



U.S. Department of Justice

Criminal Division

General Counsel
83-00135

100-55

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 4 1983

Mr. Stanley Sporkin
General Counsel
Central Intelligence Agency
Washington, D.C.

Re: S. 2255, the Antiterrorism and
Foreign Mercenary Act

Dear Mr. Sporkin:

On September 23, 1982, I testified on behalf of the Administration in regard to the captioned bill before the Subcommittee on Security and Terrorism of the Committee on the Judiciary of the United States Senate. A copy of the initial draft of my actual testimony is attached for your information.

During the testimony, several questions were raised by the Subcommittee for which supplemental responses are required. We request your assistance in responding to the Subcommittee in the following two areas:

- (1) On pages 29-30, the Subcommittee requested some specific examples of abuses by United States persons or businesses that have occurred which would be prosecutable if S.2255 were enacted. It is requested that your agency furnish us with a list of such abuses which could be included in our submission to the Subcommittee.
- (2) On page 34, the Subcommittee asked for an estimate of how widespread mercenary activity was on the part of Americans. Your response should not be limited to such activity in Libya, but should include other countries where you know that United States citizens are providing mercenary skills, either in training or actual service, to foreign countries, factions, or groups.

- 2 -

It is requested that your response be directed to the attention of Mr. Stephen M. Weglian of this Division who is coordinating this effort. Mr. Weglian's telephone number is 724-7526. In order that we may respond promptly to the Subcommittee, it is requested that your reply be furnished to us on or before January 17, 1983.

Sincerely,



Mark Richard
Deputy Assistant Attorney General
Criminal Division

Attachment

1 STATEMENT OF MARK RICHARD, DEPUTY ASSISTANT ATTORNEY
2 GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF
3 JUSTICE.

4 Mr. Richard. Good afternoon, Mr. Chairman. It is a
5 pleasure to be here once more.

6 The Department of Justice supports the concepts behind
7 S. 2255 if the changes we suggest are in fact incorporated into
8 the bill.

9 With your permission, Mr. Chairman, I would like, rather
10 than read my prepared remarks, to summarize them and submit
11 the full text for the record.

12 We believe that S. 2255, as modified, would close gaps in
13 existing law. It is, as already pointed out by Congressman
14 Rinaldo, similar to legislation he introduced, H.R. 5211, on
15 the House side. These bills would prohibit the furnishing by
16 Americans of various forms of assistance, essentially services,
17 to certain governments, factions, or terrorist groups.

18 The operative section of S. 2255, section ³Three, provides
19 that it would be unlawful for any citizen or alien lawfully
20 admitted to the United States, or sole proprietorship,
21 partnership, corporation or association organized under the
22 laws of the United States to knowingly and willfully perform
23 or attempt to perform any of the enumerated acts with respect
24 to the government of Libya or any other foreign government,
25 faction, or terrorist group named in the presidential

1 proclamation.

2 The prohibited acts are, in essence, serving in the armed
3 forces or in any intelligence agency; providing training to the
4 armed forces or intelligence agencies; providing logistical,
5 mechanical, maintenance or similar support services to the
6 armed forces or intelligence agency; conducting any research,
7 manufacturing, or construction project primarily supportive of
8 the military or intelligence functions; and recruiting or
9 soliciting anyone to engage in any of the activities just
10 described.

11 It would make it unlawful for anyone within the United
12 States to knowingly and willfully perform or attempt to perform
13 any of these acts.

14 The penalty provision for violating this proposal would be
15 ten years in prison, a fine of five times the compensation
16 received for the violation, or twenty-five thousand dollars,
17 whichever is greater, or both.

18 Forfeitures are also provided for elsewhere in the bill.

19 Subsection c provides that the President may, when he
20 determines that it is warranted for national security, foreign
21 relations, or commerce interests of the United States, issue a
22 proclamation naming any foreign government, faction, or
23 terrorist group as being subjected to the ban on receiving
24 services previously enumerated.

25 There is provision, of course, for the revocation of any

1 proclamation made by the President due to changing circum-
2 stances.

3 Mr. Chairman, we would suggest several changes to this
4 legislation. We have set forth in the appendix to my remarks
5 specific changes we suggest and the reasons for them. I would
6 like just to discuss briefly several particular areas which,
7 in our judgment, warrant changes and additional attention.

