MAY 24, 1989 ASSASSINATION OF TWO MORMON MISSIONARIES.

THE FBI AND THE DOJ ARE COMMITTED TO A VIGOROUS EFFORT TO USE THE STATUTES THAT CONGRESS HAS GIVEN US TO DETECT, INVESTIGATE AND PROSECUTE TERRORISTS THAT VIOLATE OUR LAWS WHEREVER THEY MIGHT BE.

CONCLUSION

THIS CONCLUDES MY PREPARED REMARKS, MR. CHAIRMAN. I WILL BE PLEASED TO ADDRESS THE QUESTIONS OF THE COMMITTEE.

STATEMENT

OF

RONALD K. NOBLE
SPECIAL COUNSEL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

EXTRATERRITORIAL JURISDICTION OVER TERRORISTS
ACTS AGAINST UNITED STATES NATIONALS

ON

MAY 31, 1989

My name is Ronald K. Noble. I am Special Counsel and Chief of Staff of the Criminal Division of the United States Department of Justice. It is a pleasure for me to testify today before this Subcommittee on the usefulness of 18 U.S.C. §2331 (Terrorist acts abroad against United States nationals).

Section 2331 of title 18, U.S.C., makes it a federal crime for a terrorist to kill or seriously injure any United States national who is outside the United States. It also makes it a federal crime for a terrorist outside of the United States to conspire to kill any United States national regardless where the national is located. Section 2331 was enacted by the Congress on August 27, 1986 as an additional legal weapon to be used against international terrorists. Along with other federal extraterritorial criminal statutes, such as aircraft piracy (49 U.S.C. App. §1472(i) and (n)), aircraft sabotage (18 U.S.C. §32), offenses against U.S. diplomats and internationally protected persons (18 U.S.C. §§112, 878, 1116, 1201(a)(4)) and hostage taking (18 U.S.C. §1203), section 2331 provides another legal predicate to confront international terrorists who attack U.S. persons and interests overseas. The Department of Justice worked closely with the Congress in the formulation of section 2331, and we have found it to be useful in the investigation and prosecution of international terrorist matters.

Section 2331 is not intended to reach the murder of every U.S. national overseas. Instead, the legislation was carefully drafted to apply only to those acts intended to coerce, intimidate, or retaliate against a government or a civilian population. Hence, the section clearly covers murder of U.S. nationals overseas by a terrorist, but it does not encompass more common murders, e.g., a death resulting from a bar room brawl or violent domestic disputes. Proper application of the section is ensured by requiring a written certification by the Attorney General (or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions) that in his/her judgment such offense was intended to coerce, intimidate, or retaliate against a government or a civilian population.

Since its enactment, section 2331 has often been used as one of the legal bases to initiate a criminal investigation by the Federal Bureau of Investigation (FBI) if a terrorist attack overseas involved a murder or serious bodily injury to a U.S. national. If no serious bodily injury to a national occurred, the section could still be utilized if there was sufficient evidence to show an intent to murder or seriously harm a U.S. national. Often, however, in cases of no serious bodily injury, the necessary intent is not always evident.

The Attorney General has approved two prosecutions pursuant to subsection 2331(e). In fact, the first

certification related to the violent terrorist attack on Pan American Airways Flight #73 on September 5, 1986, at the Karachi International Airport in Pakistan. This attack occurred only 10 days after the enactment of the legislation. In Pan Am #73, the flight had arrived in Karachi from Bombay, India and was in the process of boarding passengers for its scheduled departure to New York City when four terrorists attacked the 747 aircraft. One of the passengers executed by the terrorists early in the episode was a recently naturalized U.S. citizen. Subsequently during the ordeal, other U.S. nationals on the flight were seriously injured. The second certification by the Attorney General involved a terrorist matter for which a federal complaint has been filed and an arrest warrant issued. However, the complaint and warrant have been sealed by the court pending the perpetrator's arrest. Hence, I am not at liberty to further publicly discuss that matter.

The Department has experienced no legal problems with the statute as drafted. The necessity of the existence of an intent to seriously harm a U.S. national when no harm has actually occurred is, on balance, a reasonable statutory requirement considering the difficulties and cost of an overseas investigation.

