PROHIBITION AGAINST THE TRAINING OR SUPPOR OF TERRORIST ORGANIZATIONS ACT OF 1984

HEARING

BEFORE THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 5613

N AGAINST THE TRAINING OR SUPPORT OF TERRORIST ORGANIZATIONS ACT OF 1984

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THURSDAY, AUGUST 2, 1984

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met in room 2237, Rayburn House Office Building, at 9:30 a.m., Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards and Sensenbrenner.

Staff present: John A. Briley, counsel; and Phil Kiko, associate counsel.

Mr. EDWARDS. Since 1978, this subcommittee has been involved in formulating and evaluating governmental responses to the threat of terrorism.

Earlier this year we held hearings on the FBI's efforts in the area of domestic terrorism. Both the FBI director and the State Department's director for combating terrorism testified that our capabilities in that area were more than adequate to meet any potential problems. In addition FBI Director Webster repeated these reassurances during the hearings on the FBI authorization request for fiscal year 1985. Several members of the subcommittee took note of the accomplishments of the FBI in this area.

The purpose of today's hearing—and of the hearing scheduled for next Tuesday [1]—is to examine the administration's proposal to prohibit the training, supporting, or inducing of terrorism by the administration in H.R. 5613.

This measure has been advanced as a necessary response to the threat of international terrorist activities to the U.S. national security.

Before introducing our first two witnesses, I recognize the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. First of all, let me begin by asking that this hearing be broadcast by either still or live photography pursuant to committee rule 5.

Mr. EDWARDS. Without objection, so ordered.

Mr. SENSENBRENNER. Once again, the minority and the majority on this subcommittee approach a controversial subject from rather

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[1] This hearing was canceled at the request of the Department of Justice. See additional materials.

different perspectives. I view the majority approach to this subject as one of an ostrich; that international terrorism cannot strike in the United States because we have been lucky and that there has not been a major incident involving international terroristic activity within our borders. I do think that we can provide law enforcement agencies with the tools to combat international terrorism which requires a considerable amount of intelligence gathered beforehand without throwing out these civil liberties and constitutional protections that our constitution gives to American citizens and those who happen to be within our borders even though they do not enjoy American citizenship.

In the last week or so, there have been two instances where intelligence has prevented suspected international terrorists from coming in our country from abroad to disrupt the Olympic games in Los Angeles with a terroristic strike. There have been news reports that U.S. immigration authorities were able to prevent the entry of a gentleman who was an Armenian as well as a gentleman of the Middle East from showing up in Los Angeles to disrupt the Olympic games.

Finally, I think the record is replete with the number of international terroristic strikes against U.S. embassies and diplomatic personnel overseas to show that this country does pose a great target for those that do not appreciate the American way of life and the principles that our country stands for. The only way to prevent something like this from happening here together with the killing and injuring and maiming of many international people is by the Government to be prepared and for laws to be up to date. And frankly, I think that the Reagan administration has done this country a great credit in raising this issue before it happens rather than after it happens. And I would hope that the hearings that the subcommittee majority is arranging on this particular subject are not designed to pooh-pooh the threat of international terrorism striking within our borders but figuring out how we can better cope with it and I yield back the balance of my time.

Mr. EDWARDS. Our witnesses are Mr. Jerry Berman, ACLU legislative counsel, and Joseph Hassett, who is an attorney with Hogan & Hartson. Then after these two witnesses, we are going to have a third witness.

Mr. Berman has been a frequent and helpful contributor to subcommittee proceedings. Mr. Hassett has been involved in a number of constitutional cases over the years and was counsel for the House Committee on Interstate and Foreign Commerce in a case regarding national security wiretapping.

Gentlemen, we welcome you. Without objection your statements will be made a part of the record and you may proceed.

[The complete statements follow:]

TESTIMONY OF JOSEPH M. HASSETT AND JERRY J. BERMAN

INTRODUCTION

Mr. Chairman and Members of the Committee, on behalf of the American Civil Liberties Union, we thank the Committee for this opportunity to testify on H.R. 5613 (S. 2626), a bill "To prohibit the training, supporting, or inducing of terrorism",

and related draft bills.[1] As you know, the American Civil Liberties Union is a nonpartisan organization of over 275,000 members dedicated to the defense and enhancement of civil liberties guaranteed by the Bill of Rights.

Our testimony focuses primarily on H.R. 5613, the Administration bill. Thereafter, we also discuss two alternate bills which the Administration has circulated since introduction of H.R. 5613. Our analysis of the basic bill has equal application to these alternatives in all fundamental respects.