8 To begin with, we think the focus of the legislation
9 should be aimed at international terrorism. In this connec-
10 tion, we suggest that the legislation incorporate the defini-
11 tion for international terrorism currently contained in the
12 Foreign Intelligence Surveillance Act.

13 Additionally, we suggest that the bill specifically
14 exclude any properly authorized and conducted intelligence
15 activities of the United States Government.

16 We also believe that the criminal forfeiture provision be
17 rewritten to correspond to existing legal practices and be
18 drafted in such a fashion that anticipated future congres-
19 sional improvements will immediately be incorporated into this
20 legislation. We believe that the definition of business
21 currently in the bill is overly restrictive and would provide a
22 major loophole for would-be offenders.

23 With respect to the specific naming of Libya in the
24 legislation, we would defer to our colleagues at the State
25 Department.

1 While we feel that the standards for the President in
2 issuing the proclamation in the bill are constitutionally
3 adequate, we do suggest that the term "commerce interests" be
4 dropped and replaced with a more descriptive phrase.

5 Finally, this bill is designed to prohibit providing
6 support services to military or intelligence branches of hos-
7 tile governments or groups. However, the type of activities
8 set forth in subparagraphs ^(A) ⁽¹⁾ ^(D) ^(a) ^(b) ~~and~~ ^(A) ^(d) can be viewed
9 as even going further than that. Thus, Congress may wish to
10 either eliminate these two subsections or narrow them
11 appreciably.

12 These, as I indicate, are just the more significant areas
13 that we suggest additional attention and drafting time be
14 allowed. We do think, in conclusion, that the bill does
15 address a need and that this is very significant legislation
16 which would appreciably assist us in dealing with a serious
17 problem.

18 Thank you, Mr. Chairman.

19 Senator Denton. Thank you, Mr. Richard. Without objec-
20 tion, your statement will be inserted into the record.

21 [Material referred to follows:]
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1 Senator Denton. I appreciate the emphasis placed on
2 preliminary thinking. Of course, that is also our position at
3 this point. We have had this legislation to look over for a
4 very short period of time. I did study it carefully over the
5 past couple of nights at home. It occurred to me--and this is
6 just an off-the-top-of-the-head observation--but I want to
7 check it against your own immediate reactions. Rather than
8 take the tack that the President should name nations and
9 groups with all of the hazards which you have just mentioned
10 with respect to the government of Libya and whatever other
11 nations or groups he might choose to mention, would it not be
12 better to list the practices which we would call into question
13 such as supplying training for terrorists, et cetera? And
14 then we could place a punishment on those who would violate
15 the following. Each transaction, each action on the part of
16 individuals or corporations, which would fall into the cate-
17 gories which are more or less outlined in this legislation,
18 would have to be cleared by either State or Justice or in some
19 place in the administration. Then you do not have to go
20 through all this bag of worms of trying to identify who is
21 doing what at any time and all of the interpretation of
22 whether it is military or civilian and that sort of thing.
23 If they do it without being cleared, then they get punished.
24 Wilson and Terpil, as would many others, would fall under that
25 approach.

1 I admit that would require major alternation to the
2 approach taken by the bill. But much of what is in here
3 already could be sustained with respect to the kind of activity
4 involved, and then each case would have to require clearance.

5 Would that general approach have any merit?

6 Mr. Richard. Well, it certainly is an approach that
7 could be utilized to deal with the problem. There are various
8 tradeoffs involved, that is, the approach reflected in the
9 Export Administration Act, the Arms^{Export} Control Act, and so forth.
10 However, by having what I would refer to as a straight
11 criminalization of certain conduct, once the President issued a
12 proclamation, you are, of course, affirmatively condemning, if
13 you will, a course of conduct which you would not otherwise
14 have where you are merely issuing it approving licenses, if you
15 will. One is a more forceful condemnation of certain types of
16 behavior, I think, than a purely regulatory system where you
17 seek prior approval for the conduct.