Upon receipt of information indicating a possible section 2331 violation, the FBI seeks from the appropriate

component of the Criminal Division an initial prosecutive opinion as to whether the section appears to have been violated and whether under the circumstances any investigation is warranted. The FBI's handling of the authorized investigations has been exemplary considering the fact that any investigation in a foreign country requires approval of the host country as well as the cooperation of the head of the involved U.S. mission (i.e., the U.S. Ambassador to the host country.) When the FBI has been permitted to enter the host country, it has worked well, in our judgment, with the foreign law enforcement agencies. I will defer to my colleague at the FBI for a more detailed explanation of how the FBI investigates violations of section 2331.

This completes my prepared remarks.

REGARDING OVERSIGHT OF
"EXTRATERRITORIAL JURISDICTION OVER TERRORIST
ACTS ABROAD AGAINST UNITED STATES NATIONALS."

By
AMBASSADOR ALVIN P. ADAMS
ASSOCIATE COORDINATOR, OFFICE OF COUNTERTERRORISM
DEPARTMENT OF STATE
May 31, 1989

Mr. Chairman:

Thank you for the opportunity to testify on behalf of the State Department regarding the 1986 law which makes terrorist attacks of murder or assault against Americans overseas a crime punishable in American courts.

The legislation under review was passed as part of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (P.L. 99-399). The specific section, as you know, is titled "Extraterritorial Jurisdiction over Terrorist Acts Abroad Against United States Nationals." It is now firmly part of the arsenal of tools on which we rely to combat international terrorism. We very much support this statute, its objectives and its application.

The State Department strongly supported this legislation in the 99th Congress and we worked for its passage as part of the 1986 Diplomatic Security and Antiterrorism Act of 1986. The legislation was a natural extension of other areas of extraterritorial jurisdiction which were accorded by Congress in the implementing legislation of treaties addressing various international terrorist crimes.

As we testified at a 1985 Congressional hearing on the proposed statute, the legislation "emphasizes the view of the United States that criminal acts by terrorists, particularly

murder and attempted murder, are crimes which require punishment." Its adoption marked an important step forward in extending the legal instruments available to us in combatting terrorism. It also underscored the resolve of the United States to act vigorously to end a pattern of terrorist incidents in which Americans had been murdered. These incidents included the murder of four American military men and two civilians at a cafe in El Salvador, the murder of two A.I.D. auditors aboard a Kuwaiti airliner hijacked to Iran in 1984 and, of course, the attacks on the U.S. Embassy buildings in Beirut and Kuwait and the Marine Barracks in Lebanon.

The Department also testified in 1985 that in the absence of the proposed legislation, the murders of the two civilians in El Salvador were not punishable as a crime in U.S. courts at the time. Ironically, however, if they had been taken hostage instead of murdered outright, U.S. criminal jurisdiction would have been available, under the 1984 Act for the Prevention and Punishment of Hostage-Taking (18 U.S.C. 1203).

It is important to note that the legislation under review is not the only U.S. law which grants to U.S. courts jurisdiction over terrorist crimes against Americans overseas. The 1986 law supplements previously enacted laws, such as the Comprehensive Crime Control Act of 1984 and other legislation which implement the various international treaties in the terrorism area, including the Montreal Convention on aircraft sabotage, the Hague Convention on aircraft hijackings, the Conventions against the Taking of Hostages, and "Internationally Protected Persons." Thus, the U.S.

Government already had jurisdiction over such crimes as taking Americans hostage or attacking civilian aircraft that are within the special aircraft jurisdiction of the United States.

USEFUL TOOLS

Taken together, the various statutes including the 1986 law have been useful -- but not exclusive or necessarily automatically applicable -- tools in U.S. Government efforts to combat terrorism directed against Americans both at home and abroad. They have given us additional authority to bring to bear the resources of the FBI to help investigate suspected acts of terrorism in a wider range of cases. They have been indispensable in helping us build the evidentiary cases against individual perpetrators for potential prosecution and/or extradition. They also represent an American contribution to an international pattern of increasingly effective judicial action against terrorism.