Terrorism is a threat to the ordered liberty we cherish. Therefore, we would not oppose carefully drafted legislation designed to punish such aiding and abetting of terrorist acts as may not be covered under present law, such as the knowing provision of services or training in the United States with the specific intent of aiding the commission of sabotage, bombings, or other terrorist acts outside the United States. Unfortunately, however, the instant bill is not designed. Instead, this bill would give the Secretary of State the sole discretion to outlaw support for certain countries, factions, or groups; and then make it a crime for Americans to support that country or group, even though their support may be directed to legitimate political aims or aspirations of the country or group, involve support activities clearly protected by the First Amendment, and not be intended to aid or abet terrorist acts of force or violence.

H.R. 5613 is clearly unconstitutional. It violates the fundamental principle of our constitutional law that a "blanket prohibition of association with a group having both legal and illegal aims", without requiring a showing of specific intent to further the unlawful aims of the group, is, as the Supreme Court said in *Elfbrandt* v. *Russell,* 384 U.S. 11 (1966), an unconstitutional infringement of "the cherished freedom of association protected by the First Amendment. . . ." This principle has been applied by the Court time and time again. *See, e.g., NAACP* v. *Claiborne Hardware Co.,* 102 S. Ct. 3409, 3429 (1982); *United States* v. *Robel,* 389 U.S. 258 (1967); *Aptheker* v. *Secretary of State,* 378 U.S. 500 (1964); *Scales* v. *United States,* 367 U.S. 203, 229 (1961); *Noto* v. *United States,* 364 U.S. 290 (1961).

It is not difficult to illustrate the unacceptable consequences of the administration's failure to follow the principle set forth in the *Elfbrandt* case in drafting H.R. 5613. Under the present bill, for example:

A clergyman might visit the leader of an insurgent faction in a foreign country as to which the incumbent administration had prohibited support. Should the clergyman be impressed with the grievances of the insurgents and agree to return to the United States to urge support for their cause, his doing so would violate the terms of the legislation. He would be acting in concert with a prohibited faction (§ 2331(a)(1)).[2]

An American lawyer who represented an alleged member of a designated group in a trial would be subject to the charge that he was acting in concert with or providing a "support service" to a prohibited group ((a)(1) and (2)).

An American who, on a paid or volunteer basis, wrote a propaganda tract for a designated faction would also run afoul of this bill (*id.*).

Citizens sending money to aid the lawful political activities of a designated group could be charged with the crime of providing "support services" under this bill (*id.*).

We believe that the administration intends that S. 2626 cover such situations, and that its purpose is to cover any assistance to a designated group, leaving to the courts the task of sorting out those particular cases in which application of the broad terms of the statute would violate the First Amendment by punishing protected activity.

The bill thus ignores the substantive axiom of First Amendment law that, as the Supreme Court said in *NAACP* v. *Button,* 371 U.S. 415, 438 (1963) and repeated in *United States* v. *Robel,* 389 U.S. 258, 265 (1967), "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." It is not enough to say to American citizens that their most precious freedoms of political expression and association will be ultimately vindicated after indictment, disgrace, possible imprisonment, years of litigation and crushing expense. Instead, it is the responsibility of this body—one it has often nobly shouldered—to stand guard against legislation whose overbroad language chills First Amendment activity by indiscriminately establishing, as the Supreme Court said in *Robel,* "guilt by association alone, without any need to establish that an individual's association poses the threat feared by the Government in proscribing it." 389 U.S. at 258.

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[1] We wish to acknowledge the assistance of Catherine James LaCroix, Steven P. Hollman and Emily Preyer in the preparation of this testimony.

[2] Subsequent parenthetical references are to paragraphs of § 2331.

If the threat feared here is the provision of technical assistance for the purpose of aiding terrorist acts, it is no great task to draft legislation that so provides, yet does not sweep within its ambit protected activity engaged in for wholly legitimate purposes, such as the activities of the clergyman, lawyer, author and contributor described above. This bill shuns that approach in favor of an overly broad definition of the offense.