18 The types of services that you have in mind, I think, to
19 be covered here are far more subtle, if you will, than the
20 types of licensing procedures now in effect. The types of
21 individuals that I think we are trying to reach are far dif-
22 ferent than those we encounter in other regulatory fields
23 where you are dealing with legitimate business entities and
24 what have you.

25 So, there are tradeoffs involved, although I would

1 certainly admit that your suggested approach is a viable one
2 for dealing with the problem.

3 Senator Denton. Certainly I do not mean it as a conclu-
4 sion I have reached. It was just something that occurred to
5 me, that we will want to switch it from sort of the negative to
6 the positive. Then, were one to plead all he is doing is
7 shipping some statuettes, that is fine; but after the fact
8 it is decided that those were used and he had reason to
9 believe that they would be used for such and such an activity,
10 then he could be punished.

11 Are you not suggesting a million-dollar fine instead of a
12 twenty-five thousand dollar fine?

13 Mr. Smith. That is correct, Mr. Chairman. To amplify
14 what Mr. Richard said, certainly a straight criminalization of
15 these activities has its advantages. On the other hand, as I
16 suggested in my prepared remarks, from the point of view of
17 the Department of State, we think the licensing scheme which is
18 a variation of the idea that you proposed seems to us to offer
19 a lot of advantages which should be considered carefully.

20 Senator Denton. Would you be so kind as to contribute
21 perhaps alternative wordings that we might build from in that
22 direction?

23 Mr. Smith. We would be happy to do that, Senator. *State*

24 Senator Denton. Would either or both of you give the
25 Subcommittee some specific examples of the abuses by U.S.

1 persons or businesses which have occurred which would be
2 prosecutable if S. 2255 is enacted, some version thereof,
3 without repeating any of the more publicized examples which
4 have taken place?

5 Mr. Smith. Of course.

6 Mr. Richard. Certainly, the providing of training to
7 military groups, drawing up of military manuals and the like
8 certainly come to mind as being covered by this type of legis-
9 lation. The list would be endless, Senator.

10 Senator Denton. For the record, it would be helpful for
11 us, just in terms of a list to which we could refer, to see
12 what history has contained. If you could do that in writing
13 after the hearing, it might be of considerable use. (1)

14 On pages one and two of your testimony, Mr. Richard, you
15 state that, if the President or Congress determines that the
16 national security, foreign relations or commerce interests of
17 the U.S. warrant a ban on certain kinds of assistance to a
18 particular foreign government, faction, or terrorist group,
19 this assistance should cease. This implies that there are
20 times when certain kinds of assistance to a terrorist group is
21 appropriate. Do you mean to manifest that position? If so,
22 would you cite examples?

23 Mr. Richard. No, I am suggesting that the legislation
24 is designed to deal with those types of activities by foreign
25 governments and international terrorist groups that are of

1 primary importance to this government that affect directly our
2 interests. I think the reference was not that any of this
3 behavior is appropriate but, rather, that there are different
4 degrees of concern that we have with specific types of conduct.

5 Senator Denton. That signal was the warning for me for a
6 vote on the floor. I will take recourse in the exception
7 which permits the staff counsel to continue with questioning
8 when that questioning is not under oath. I will excuse
9 myself and return. This is Mr. Joel Lisker.

10 Mr. Lisker. As we understand it, you prefer that the
11 focus of S. 2255 deal with international terrorism. In the
12 view of either of you, is it appropriate to proscribe such
13 conduct with respect to domestic terrorist groups or factions?
14 If that is the case, is this bill the vehicle for accomplishing
15 that goal? If that is an objective that can be reasonably
16 foreseen as capable of being accomplished, should that be the
17 vehicle of separate legislation?

18 Mr. Richard. Just as a preliminary response, I would
19 just say that I think that the issue of dealing with domestic
20 groups goes way beyond the thrust of this proposed legisla-
21 tion. It involves different issues. I would suggest that we
22 not attempt to merge those issues in one comprehensive piece
23 of legislation.

24 Mr. Lisker. In your view, does the department have a
25 position with respect to the proposal in separate legislation?

1 Is that a matter which is under consideration or to which con-
2 sideration might be given by the department with respect to
3 domestic terrorist organizations and support that exists here
4 for those groups?