In the past several years there have been a number of significant cases at home, in Europe and elsewhere in which terrorists have been successfully prosecuted to the full measure of the law. Just three weeks ago, for example, a court in West Germany gave a life sentence to a terrorist, Mohammad Hammadi, for the 1985 hijacking of TWA 847 and the murder of an American sailor, Robert Stethem.

With respect to the application of this statute and related laws, we believe that we have made a good start in the relatively brief period since enactment. We have worked hard

to develop a cooperative interagency process to coordinate law enforcement needs with foreign policy, intelligence and other considerations which necessarily arise in US criminal investigations of a terrorist incident in the territory of other sovereign states. As a general rule, we have received good cooperation from other countries when requesting an FBI investigative role in such incidents. Indeed, in the past two years, the FBI, with full interagency cooperation, has undertaken about 15 investigations overseas under extraterritorial statutes on terrorist crimes against Americans.

It is important to bear in mind, however, that we cannot expect immediate successes or automatic applications of the statutory authorities under review. The fact that U.S. courts under U.S. laws may have jurisdiction over a specific incident which occurs abroad does not mean that they have exclusive jurisdiction -- or even that other countries are necessarily prepared to allow our law enforcement personnel to conduct their own investigation on their soil.

CONSENT OF OTHER GOVERNMENTS

The consent of foreign governments to a U.S. criminal investigation on their soil -- an absolute prerequisite before our personnel can become involved -- is influenced by a number of factors. These include the circumstances of the incident, the nationality and identity of the victims, the status of our bilateral relations, the record of previous law enforcement cooperation, and domestic political concerns. Sovereign countries, not surprisingly, are sensitive to the exercise of

law enforcement functions within their territory by anyone except their own officials. In some cases, a foreign government may have a different perception of the nature of the incident. Or it may not believe it appropriate that the U.S. Government conduct a separate investigation. In some cases, such sensitivity also is heightened by the attendant glare of publicity. The government may be concerned that immediate entry of U.S. Government criminal investigators will give rise to domestic criticism spawned by nationalist sentiments. Or it may welcome our assistance in its own investigation but may wish to limit our role to forensic services. Conceivably, other statutes or the circumstances of a particular case and its domestic context may cause us to extend investigative and forensic assistance through other agencies of the U.S. Government.

There may also be situations, Mr. Chairman, in which U.S. officials and/or the host government conclude that because of the nature of the attack, or the limited involvement of U.S. nationals or minor injuries sustained by them, there is not much the FBI can or should do to assist the investigation. In short, for a variety of reasons, it does not necessarily follow that the FBI automatically undertakes a full or immediate investigation of all incidents in which an American was a victim.

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EMBASSY CLEARANCE

It also is important to note that investigating terrorist cases overseas can affect the responsibilities of a number of federal agencies and can produce information useful to all. Such investigations must be -- and they are -- conducted with regard to foreign policy and national security considerations which may apply to any investigation in a foreign sovereign jurisdiction. Accordingly, the entry of U.S. law enforcement, as well as other Executive Branch personnel, into a foreign country requires the consent of the U.S. Chief of Mission. By law (Title 22 USC section 3927) the Chief of Mission "shall have full responsibility for the direction, coordination and supervision of our government executive branch employees in that country (except for employees under the command of a U.S. area military commander)."

Within the U.S. Government, the following points summarize the procedure which applies to investigations pursuant to the provisions under review:

-- First, the Department of Justice makes a preliminary decision that there is sufficient reason to believe that the incident was a terrorist attack in violation of the relevant U.S. Statute. We note that Section 2331 of Title 18 of the U.S. Code, as enacted in 1986, states that no prosecution for any offense under that section shall be undertaken unless the Attorney

General certifies in writing that the offense was intended to coerce, intimidate or retaliate against a government or a civilian population.

-- If the Justice Department, drawing on a variety of sources of information, reaches the conclusion that U.S. law has been violated, it then informs the State Department, through the FBI, that it believes there are grounds for conducting the investigation and that it wants to deploy its investigators to the crime scene overseas or offer forensics assistance.