The definition of the offense

The first step in defining the offense is the Secretary of State's determination that a group's "acts or likely acts of international terrorism" warrant a ban on support by United States citizens. ((d).) This determination may apply to three different kinds of groups: (1) the armed forces or any intelligence agency of a foreign government or the agents of that government's armed forces or intelligence agency ((a)(1)); (2) a faction, which includes "any political party, body of insurgents, or other group which seeks to become the government of a foreign country through the threat or use of force of arms" ((j)(3)); or (3) an international terrorist group, a group which engages in acts of violence for political purposes outside the United States or in a way that transcends national boundaries ((j)(6)).[3]

The second step is the prohibition against the following forms of support to the prohibited group:

1. Any action "in concert with" the prohibited faction, group, or government agency ((a)(1));
2. The provision of "training in any capacity" to the faction, group, or government agency ((a)(2));
3. The provision of any "logistical, mechanical, maintenance, or similar support services" to the faction, group, or government agency ((a)(3)); and
4. The solicitation of any person to engage in any of the above-described activities ((a)(4)).

This critical language—the language that must serve to distinguish legitimate political activity from crime—is a coat of many colors. On the one hand, it contains words like "armed forces" and "logistical", soothing assurances that sound as though we are legislating against the aiding and abetting of terrorist activities. On the other hand, however, the prohibition against the providing of "any training" is so broad as to indict the most praiseworthy form of instruction. By divorcing the crime from any requirement that the criminal intend to aid or abet terrorist activity, the statute would criminalize instruction, for example, in the principles of nonviolence. Moreover, the definition of acting "in concert with" covers any joint action to bring about a common end, however laudable the shared goal.

In sum, the drafter's injection of an occasional military term does not change the fact that this bill punishes association with the legal aims of a group, without any requirement of a showing of intent to further other, unlawful activities of the group. Harvard Professor Abram Chayes' defense of Nicaragua in the World Court, for example, could be construed as an "act in concert with . . . the armed forces" of that country. If Nicaragua had been designated, he could be convicted of violating this statute without any showing of an intention to further the commission of terrorist acts. In sum, this legislation poses precisely the danger emphasized by the Supreme Court in *Noto* v. *United States*: "There is a danger that one in sympathy with the legitimate aims of . . . an organization, but not specifically intending to accomplish them by resort to violence, might be punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share." 367 U.S. 290, 299–300 (1961).

There are three very important reasons why the overbreadth of this statute is particularly dangerous:

1. As shown above, the statute sweeps so broadly that its terms prohibit the exercise of fundamental freedoms of political speech, association and expressive conduct.[4]

[3] Although it is not clear on the face of § 2331(a) and (b) that the prohibition runs against the entire faction and group, rather than only the armed forces or intelligence agency (or their agents) of such faction or group, a representative of the Department of Justice has advised us that the construction stated in the text is the one intended.

[4] *See, e.g., Buckley* v. *Valeo,* 424 U.S. 1 (1976) (contributing money); *Broadrick* v. *Oklahoma,* 413 U.S. 600 (1973) (political campaign activity); *Brotherhood of Railroad Trainmen* v. *Virginia State Bar,* 377 U.S. 1 (1964) (railroad workers had first amendment right to advise injured workers to obtain legal services and to recommend specific attorneys) *NAACP* v. *Button,* 371 U.S. 415 (1963) (first amendment protects "association for litigation" where the litigation is intended to reach political ends); *Thornhill* v. *Alabama,* 310 U.S. 88 (1940) (picketing).

2. Because of the FBI's authority to investigate criminal activity, the tremendous breadth of this statute's definition of a crime would authorize wholesale FBI investigation of political activity on a scale not hitherto envisioned. The scope of investigation that would necessarily follow enactment of this bill would extend far beyond that which the FBI currently exercises with respect to suspected domestic or international terrorist activities, activities that pose a more immediate threat of violence and injury to persons in the United States than the foreign acts of terrorism addressed by this bill. Under the FBI's current guidelines, a domestic security/terrorism investigation may be initiated only when there is a reasonable indication that persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States.[5] FBI counter-terrorism guidelines are similarly focused on Americans suspected of acting on behalf of a foreign power and engaged in acts of force or violence designed to achieve political purposes. In sharp contrast to the present requirement of direct danger of criminal force or violence, this bill would open the way to wide-ranging investigation of political activities that are entirely peaceful and lawful.

3. The instant bill is so overbroad as to be subject to the doctrine that it is "invalid on its face". Under the law of the First Amendment, a penal statute is unconstitutional if it does not aim specifically at evils within the allowable area of state control, but instead sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech. Such a statute by its very existence causes a continuous and pervasive chilling of all freedom of discussion that might reasonably be regarded as within its purview. Such overbreadth may enable an actual terrorist to evade conviction, because the argument that a statute is unconstitutionally overbroad may be raised as a defense by someone who engaged in activity that the government could lawfully have prohibited through a more narrowly drawn statute. *Thornhill* v. *Alabama,* 310 U.S. 88 (1940).