5 Mr. Richard. Nothing that I am aware of that would be
6 analogous in approach for dealing with the problem. I am not
7 aware of any such proposals at this time.

8 Mr. Lisker. I was passed a note here. Senator Denton
9 asked me to ask this question specifically.

10 Assume I am a U.S. citizen--which, of course, I am--in the
11 United States or abroad who is supplying training to a group in
12 Libya which is comprised of members who are not Libyans, such
13 as the PLO, assuming that the PLO were--I think that it can be
14 safely assumed that there may be a PLO representation in Libya
15 --which, in turn, is training a Libyan military or intelligence
16 service. In your view, would S. 2255 as presently drafted
17 reach the conduct by the U.S. citizen, that is, a U.S.
18 citizen training a group which is not composed of Libyans but
19 which is physically located in Libya and which in turn is
20 training Libyans?

21 Mr. Richard. My response to that is that the question
22 can be looked at in two ways. Assuming that the group is under
23 the control of Libya and the legislation was passed with Libya
24 identified as it is currently in the legislation, then I think
25 it is an evidentiary issue: did the defendant have sufficient

1 knowledge of that relationship such as to expose him to the
 2 penalties under the bill? As a practical matter, without that
 3 proof, if it was just the PLO happening to be in Libya and
 4 that was the relationship that the Libyan government was
 5 tolerating their existance within the borders and nothing
 6 further, then I seriously question whether it would reach the
 7 activities of that group in your hypothetical.

8 Mr. Lisker. This is Dr. Francis, who is Senator East's
 9 designee to the committee. He has some questions.

10 Mr. Francis. Thank you. Mr. Richard, I am not entirely
 11 familiar with the Wilson and Terpil case. But it seems to me
 12 that Wilson is already under indictment. Am I correct in
 13 saying that Terpil has been convicted of offenses previously?

14 Mr. Richard. He has been convicted in New York, in state
 15 court, yes.

16 Mr. Francis. I am unclear exactly on what harmful
 17 activities we cannot prosecute already under current law.
 18 Perhaps you explained that earlier but I missed it. Would you
 19 go into that?

20 Mr. Richard. Because these cases are in active litiga-
 21 tion, I would respectfully request that we not discuss those
 22 particular matters.

23 Mr. Francis. Right.

24 Mr. Richard. There are, as I think we have indicated,
 25 what I will describe as gaps in existing law. By that I mean

1 that, while you may have something on the books in the area, it
2 does not take much ingenuity to avoid coverage and falling
3 under existing laws. The neutrality laws are notorious, I
4 think, in that regard.

5 So, while you may have a particular statute which super-
6 ficially appears to deal with certain types of conduct, on
7 reflection you can see anybody with a certain amount of effort
8 can easily devise and structure his or her affairs in such a
9 way as to get around it.

10 Mr. Francis. Do you have any estimate of how widespread
11 this type of activity on the part of Americans is, mercenary
12 activity? Not just in regard to Libya, but I mean is this a
13 common criminal activity on the part of Americans?

14 Mr. Richard. I could not give you an estimate, but I
15 could certainly try to obtain that information for you.

16 Mr. Francis. I think Senator East would like to have some
17 indication of how necessary the need for a law like this is
18 before actually supporting it. So, we would appreciate it.

19 Mr. Richard. I will try to obtain that. (2)

20 Mr. Francis. I have no more questions.

21 Mr. Lisker. Mr. Richard, assume that the army of a
22 foreign government covered by the presidential proclamation,
23 assuming that S. 2255 becomes law, is engaged in funding and
24 providing training to an international terrorist group. A
25 United States intelligence officer is able to persuade a junior

1 officer of that army to provide on a continuing basis informa-
2 tion identifying the members of the terrorist groups. The
3 junior army officer fears for his life and insists that he will
4 provide the information only if a means can be found for him
5 to communicate it without coming into further personal contact
6 with the U.S. intelligence officer. The U.S. intelligence
7 officer wishes to provide the junior army officer with a com-
8 plicated but easily concealable communications device by use
9 of which he can transmit information. The U.S. intelligence
10 officer furnishes the device to the junior army officer and
11 trains him in its use.