-- In accord with the State Department's regulations (7 FAM 942) involving all travel of U.S. Government officials to other countries, the Department advises the Ambassador of the FBI's interest in investigating the case or providing assistance and requests country clearance. The clearance is granted or withheld by the decision of the Chief of Mission after consultation with the host country officials.

Declaring extraterritorial jurisdiction by statute is therefore only the beginning of a process of coordination, clearance and investigation which all of us here expect to lead to the apprehension and successful prosecution of terrorists who have committed crimes against Americans overseas. Again I want to emphasize that the State Department is committed to the success of this process, and the effective application of this statute.

Mr. Chairman, the 1986 Act and the related earlier laws have helped pave the way to a direct U.S. role in investigating terrorist acts overseas. They have strengthened our capacity to combat terrorism. Through their application we also have gained valuable experience in working with foreign law enforcement officials. Establishing and maintaining good working relationships with such agencies plays an important role in our ability to effectively exercise the extraterritorial jurisdiction under the 1986 law.

In the State Department, we have been working in a variety of areas to improve the overall climate for cooperation on anti-terrorism. For example, we work in multilateral fora such as the Summit Seven, the European Community, and various United Nations bodies to advance the application of the rule of law. We also work closely with many countries on a bilateral basis, conferring with their officials in bilateral meetings, exchanging information and consulting on new developments. Through our Anti-Terrorism Training Assistance Program, we help train security officials of other countries. All this helps improve the general climate of cooperation. It also aids in developing working relationships which can be useful should an actual incident involving Americans take place and the need arises for a U.S. investigation on the scene.

Mr. Chairman, identifying and tracking down terrorists and bringing them to justice is an exhaustive, complicated and lengthy process. Earlier this month, for example, the Greek

Supreme Court ruled in favor of extraditing Mohammed Rashid under charges of placing a bomb aboard a Pan Am flight to Honolulu seven years ago, which killed a teen-age Japanese boy and wounded 15 other passengers. It was through the FBI and Justice Department prosecutors that we were able to identify Rashid's role in this attack and present the evidence sufficient to meet the obligations of our extradition treaty with Greece and to satisfy the Greek courts. The Justice Minister now will make the final decision in this case sometime after Greece's June 18 elections. We want the Greek government to uphold the Supreme Court decision and extradite Rashid to the U.S. as soon as possible for trial. In this and other investigations initiated recently by the FBI -- the assassination of Col. Rowe in Manila, the bombing of Pan Am 103, the murder of the Mormon missionaries in La Paz just last week, to name a few, we hope to bring to justice those responsible.

In summation, the 1986 law is a useful, indeed indispensable aid in the task of countering international terrorism. We are making full use of it. The law provides an important asset in bringing to bear the investigative powers and laws of the United States. We are glad we have it. We are confident that by countering terrorists on a number of legal fronts, in cooperation with other governments, we can bring terrorists to account, render justice of behalf of the victims, and deter future terrorists.

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STATEMENT
OF THE
CENTRAL INTELLIGENCE AGENCY
BEFORE THE
SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

OVERSIGHT HEARINGS ON
EXTRATERRITORIAL JURISDICTION
OVER TERRORIST ACTS ABROAD

WASHINGTON, D.C.
31 MAY 1989

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, WE ARE PLEASED TO APPEAR BEFORE YOU TODAY IN CLOSED SESSION IN CONNECTION WITH THE SUBCOMMITTEE'S OVERSIGHT HEARINGS ON INTERNATIONAL TERRORISM AND THE ENFORCEMENT OF LEGISLATION ENACTED IN 1986 RELATING TO EXTRATERRITORIAL JURISDICTION OVER TERRORIST ACTS ABROAD.