Accordingly, passage of the instant bill would both be dangerous to our protected liberties and ultimately self-defeating—if the goal is to deal with the problem of terrorism in a responsible way—because it invites judicial invalidation.

A word about the Secretary of State's conclusive determinations

The provision of the bill giving the Secretary of State broad discretion to make a conclusive determination as to which countries or factions should be subject to the bill is, in effect, the grant of the power of censorship. Under this bill, the Secretary has descretion to prohibit domestic political activity in support of one country or faction, but permit support for another, although *both* are engaged in terrorism. The only standard is his subjective determination that "national security" or "foreign relations" warrant" the ban in one case but not in the other. Such discretionary power to suppress speech is plainly unconstitutional. *Cox* v. *Louisiana,* 379 U.S. 536, 557–558 (1965); *see United States* v. *Robel,* 389 U.S. 258, 281 (1967) (Brennan, J., concurring in result).

Moreover, the conclusiveness of the Secretary's power conflicts with the fundamental principle of due process that, in a criminal prosecution, the government is required to establish every element of the crime beyond a reasonable doubt, *In Re Winship,* 397 U.S. 358 (1970), and presents difficult questions as to whether the legislation is a Bill of Attainder, *see United States* v. *Brown,* 381 U.S. 437 (1965).

The designation provision is also likely to make the statute ineffective because individuals could easily circumvent the Secretary's designation by forming a new group.

All of these difficulties would evaporate if the offense were precisely defined in terms of aiding and abetting the commission of terrorist acts, an offense that can be straightforwardly applied across the board to all terrorists, without any need of designation, a concept that is constitutionally flawed and suggests that there may be terrorism in the world which our country is prepared to favor or tolerate.

Summary

It is clear that H.R. 5613 threatens activity protected by the First Amendment, both because its language sweeps too broadly and because its virtually standardless delegation of discretion to the Secretary of State carries with it a power to stifle dissent from the reigning foreign policy of the moment. Moreover, the bill contains a number of flaws which threaten its effectiveness as a deterrent to international

[5] Section III.B.1.a., Attorney General's Guidelines for Domestic Security Investigations, Hearings Before Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary, 98th Congress, 1st Session, 76 (1977).

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terrorism. First, its overbreadth and its effort to make the Secretary's determination conclusive in a criminal trial raise a substantial likelihood that any criminal conviction would be reversed on constitutional grounds. Second, new terrorist groups would not be designated, and thus not covered, and old ones could escape coverage by changing their names.

The first alternate—the "Prohibition Against Services in Support of International Terrorism Act"

The first Administration alternate draft surfaced on June 8 at a hearing before the House Committee on Foreign Affairs. None of the fundamental defects of H.R. 5613 is cured by this alternate:

1. This bill continues to apply criminal penalties to innocent, protected activity that is not designed to aid or abet acts of terrorism. Although the bill eliminates its predecessor's reference to "acting in concert" with a foreign faction or group, it outlaws not merely "serving in", but serving "with" the armed forces or any intelligence agency of a designated foreign government. Given the bill's "finding" that "United States nationals . . . should be prevented from placing their abilities and expertise at the disposal of foreign governments which engage in or support international terrorism", the prohibition against serving "with" the army or intelligence agency of a foreign government is broad enough to sweep up the clergyman who places his "abilities . . . at the disposal" of foreign armed forces by urging U.S. citizens to lend political support to their cause.

As with the prior bill, this bill fails to make the constitutionally-required distinction between (a) use of the "abilities and expertise" of American citizens to engage in protected and laudable support for the permissible goals of foreign governments, and (b) use of American ability and expertise to aid and abet the carrying out of terrorist acts. No good reason has been advanced for ignoring this fundamental distinction. By ignoring it, the bill inhibits protected domestic political activity.

This fundamental defect is also reflected in the bill's prohibition against the provision of "training" to any "agent" of the armed forces or intelligence agency of a foreign government. As the government recognizes,[6] training includes education. Thus the bill outlaws any educational activities, no matter how laudable or innocent, for the benefit of anyone who can be characterized as the agent of the armed forces of a designated country. Similarly, the provision of nebulous "technical services"—no matter how innocent the services nor how benign the motive of the provider—is made a crime.