12 Under these circumstances, would the U.S. intelligence
13 officer appear to have engaged in conduct that would violate
14 section Seven Hundred Ninety-One A(One)b of S. 2255, which
15 prohibits any U.S. citizen from providing training in any
16 capacity to a member of the armed forces of a presidentially
17 designated terrorist government or group?

18 Mr. Richard. In my judgment, you would not have the
19 requisite criminal intent to support a conclusion that the
20 statute was violated if the activity was duly authorized by our
21 government. We, nevertheless, suggest that that issue be dealt
22 with by having an explicit exclusion, a national security type
23 of exclusion in the legislation to avoid that issue entirely.

24 Mr. Lisker. It is just an abundance of caution?

25 Mr. Richard. Yes.

1 Mr. Lisker. What impact will this bill have on the
2 so-called soldiers of fortune who fight or provide training,
3 for example, in the army of Jonas Sevimbi against the Cubans
4 and Angolans in Angola or with the Afghanistani rebels against
5 the Soviets in Afghanistan? Are there any laws on the books
6 which already proscribe such conduct? If you know what they
7 are, would you tell us about them?

8 Mr. Richard. Again, it is difficult to generalize, as you
9 know, because each transaction, each incident can give rise to
10 jurisdiction, if you will, under one or more statutes,
11 depending on the nuances of the transaction. So, it is hard to
12 say that a given course of conduct would under all circum-
13 stances not be covered by some law on the books. But, assuming
14 that the executive branch, the President issued the required
15 proclamation and felt it was in the national interest to do
16 so and so forth, it would occur to me that there could be
17 coverage under that act.

18 Mr. Lisker. Mr. Smith, S. 2255 is silent on the question
19 of raising money. We are dealing here with services and cer-
20 tain technical skills, but nothing is said about money. Money,
21 of course, can buy services and technical skills, construction,
22 and so on.

23 Do you think it would be appropriate to expand the pro-
24 scribed conduct to include the solicitation, collection, dis-
25 bursal, dispensing of contributions, loans, money or other

1 things of value in the interest of such government, faction, or
2 group?

3 Mr. Smith. I think that raises a number of questions, Mr.
4 Lisker, that would have to be looked at carefully. My initial
5 instinct is that it would not be advisable to extend it to that
6 activity. I think Mr. Richard might have some additional
7 thoughts from the point of view of the Department of Justice.

8 Mr. Richard. Again, I would suggest not expanding the
9 scope of this bill to reach the fund-raising situation.

10 Mr. Lisker. Well, the problem from our perspective, that
11 is, you have the Provisional IRA. I guess you could probably
12 get an argument as to whether or not they are a terrorist
13 organization; we happen to think they are. We have in the
14 United States a group called the Irish Northern Aid Committee,
15 which the Southern District of New York has recently concluded
16 is an agent of the Provisional IRA; and the Second Circuit
17 seemed to agree with that conclusion. They claim to raise
18 money for the Green Cross, and the prisoners' relief fund, and
19 all that, but there are some who are skeptical among us that
20 think that some of that money goes for the purchase of guns
21 and ammunition.

22 There are a lot of people in this country that support the
23 IRA through fund-raising drives of various types and descrip-
24 tions and support the Irish Northern Aid Committee. Do you
25 think that it is appropriate that that activity by U.S. persons

1 should continue? Or do you think that we should devise a
2 vehicle by which such fund-raising activity for a terrorist
3 organization becomes illegal?

4 I am really looking for a response not specifically with
5 respect to the IRA. I use that only as an obvious example, but
6 there are other organizations that would fit that definition.

7 Mr. Richard. Obviously ^{the} active and knowing support of
8 international terrorist groups is reprehensible. But what
9 gives me the pause and the hesitation is trying to come up with
10 the outlines of the legislation which would avoid various
11 issues that are obviously latent in trying to deal with the
12 area. So, it is because of my concern with those issues that I
13 am hesitant to say yes it is a good idea.

14 I would certainly reiterate that I think it goes way
15 beyond the thrust of this particular proposal. I do not see
16 how this proposed legislation would easily deal with that kind
17 of situation.