THE CENTRAL INTELLIGENCE AGENCY AND THE INTELLIGENCE COMMUNITY PROVIDE INTELLIGENCE SUPPORT TO THE EFFORTS OF THE UNITED STATES GOVERNMENT TO COMBAT INTERNATIONAL TERRORISM. IN SUPPORTING LAW ENFORCEMENT EFFORTS IN THIS REGARD, WE CONTINUE TO GATHER INTELLIGENCE WHILE, AT THE SAME TIME, PROTECTING SENSITIVE INTELLIGENCE SOURCES AND METHODS. WE WILL BE PLEASED IN OUR INFORMAL REMARKS TO DESCRIBE THESE EFFORTS IN MORE DETAIL AND THEN TO ANSWER ANY QUESTIONS YOU MAY HAVE.

OPENING STATEMENT OF CONGRESSMAN WILLIAM J. HUGHES

CHAIRMAN, SUBCOMMITTEE ON CRIME

ON

LEGISLATION ENACTED IN 1986
RELATING TO EXTRATERRITORIAL JURISDICTION
OVER TERRORISTS ACTS ABROAD
(18 U.S.C. §2331)

May 31, 1989

TODAY THE SUBCOMMITTEE ON CRIME IS CONDUCTING AN OVERSIGHT HEARING ON THE ENFORCEMENT OF AN IMPORTANT ANTI-TERRORIST LAW WHICH THE SUBCOMMITTEE HELPED WRITE AND ENACT THREE YEARS AGO.

THAT LAW PROVIDES FOR EXTRATERRITORIAL JURISDICTION OVER TERRORISTS ACTS ABROAD AGAINST UNITED STATES NATIONALS.

AS A GENERAL RULE, THE CRIMINAL LAWS OF THE UNITED STATES APPLY ONLY TO CONDUCT OCCURRING WITHIN THE U.S.

THE 1986 LAW IS AN EXCEPTION, IN THAT IT EXTENDS U.S. CRIMINAL LAW BEYOND OUR BORDERS TO REACH TERRORIST ATTACKS COMMITTED ANYWHERE IN THE WORLD UPON U.S. NATIONALS, HENCE ITS POPULAR TITLE "THE LONG ARM STATUTE."

EARLIER, IN 1984, WE WROTE SIMILAR ANTI-TERRORIST LEGISLATION TO IMPLEMENT THE INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES.

THE HOSTAGE TAKING LEGISLATION, WHICH ALSO HAS EXTRATERRITORIAL REACH, IS DESIGNED TO COMBAT EXTORTIONIST KIDNAPPINGS BY INTERNATIONAL TERRORISTS.

INCIDENTS SUCH AS THE KUWAITI AIRLINE HIJACKING AND THE TERRORIST SEIZURE OF THE ITALIAN CRUISE SHIP ACHILLE LAURO, BOTH OF WHICH INVOLVED THE TAKING OF U.S. HOSTAGES, ARE EXAMPLES OF INCIDENTS WHICH THE HOSTAGE TAKING LEGISLATION WAS DESIGNED TO REACH.

THE LONG ARM STATUTE IS DIFFERENT FROM THE HOSTAGE TAKING LAW IN A NUMBER OF RESPECTS. ONE IS THAT IT DOES NOT REQUIRE THAT A U.S. NATIONAL BE TAKEN HOSTAGE. INSTEAD IT COVERS KILLINGS AND LESSER VIOLENT ACTS COMMITTED ABROAD AGAINST U.S. NATIONALS.

SECOND, NO THREAT OR DEMAND NEED BE COMMUNICATED FOR THE OFFENSE TO BE COMMITTED. WHILE AN INTENT TO COERCE OR INTIMIDATE THE UNITED STATES OR ANOTHER GOVERNMENT IS A CIRCUMSTANCE WHICH CAN TRIGGER U.S. JURISDICTION, IT IS ALSO TRIGGERED BY A RETALIATORY KILLING OF A U.S. NATIONAL BY A TERRORIST.

THE LONG ARM STATUTE IS, IN MANY RESPECTS, A SPECIAL LAW, AND CREATES SOME SPECIAL PROBLEMS. FOR EXAMPLE, WE FOUND THAT IN DRAFTING THE LAW, PARTICULAR ATTENTION HAD TO BE PAID TO ANOTHER BODY OF LAW, THAT RELATING TO INTERNATIONAL EXTRADITION.

