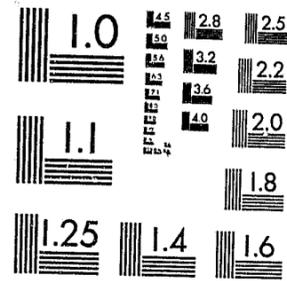


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Department of Justice

STATEMENT

OF

VICTORIA TOENSING
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

NCJRS

THE

APR 23 1985

ACQUISITIONS

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

ABORTION CLINIC VIOLENCE

ON

APRIL 3, 1985

U.S. Department of Justice
National Institute of Justice

97819

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Mr. Chairman and members of the Subcommittee, my name is Victoria Toensing. I am a Deputy Assistant Attorney General of the Criminal Division. I am pleased to discuss with you the very important issue of abortion clinic bombings. I was selected to represent the Department because I have supervisory authority over the investigation and prosecution of federal arson and explosive offenses.

At the outset, I would like to dispel an impression that has gained some currency--that the Department of Justice and the Administration are unconcerned with the campaign of violence that has been unleashed against abortion clinics. Nothing could be further from the truth. President Reagan condemned this violence in no uncertain terms on January 3, 1985, when he said:

During the past few months, there has been a series of bombings at abortion clinics throughout the country. I condemn, in the strongest terms, those individuals who perpetrate these and all such violent, anarchist activities. As President of the United States, I will do all in my power to assure that the guilty are brought to justice. Therefore, I will request the Attorney General to see that all federal agencies with jurisdiction pursue the investigation vigorously.

The Department of Justice's prior and future commitment to this task was articulated on the same date by then Attorney General William French Smith who said:

I join with the President in condemning, in the strongest terms, those individuals who perpetrate the series of bombings at abortion clinics throughout the country.

I have asked FBI Director William H. Webster to take steps to insure that the

FBI is providing all possible assistance in the investigation of acts of violence against abortion clinics.

* * *

The Department of Justice, continuing its intensive work with the Department of Treasury, will continue to investigate, identify, prosecute, and convict those who commit these unlawful acts, to the end that this senseless destruction be stopped.

Attorney General Ed Meese has requested me to convey to you that he wholeheartedly concurs with the President and William French Smith's outrage at these violent crimes and that he is committed to protecting "the law abiding from the lawless," a promise made during his installation ceremony.

These statements are not merely promises for the future; they are equally descriptive of the Administration and Department attitude ever since this evil has raised its head.

You heard previously from Stephen Higgins, Director of the Treasury Department's Bureau of Alcohol, Tobacco and Firearms (BATF), of the Bureau's intensive efforts to identify the perpetrators of these violent crimes and of the superlative results of these efforts. They are, however, worthy of repetition because the message must be clearly conveyed to any would be violator of the likelihood of apprehension, prosecution, conviction and severe penalties in store for bombers and arsonists. It is, moreover, important to reassure those who wish to use the clinics and to those who staff the clinics that the federal government will continue its vigilance in pursuing those who violate the law in this area.

The BATF, the agency which has primary investigative jurisdiction over most federal arson and bombing offenses, has classified abortion clinic burnings and bombings as a "National Investigation" and is coordinating enforcement efforts from the national headquarters in Washington, D.C.

The BATF has had over 500 of its agents, all trained specifically in arson and explosives work, assigned at one time or another to these investigations during the past year. The field agents have been supported by BATF's National Laboratory and two regional laboratories, as well as experts in explosive technology and other resource personnel. Close liaison has been maintained with state and local law enforcement agencies and other federal agencies as well.

As a result of these dedicated efforts, 23 out of 33 incidents investigated by the BATF since 1982 have been solved. Thirteen persons have been arrested and charged; five have been convicted and have received sentences ranging from 10 to 30 years imprisonment; eight persons arrested since the beginning of the year are awaiting trial at this time. I have a table of those cases that I would like to have made part of the record.

I would like to turn to two other areas where there has been much misinformation and confusion about the Administration's position. First is that the Department did not characterize these attacks officially as "terrorism," and the second is that on the facts available so far the Department has not requested an investigation based on the civil rights laws. I want to explain the basis for these positions.