18 Mr. Lisker. It just strikes me that, if the thrust of
19 this proposal is to diminish the quality and amount of services
20 which a terrorist government might receive from U.S. persons,
21 that, if we make the funds available, assuming that they are
22 an impoverished terrorist government--Libya does not happen to
23 fit that definition--but assuming that the funds are not
24 plentiful, if we provide the funds for them to acquire the
25 technology or the expertise or training or whatever it is that

1 they are seeking from third countries, then really all we have
2 done is forced it into another channel.

3 Mr. Richard. The bill is directed at a fairly direct
4 rendition of aid and services. It does contain the humani-
5 tarian exemption, and that, of course, reflects the recognition
6 that there are tradeoffs involved.

7 Mr. Lisker. With respect to a humanitarian exemption, is
8 it not a fact, or would you agree, that, when money is legiti-
9 mately or legally raised for humanitarian purposes, that frees
10 up funds which the terrorists themselves have to divert from
11 the purchase of arms and so forth for that purpose, thereby, in
12 a sense, enhancing their capabilities because they no longer
13 have to be concerned about the humanitarian aspect of their
14 operation?

15 Mr. Richard. From an accountant's point of view, yes, I
16 agree with you.

17 Mr. Francis. Mr. Richard, in addition to the information
18 that I requested earlier, I would like to request if you could
19 provide whatever specific examples of existing loopholes in
20 the current laws that you think are reasonable, I would appre-
21 ciate that, too.

22 Mr. Richard. Certainly.

23 Mr. Francis. Thank you.

24 Mr. Lisker. How do you reach a group that uses
25 humanitarian purpose as a cover, whether you call it the Red

1 Crescent or the Green Cross or whatever?

2 Mr. Richard. I am not sure that I appreciate the thrust
3 of your question. When you say use as cover---

4 Mr. Lisker. In other words, if a group says that we are
5 raising money for the Red Crescent Society, the Islamic Red
6 Cross, or the Mogen David, the Jewish equivalent, or the Green
7 Cross, the Irish equivalent, that is what they say they are
8 raising the money for. So, people of good will give to that
9 organization. Then it turns out that was not exactly the
10 purpose, that that humanitarian organization was simply a
11 conduit for the money. The people in that organization were
12 cooperating with the terrorists and actually just acting as a
13 channel.

14 How do you get to those groups? How do you stop that
15 activity? In my understanding, that is a fairly common way in
16 which funds are raised for ostensibly humanitarian purposes,
17 but in fact the funds never reach the beneficiaries.

18 Mr. Richard. It is somewhat analogous to other schemes
19 that we are encountering with regularity on the domestic front
20 where you have charity solicitations being made based on false
21 representations. Of course, in the normal course of events,
22 those are treated as misrepresentations and are thus suscep-
23 tible to treatment under traditional fraud concepts and mis-
24 representation concepts.

25 I think, as a practical matter, education, though, of the

1 public is the key to impacting on the problem. Your hypo-
2 thetical assumes that, if the public is aware of the intended
3 use of the monies, they would not contribute and thus, pre-
4 sumably, education alone would effectively deal with the
5 problem.

6 Mr. Lisker. With respect to the naming of Libya in the
7 bill as it now stands, we have heard some testimony--as a
8 result of your opening statements, I think, specifically--on
9 the disadvantages of such an approach. What about countries
10 like the Soviet Union, political entities like SWAPO, the
11 Southwest African People's Organization, the Popular Front for
12 the Liberation of Palestine, the African National Congress,
13 the Palestine Liberation Organization? Would they under any
14 conceivable set of circumstances, would they likely become
15 part of this bill? It seems to me that the criteria which are
16 set forth are not that specific. So, I would assume there
17 would be wide discretion on the part of the President or those
18 who advise him on reaching this decision. After all, the
19 Soviet Union supports international terrorism. I think we have
20 established that in many hearings. I do not think that is a
21 secret.

22 Mr. Smith. I cannot, of course, speak for what some
23 President would do should this law be enacted. But I can say
24 that we are presently required by the Fenwick amendment to the
25 Export Administration Act to list countries that repeatedly

1 provide support for international terrorism. At the moment,
2 we list Libya, Cuba, Syria, and South Yemen. It seems to me
3 that is a standard not inconsistent with the purpose of this
4 bill.