2. This first alternate bill adds window dressing, in the form of consultations and notifications, to the Secretary of State's discretion to designate those countries to which the Act applies. These consultations and notifications in no way limit the Secretary's discretion. It remains true that, despite the hypocritical recitation in Section 301(a)(2), "all acts of international terrorism are to be condemned", this bill

(a) authorizes the Secretary of State to pick and choose those countries whose terrorism may be supported and those whose terrorism may not be supported;

(b) does not outlaw the aiding and abetting of terrorism carried out by countries not designated by the Secretary of State; and

(c) does outlaw innocent political, educational or financial support for the relief of real grievances in countries that the Secretary of State does designate.

The second alternate—"Authority to Control Provision of Certain Services

Since June 8 the Administration has circulated another draft—one so hastily prepared that the bill contains footnotes. It implicitly recognizes that the other bills suffer from lack of specificity, and proposes to solve the problem by giving the president carte blanche to fill in the blanks by "regulation"—any regulation, including, but by no means limited to, one requiring licenses. Under this bill, the President could license speeches favoring the government of South Africa, but deny licenses for speeches favoring the government of Nicaragua.

If the Congress proposes to enact legislation that could impinge upon the right of Americans to engage in protected political activity, the Congress has the responsibility to enact precisely drawn legislation that proscribes the provision of technical assistance for the purpose of aiding terrorist activity, but does not sweep within its ambit protected activity engaged in for wholly legitimate purposes. This fundamental responsibility of the Congress is not satisfied by delegating wholesale authority to the President to "control by regulation" as he sees fit.

[6] Testimony of representatives of the Department of Justice before the Subcommittee on Security and Terrorism of the Senate Judiciary Committee on S. 2626, June 5, 1984.

TESTIMONY OF JOSEPH M. HASSETT, ESQ., HOGAN & HARTSON, WASHINGTON, DC; AND JERRY BERMAN, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION, WASHINGTON, DC

Mr. BERMAN. Thank you, Mr. Chairman, members of the committee. The balance of our testimony will be presented by Mr. Hassett today. He's with the law firm of Hogan & Hartson and when this legislation came out we asked that law firm and Mr. Hassett particularly, because of his constitutional expertise, for an independent memorandum on the constitutional issues raised by this legislation. His memorandum was so persuasive that this bill is a sweeping infringement or potentially sweeping infringement on first amendment liberties that we asked him to testify on this matter. Mr. Hassett was also counsel in the Chicago litigation which led to the enjoinment of the FBI domestic security guidelines in Chicago. So he is an expert in this area. So I turn over the balance to Mr. Hassett and then both of us will be prepared to answer questions at the conclusion of his presentation.

Mr. EDWARDS. Very good. Mr. Hassett, welcome.

Mr. HASSETT. Thank you very much, Mr. Chairman.

Mr. EDWARDS. You might use the live microphone that Mr. Berman used.

Mr. HASSETT. Thank you, Mr. Chairman.

The gist of my remarks will be devoted to what I think is the demonstrable threat that this legislation does pose to political expression, political speech in the United States. But before I get to that, I think it is worthwhile asking for a moment before we get to the question of what harm might this do, what good would this legislation do? And I think that if I were privileged to sit in the shoes of members of this committee, I might begin by asking myself that question.

The bill by its title and by the statements made by its proponents, appears to be a bill to prohibit terrorism, the supporting or inducing of terrorism. That, we are told with considerable flourish, is what the bill would do. We are told that it is designed to fill a gap in the law that was noticed in the case of Wilson and Terpil, Americans who gave technical assistance outside the United States to terrorist acts performed abroad. It was said that this bill would make criminal in the United States acts by U.S. nationals outside the United States designed to aid or abet—to induce as the title of the bill terrorism by terrorists outside our country.

Now, it may be worth noting, first of all, that it does not purport to address the threat of terrorism occurring within this country. It is not claimed, as I understand it, by the proponents of the bill that there is a gap in our law with respect to terrorism occurring within the country or that this legislation is designed to address that. No, say the proponents. This bill is designed to prevent Americans from giving their military or technical aid to the carrying out of terrorist acts abroad. But the funny thing is this bill doesn't do that. If this bill were law today, it would not, by its own terms, apply to the most terrible case of terrorism and the most blatant aiding and abetting of that terrorism by citizens of the United States. The reason for that is that this bill doesn't outlaw the general aiding and abetting of terrorism. It outlaws only the aiding

and abetting of conduct by countries or factions or groups that have been designated by the Secretary of State, in his sole discretion, as being the kind of terrorist groups that shouldn't have the help of United States citizens.