SINCE THESE OFFENSES ARE, BY DEFINITION, COMMITTED OUTSIDE THE UNITED STATES, WE FREQUENTLY WILL NEED TO SEEK THE COOPERATION OF ANOTHER GOVERNMENT IN EXTRADITING THOSE WHO MURDER OR ASSAULT U.S. NATIONALS.

WITH THIS IN MIND, WE FOUND IT NECESSARY TO MODIFY THE LANGUAGE OF THE LAW SO THE REQUIREMENT OF "DUAL CRIMINALITY" IS MET. DUAL CRIMINALITY MEANS THAT BOTH THE U.S. AND THE COUNTRY FROM WHICH WE ARE SEEKING EXTRADITION HAVE COMPARABLE LAWS COVERING

THE CONDUCT IN QUESTION. A LAW WRITTEN IN SPECIAL LANGUAGE DESCRIBING INTERNATIONAL TERRORISM MIGHT NOT MATCH UP WITH A SIMILAR LAW IN GERMANY OR JAPAN. WE SOLVED THIS PROBLEM BY MAKING THE LAW ESSENTIALLY A MURDER STATUTE, WHICH IS THEN LIMITED TO TERRORIST TYPE CIRCUMSTANCES BY A CERTIFICATION OF THE ATTORNEY GENERAL.

IT WAS ALSO BROUGHT TO OUR ATTENTION THAT CAPITAL PUNISHMENT PROVISIONS, SUCH AS WERE CONTAINED IN THE BILL AS REPORTED BY OUR SUBCOMMITTEE, PRESENT SPECIAL PROBLEMS.

MOST COUNTRIES DO NOT HAVE CAPITAL PUNISHMENT, AND SEVERAL HAVE CONSTITUTIONS, STATUTES, OR POLICIES PROHIBITING EXTRADITION OF PERSONS WHO MIGHT BE SUBJECT TO CAPITAL PUNISHMENT IN THE REQUESTING COUNTRY.

THIS CAPITAL PUNISHMENT ISSUE IS ONE WE CONTINUE TO FACE, AND WE HOPE OUR HEARING TODAY CAN PROVIDE US WITH ADDITIONAL INFORMATION AND INSIGHT ON HOW BEST TO RESOLVE IT.

ANOTHER SPECIAL CONSIDERATION INVOLVES THE INVESTIGATION OF THESE OFFENSES. IN ONLY A SLIGHTLY LESS FORMAL SENSE, INVESTIGATION, LIKE EXTRADITION, ALMOST ALWAYS REQUIRES THE COOPERATION OF AT LEAST ONE OTHER GOVERNMENT.

THIS RAISES CONSIDERATIONS NOT ONLY FOR OUR RELATIONS WITH OTHER GOVERNMENTS, BUT ADDITIONAL ONES WITHIN OUR OWN GOVERNMENT. THESE INCLUDE WEIGHING OF LAW ENFORCEMENT NEEDS AND FOREIGN POLICY NEEDS, AND THE DEVELOPMENT OF A DISPUTE RESOLUTION MECHANISM FOR USE WHEN DISPUTES OCCUR.

IN THIS REGARD, WE WILL GIVE SOME ATTENTION TODAY TO THE DELAYS AND DIFFICULTIES WHICH THE FBI EXPERIENCED IN ITS ATTEMPTS TO OBTAIN CLEARANCE FROM OTHER ELEMENTS OF OUR GOVERNMENT SO THAT IT MIGHT LEND ITS EXPERTISE TO THE INVESTIGATION OF THE 1987 CRASH OF A C-130 WHICH KILLED PAKISTAN PRESIDENT ZIA, U.S. AMBASSADOR ARNOLD RAPHEL, AND 29 OTHERS.

OUR RANKING REPUBLICAN MEMBER, BILL MCCOLLUM, HAS SPENT A LOT OF TIME LOOKING INTO THE PROBLEMS PRESENTED IN THE PAKISTANI INVESTIGATION. I NOW RECOGNIZE HIM FOR ANY OPENING REMARKS HE MAY HAVE.

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