First, as to "terrorism." As you are aware, there are a number of federal investigative agencies, such as the Federal Bureau of Investigation, the United States Secret Service, the United States Customs Service, the Postal Inspection Service, the Drug Enforcement Administration, etc. Except for the FBI, each is generally charged with enforcement of one or relatively few statutes and the investigation of one or a few classes of offense. Thus, Customs oversees import and export violations; IRS--tax offenses; the Secret Service--counterfeiting of currency, protection of the President, and forgery of Treasury checks; BATF--firearms and explosives; Postal Inspection Service--mail fraud, thefts from the mail and so on. The FBI has jurisdiction over all the rest of the hundreds of federal offenses. The assignment of jurisdiction is usually explicit in the statute creating the offense or is inferred from the statute creating the investigative agency. Frequently, there is overlapping jurisdiction. Thus, explosives sent through the mail to certain federal officials could implicate the explosives jurisdiction of the BATF, the mail jurisdiction of the Postal Service and the FBI's jurisdiction over assaults upon federal officers. To avoid duplication of effort or the failure of any agency to investigate because it supposes someone else is doing so, guidelines have been adopted and memoranda of understanding have been entered into between the several agencies allocating responsibility. In addition, not only do offenses fall within several areas of jurisdiction, but offenders do as well. That is to say, a criminal can commit

violations of statutes falling within the investigative jurisdiction of several agencies. Again, to avoid either duplication or inadequate investigation, resort is had to guidelines and memoranda of understanding.

As you are aware, there are a number of groups, both foreign and domestic, that have political designs they hope to accomplish by crime and violence. In reaching their political goals, they may attack persons and facilities, they may rob banks for funds, or they may commit various other offenses falling within the jurisdiction of several federal investigative agencies. As a managerial strategy, it was agreed that the federal effort to combat organized criminal enterprises should be coordinated by a single agency, the FBI, regardless that primary jurisdiction over a particular violation rested with another agency. This criminal syndrome has been labelled "terrorism" in the guidelines assigning responsibility. It is not a statutory term; it is merely a shorthand description of a kind of activity which warrants a certain kind of handling.

Up to the present, the investigation of the many, scattered abortion clinic attacks has failed to develop any evidence of a coordinated, organized campaign. Rather, it appears these crimes are independent actions by an individual or closely related groups of persons (family or friends) who share both a common philosophy of antipathy to abortion, and a lawless love of violence. This type of activity does not pass the threshold under our guidelines that would warrant the FBI to assume

overall command of our efforts and displace the BATF, which has been doing a splendid job.

Turning now to the second issue about which there is a great deal of confusion: why the Department has not characterized these assaults upon abortion clinics as criminal violations of the civil rights statutes. Let me explain.

Section 241 of title 18 provides:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured--

They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

The statute's plain but broadsweeping words house a history of over 100 years of Supreme Court interpretation. The Court has required that for prosecution under §241 there must be a conspiracy to interfere with a clearly defined federal right, found either in the Constitution or federal law. Section 241 does not create any new civil right but only makes criminal interference with rights found elsewhere in the Constitution or federal law. Therefore, one must first look to that right and discern how courts have defined it.

We are discussing here the constitutional right to an abortion. Let there be no doubt--there is no disagreement that women possess this constitutional right. The constitutional basis of the right to abortion was recognized in Roe v. Wade, 410 U.S. 113 (1973), where the Court "conclude[d] that the right of personal privacy includes the abortion decision." (at p. 154) The right of privacy, the Court wrote, is "founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action." (at p. 153)

When the federal right flows from the Fourteenth Amendment, we must therefore look to the Fourteenth Amendment which states, in relevant part:

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
(Emphasis supplied)

The Fourteenth Amendment clearly is a prohibition on the State as recognized by the Supreme Court in the above quotation from Roe v. Wade. For over 100 years the Supreme Court has consistently required some form of state or official action for a §241 prosecution based on a right founded in the Fourteenth Amendment. Past Justice Departments of both parties have

recognized that interpretation. For example, the Constitution guarantees one against the deprivation of life, liberty, and property without due process of law -- but ordinarily a kidnapper, robber or murderer has not violated his or her victim's constitutional right, for the right to life, liberty and property is protected only against deprivation by the government and its officers.

Let me state quickly that a prosecution under §241 does not always require state action. Section §241 can reach private interference when the right to be protected has been clearly articulated as a federally protected right, such as the right to public accommodation, which is guaranteed by statute irrespective of state action.

We have had no reason to believe that states or their officials have in any way participated in, actively connived in, or intentionally closed their eyes to criminal actions taken against abortion clinics, their staffs and patrons. Accordingly, there has been no "state action" that would convert these private crimes into constitutional violations punishable under 18 U.S.C. 241. I hasten to add that I promise you just as I promised a group of representatives from pro-choice organizations several months ago that if there is any evidence of state action, the Department would not hesitate to take the necessary steps for investigation.

Indeed, I requested them as I now request you to provide the Civil Rights Division with any information where you feel there is evidence of State action. In the past week you submitted a

factual situation in a New York matter and the FBI is looking into that now.