5 Mr. Lisker. With respect to establishing criteria, it
6 seems to me that, in order for the President to reach this
7 decision based on the criteria which are specified here, he is
8 going to have very broad latitude.

9 Do you agree that that broad latitude should be afforded?
10 Or do you think that it should be much narrower, that is that
11 the criteria should be more susceptible to objective applica-
12 tion and less discretion?

13 Mr. Richard. Certainly from a constitutional point of
14 view we think it is adequate now. We do not want to find our-
15 selves in a position where we have to litigate the validity of
16 whether a certain group named is in fact a terrorist group and
17 what have you. We do not think that that is an item subject to
18 litigation in the course of the prosecution.

19 As I indicated, I think that this is sufficient, consti-
20 tutionally adequate, and provides maximum flexibility.

21 Mr. Lisker. When the department did its analysis of this
22 bill, I assume that the constitutional question was thoroughly
23 analyzed from the conclusion which was stated.

24 Mr. Richard. Yes, from the department's point of view.

25 Mr. Lisker. Would it be possible to provide us with that

1 product? The reason that I ask for it, I expect that, when we
2 get to the full committee with this bill, there will be those
3 who might disagree. It would be useful to have that product to
4 share with the minority and those members of the majority who
5 might disagree.

6 What is the advantage or purpose in using the definition
7 of foreign government found in section Eleven Hundred Sixteen
8 B(Two) of Title Eighteen as opposed to the standard definition
9 found in section Eleven of Title Eighteen? There is a specific
10 reason, I would assume, for including this definition.

11 Mr. Richard. Yes, Mr. Lisker, we felt the one we advocate
12 is a narrower definition. The other one, as you know, picks up
13 insurgent groups and the like. We feel within the context of
14 this proposed legislation it already reaches factions, and we
15 feel the narrower approach is the more appropriate one for
16 purposes of this legislation.

17 Mr. Lisker. I think you may have already responded to
18 this, but would you please answer it for the record?

19 Do you feel that the penalties presently set out in this
20 bill are substantial enough to reflect the gravity of the
21 offense? Are they consistent with other statutory penalties
22 presently in force?

23 Mr. Richard. The penalties in this area, of course, span
24 the gamut from being very light to more significant. To
25 characterize it in the mid-range, if you will, ^{18 USC 7951} ~~nine-fifty-one~~

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comes to mind. It also includes a ten-year penalty. The range of fine is realistic although I certainly would welcome an additional potential fine other than the twenty-five thousand or five times the amount of the compensation.

I envision that, unlike other statutes where you have a series of violations, this will probably be a single violation the way it is currently worded, that the total exposure from any prosecution would be the ten years plus the twenty-five thousand dollar fine.

Senator Denton. Mr. Richard, on pages one and two of your prepared statement, you state: "Under accepted international law principles the Congress has the power to regulate and punish conduct of United States citizens and others owing permanent allegiance to the United States wherever they may be."

Would you provide the Subcommittee with a more detailed analysis of this power of Congress and the principles, both international and domestic, upon which they rest?

Mr. Richard. It is the so-called international principle of jurisdiction. We would be glad to provide you with material on that principle.

Senator Denton. Also in your statement you recommend amending the forfeiture provisions presently contained in the bill. Would you describe more fully the changes you are suggesting, giving the department's rationale for the changes?

1 Mr. Richard. Mr. Chairman, the administration has sup-
2 ported extensive revision of the general forfeiture provisions.
3 They are quite complex and quite lengthy. I will be glad to
4 submit that for the record, Mr. Chairman.

5 Senator Denton. I would like to thank you both very much.
6 In case you leave before the usual statement at the end about
7 responding to questions within ten days after submission, we
8 invite your attention to that. Thank you very much for your
9 helpfulness.

10 I now call on the Honorable John M. Maury, President of
11 the Association of Former Intelligence Officers. I welcome
12 John Warner, also.

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24 January 1983

NOTE FOR: General Counsel

FROM:
Chief, Legislation Division

STAT

SUBJECT: Letter from Mark Richard

Stan:

I spoke to Richard this morning and I have drafted
a new response from you to him accordingly.

STAT

Attachment

*See
Type corrected.
S. J.*