The bill creates a distinction between those terrorist countries, factions, and groups to which U.S. aid and assistance is perfectly proper and those to which such aid and assistance is not proper. By doing this, we would create a situation in which, should the Secretary fail for whatever reason—and he need not give a reason—to designate some known terrorist group or country, that group would, in effect, have the seal of approval of the United States—a seal—a certificate—saying that their brand of terrorism is OK; that Americans may with impunity aid and abet that kind of terrorism.

So, for example, if one of those groups—a known terrorist group—were not, for whatever reason, designated by the Secretary, were to blow up a department store in London, the glare of the international press would properly be on the fact that American participation in that kind of activity was not covered by our law because our authorities had chosen not to designate that group as being in the group of terrorists who could not receive the assistance of Americans. And I may say that in all the testimony I've heard by the State Department and the Justice Department, in support of this bill, the one thing on which they've been clear is their refusal to identify what countries, factions, or groups they would intend to put on the proscribed list. And I think that it doesn't take much imagination to conclude that there would be a number of known terrorist countries, factions, or groups, that would not be included on the list. Should their terrorist acts be assisted by an American citizen, it would be very clear that assistance by Americans took place without a prohibition by their own government. I think by creating that situation we would, in a very serious way, undermine our own moral stance with respect to terrorism and in that respect defeat what was said to be the purpose of the bill.

Now, it's interesting to me, Mr. Chairman, that while on the one hand the bill would not cover clear cases of aiding and abetting of terrorist acts by Americans, the bill, on the other hand, would cover activity by Americans consisting of no more than traditional political behavior such as giving a speech and writing a pamphlet or raising funds or giving food. The reason for that is that on its face the bill, H.R. 5613, outlaws conduct is perfectly proper, lawful conduct; conduct that is traditionally engaged in by persons in the United States as part of their free political activity. Now it is not unknown in our law, of course, for the law to punish conduct which in itself is lawful but becomes unlawful only because its undertaken with an intent to aid and abet the carrying out of unlawful conduct by someone else. Driving an automobile is perfectly lawful conduct, but when driven for the purpose of aiding and abeting a getaway from a bank robbery, it becomes a crime. But, peculiarly, this bill punishes lawful conduct without requiring a specific intent by the actor to aid and abet the carrying out of someone else's unlawful conduct. Instead, the way that this bill divides the criminal routine conduct from the noncriminal routine conduct, is not in

terms of the state of mind of the actor, but in terms of the ideology of the country or group that is said to be the beneficiary of the actors. And let me illustrate that.

If I gave a speech on behalf of country X, or the cause of country X, and country X is not on the Secretary of State's list, then my conduct is perfectly lawful. But if I give a speech or raise funds or write a pamphlet in support of the cause of country Y, and country Y happens to be on the Secretary of State's list, then I have committed a crime under this legislation.

Now, that peculiarity obviously could be cured, and the moral ambiguity created by this two-tier system could be cured, simply by saying that whenever any American wherever in the world aids and abets the carrying out of terrorist activities, he's committed a crime. This legislation steers totally clear of that. In steering clear of that, they run smack up against the constitutionally settled principle that when a group has two purposes, at least two, only one of them unlawful, legislation may not constitutionally punish mere association with the group; but, it must instead require that the association be undertaken for the purpose of aiding and abetting the carrying out of the unlawful purpose. And the failure to heed that fundamental principle is at the core of what's wrong with this legislation. Were there not this principle we would be creating a system of law in which the Secretary of State would have carte blanche to say that giving speeches, raising funds in support of country A or group A is a crime, but in support of country B or group B is not a crime. That type of control over normal political activity by U.S. citizens is, I think, the most serious kind of threat to the very way of life that we are trying to preserve in the face of the international terrorism in the world today.

I don't think there is much of a case to be made for closing our eyes to the reality of that threat. And that is not what we are here to urge this body to do. But I think that dealing with that threat requires something more than gestures—particularly when the gesture could be as counter-productive as this one—when it could make it very clear to the world that there are forms of terrorism that we are prepared to tolerate or support and that terrorism is unacceptable when it's done by the wrong people. I don't think that represents the true views of the American people and I don't think that should be enacted into law.