The arsons and bombings are being dealt with under existing laws. Other activities directed against the clinics, such as picketing, are constitutionally beyond the reach of federal law as this Subcommittee is well aware. That leaves certain acts of trespass or personal violence or threats of violence by private persons that could possibly be made criminal by additional legislation. State or local laws presently provide for prosecution of these violations. Not only is the federal government ill-equipped to investigate violations of many of these state and local ordinances but there has also been a great reluctance for the federal government to tread upon traditionally state matters. Certainly, if states are not doing their jobs properly we should all reevaluate this position.

In concluding on this issue, let me say that the legal views I have expressed are those of the Civil Rights Division which has primary responsibility and expertise in the area, and have been confirmed by independent research of my staff within the Criminal Division. We are not, however, infallible. If the Subcommittee or the Subcommittee's staff, or any interested party has another approach or analysis that points in another direction, we are pleased to consider it.

That concludes my prepared statement, Mr. Chairman. I should be pleased to respond to any questions you or the Subcommittee may have.

ARRESTS AND CONVICTIONS OBTAINED AS A RESULT
OF BATF INVESTIGATION OF ARSONS AND
BOMBINGS OF ABORTION FACILITIES
SINCE MAY, 1982

<u>Date</u>	<u>Location</u>	<u>Disposition</u>
May 29, 1982	St. Petersburg, Florida (St. Petersburg Women's Health Center)	BATF investigation resulted in a state prosecution of Donny B. Anderson and Matthew Maxon Moore for these two arsons. Both Anderson and Moore pleaded guilty to arson charges and were sentenced to 30 years imprisonment.
May 29, 1982	Clearwater, Florida (the Bread and Roses Clinic)	
June 6, 1982	Arlington, Virginia, (the Arlington-Fairfax Medical Center)	Following BATF investigation Donny B. Anderson was indicted and pleaded guilty to federal explosives charges. Anderson was sentenced to 12 years imprisonment.
May 23, 1983	Norfolk, Virginia, (the Hillcrest Clinic)	Joseph Grace was arrested and convicted on state arson charges as a result of this incident. He has been sentenced to 10 to 20 years imprisonment.
December 3, 1983	Everett, Washington, (the Feminist Women's Health Clinic)	
March 4, 1984	Bellingham, Wash., (the Bellingham Family Practice Clinic)	
March 26, 1984 April 19, 1984	Everett, Washington, (the Feminist Women's Clinic)	On July 19, 1984 BATF agents arrested Curtis Beseda in connection with these four arsons. Beseda was subsequently indicted, tried and on November 9, 1984, convicted on four federal arson charges. On Dec. 20, Beseda was sentenced to imprisonment for twenty years and ordered to make restitution in the amount of \$295,000.

<u>Date</u>	<u>Location</u>	<u>Disposition</u>
June 25, 1984	Pensacola, Florida, (Ladies Center of Pensacola)	Following the December 25th bombings, BATF dispatched a national response team to Pensacola, Florida to conduct an investigation. Within one week, Matthew Goldsby, James Simmons, Kaye Wiggins and Kathren Simmons were arrested on federal charges relating to these four incidents.
December 25, 1984	Pensacola, Florida, 1. (Ladies Center, Inc.) 2. (Dr. Ragenholm's Office) 3. (Dr. Permenter's Office)	
January 13-14, 1984	Dover, Delaware (Reproductive Care Center)	On January 19, 1985, Thomas Spinks, Kenneth Shields and Michael Bray were arrested by BATF special agents and charged with federal conspiracy and explosives law violations in connection with these ten incidents. On February 11, 1985, a federal grand jury indicted Spinks, Shields and Bray on these charges.
February 17, 1984	Norfolk, Virginia (Hillcrest Clinic)	
February 28, 1984	College Park, Md. (Prince George's Reproductive Health Service)	
July 4, 1984	Washington, D.C. (National Abortion Federation)	
July 7, 1984	Annapolis, Maryland (Planned Parenthood of Maryland)	
November 3, 1984	Washington, D.C. (American Civil Liberties Union)	
November 19, 1984	Rockville, Maryland (Metropolitan Women's Medical Center)	
November 19, 1984	Wheaton, Maryland (Randolph Medical Center)	

December 24, 1984 Suitland, Maryland
(Metropolitan Family
Planning Institute)

January 1, 1985 Washington, D.C.
(Hillcrest Women's
Surgi-Center)

March 16, 1985 San Diego, California
(Birth Control Institute)

On March 28, 1985 Shane
Cameron was arrested
in connection with
this incident.

NOTE: BATF continues to investigate other arson and firebombing incidents directed at abortion facilities since May of 1982. Arsons and bombings directed against abortion facilities are designated as a national investigation by BATF.

END