On the other hand, enacting this law creates—and I think I've shown it in a way that's really unanswerable—it creates a tremendous power in the government of the United States to prohibit and to investigate perfectly lawful, normal political activity, and the whole basis for doing it rests on a failure to adhere to one of the very fundamental principles of our constitutional law, one that the country went through a great deal of turmoil through much of this century in order to establish as part of our constitutional law. I think it would be most unfortunate to lose sight of the wisdom that was so hard won.

Thank you very much for permitting me to take up your time with these thoughts, and we'd be very happy to entertain any questions.

Mr. EDWARDS. Thank you. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Hassett. Let me pose this hypothetical to you, starting out with a true premise. Earlier this year Jack Anderson reported that there was a faction in El Salvador that wanted to trail a U.S. Congressman from California and that faction was intimately associated with death squad activity in El Salvador. I happen to know that as a fact because I was on a trip to El Salvador with that U.S. Congressman and when we found out about it we went home.

Now, let's say you and I disagree very violently with that Congressman's political activities, his stand on Central American questions and would like to defeat that Congressman in the next election, which is our constitutional right as U.S. citizens. To defeat him, we give speeches against the Congressman; we raise money against the Congressman; we print a pamphlet against the Congressman; and do all of the kinds of legitimate political activities that is recognized as part of the system. During our campaign against that Congressman in the election, the nexus is made with the death squad group in El Salvador. And all of a sudden the things that we are doing dovetail in with some of the things they are plotting and scheming against that Congressman in El Salvador. And all of a sudden the Salvadorians come up to the United States; we meet with them; and, the Congressman is murdered.

Don't you think that the Federal Government ought to be able to do something to put a stop to that before there is a Congressman that is actually shot within the United States as an act of political terrorism by a foreign government?

Mr. HASSETT. Absolutely. And I don't see that there's any inhibition on that taking place right now. That's the whole point. I agree 100 percent that if someone is engaged in what appears to be unlawful conduct, the aiding and abetting of a murder, they ought to be investigated, tried, and if the facts justify it, convicted. No question about that. But on the other hand, because somebody in some foreign country takes a position on an issue that happens to dovetail with a position that opponents of Congressman X happen to take, that is no justification for investigating or outlawing opposition to Congressman X. So the dividing line that I think you and I both want to draw is that between activity which is engaged in for political purposes and activity which is engaged in to aid and abet the carrying out of a murder.

Mr. SENSENBRENNER. Well, I think there is a very clear distinction. Legitimate political activity is protected under the present system and if this bill is passed. I don't know what the California firearms statutes are since I haven't lived in California for 19 years now. But I would assume that even if the Salvadorans come to the United States it is not illegal to stop them or to give them firearms which they might use for the purpose of political terrorism. And then that line, in my opinion, is breached.

But what the American citizens are doing all along is absolutely legal under present law until after the fact when we have something that is awful that strikes at the heart of our political system. I do think that Members of Congress not only have a right but an obligation to speak their minds on the issues of the day.

And they shouldn't be murdered as a result of speaking their minds.

Mr. HASSETT. Well, I am in 100 percent agreement with that. But this bill doesn't have anything to do with selling arms to Salvadorans. There is in existence in the United States today a law that makes it a crime to engage in a conspiracy for the purpose of murdering somebody, anybody.

Mr. SENSENBRENNER. But say the Salvadorans don't say that. That what they're going to do. That you don't like the Congressman I referred to. You've been trying to defeat him in the election and they may contact—they say, we're across the border. We want to buy a gun for our collection. We don't have the proper document to do it in California, so would you please do it. Then all of a sudden the political activity is the unwitting fling of political terrorist activity.

Mr. HASSETT. It is very seldom that the perpetrators of crimes announce their criminal purpose. Criminal purpose, in any case, has to be proved by whatever the surrounding circumstances are. And one of the interesting things about this legislation is that it shows such a complete lack of trust in our American jury system that, to me, it's a very pessimistic development.

The premise that seems to be behind your question is that, because it might be difficult—because it's more difficult, because it requires extra effort—to prove the facts to an American jury as to what took place, the simple thing to do is to avoid all the effort of proving the facts as to what took place and just make it a crime to give any support to somebody whose ideology I don't like.

The trouble with this bill is, that it is not directed to selling a gun to somebody for the purpose of carrying out an assassination. The bill says you can't "Act in concert with" them. You can't give a speech in concert with them.

Now when you say that distinction exists, it only exists in the law of today. This bill mars, overrides, trenches upon that distinction. And I think that distinction is a fundamental one, and one that this House has a constitutional obligation to preserve.

Mr. SENSENBRENNER. Meanwhile, the Congressman lies dead, because he had the guts to speak his mind on an emotional issue of foreign policy that touches the country, but obviously does not share the United States—well, factions of which do not share the American public's—view of what constitutional protections are.

Mr. HASSETT. No, I disagree with you, with the greatest respect, but you are attributing activity which may take place in the world for a whole host of reasons to a particular bill which has nothing to do with that activity. There's already plenty of legislation on the books, giving our law enforcement official authority to investigate this type of activity in the United States, and I don't understand it to be claimed by the proponents of the bill that the situation that you described is something for which they need additional authority. If they do, then they should ask for it. But they're certainly not saying it. But it isn't this bill or the failure to have this bill that may cause somebody to die. I do think that it's unfair to attribute that kind of an event to this legislation. There is nothing in this legislation that would increase the ability of U.S. law enforcement officials to deal with the kind of situation that you described.

Mr. SENSENBRENNER. Well, I guess we're going to disagree. Thank you, Mr. Chairman.

Mr. EDWARDS. Well, it appears to me that the purpose of this bill certainly doesn't have anything to do with terrorism within the United States. It has to do with the frustration of the administration with regard to terrorism elsewhere, and I am sure that we are all distressed with the plight of the hostages on the airplane today. But in our entire history, has there ever been a Federal criminal statute which, in essence would be,—or that is, similar to this one where apparently the Secretary of State can say that country X or group X is a terrorist nation and, therefore, if any American deals with this particular nation in some way, then this is a nonreviewable finding that the nation is a terrorist nation?

All right. What measure of proof does the Secretary of State have to have to make this declaration?

Mr. HASSETT. Under the statute, Mr. Chairman, he needs no proof whatsoever. It is purely in his discretion, and that discretion is unreviewable. It's a funny thing—and I've attended—and when I haven't been able to attend, I have read the transcript of the testimony of the administration in support of this, and they seem to always approach it with blinders on, and they'll say simply, well, this kind of determination is not the kind that should be made by juries. And I would be the first to agree that, the way that the Secretary of State should carry out his normal day-to-day functions of deciding what our policy should be, is probably better done in some surroundings other than the examination and cross-examination of witnesses. But this is a bill creating a criminal penalty and calling for people to be tried in courts of law and to go to jail. And again, I think that one of the things that we have gone through a great deal of trouble in this country to create in our system, one of the things from which we've tried to protect our system from terrorists abroad, is a right to trial by jury. And it's fundamental that the due process right includes a right—of the defendant—to have the Government prove every element of the crime beyond a reasonable doubt.

And this bill, of course, would undercut that—would be in odds with that. And it would not permit it, the defendant would need to prove that, in fact, the group that he aided was not one that was engaged in terrorists acts or was not one that ought to be on the list. I addressed primarily the effect of the bill on political speech and association, but the bill also, I think, interferes with the criminal trial in a completely impermissible way. And I don't know of any—there may be some case where it was tried, but at least I'm not aware of it—effort to take a fundamental fact issue of a murder prosecution away from a jury.

Mr. EDWARDS. Well, would there be the inclination by the Secretary of State, whether Democrat or Republican, to use political judgment in making this decision?

Mr. BERMAN. Well, there is an open invitation to do that, because there's no binding definition of terrorist activity in the legislation. There's no clear guidance for the Secretary's determination. So that one administration could well put Nicaragua's government and the PLO on a list and designate the former as a terrorist government and the latter as a terrorist faction. Another administration could come along and say that, because of activity in the West Bank, that Israel belongs on the list, and therefore, any support to

Israel would be covered by this legislation or that any aid to South Africa would be covered, because it is a terrorist government. There is no standard; it's an open invitation for political decisionmaking, because there is no binding neutral definition.

Mr. SENSENBRENNER. Would the chairman yield?

Mr. EDWARDS. Sure.

Mr. SENSENBRENNER. I think there is a definition. If you look at the analysis in the presidential message, it says: "The term 'international terrorism' has the meaning given to it in section 101(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(c))."

Mr. HASSETT. That's correct. The problem with the legislation comes from the fact that the Secretary of State has the discretion to decide which of those terrorist groups are covered. You could take a list of 50 admittedly terrorist groups, factions, or States. The statute would not apply across-the-board to those 50, but the statute gives to the Secretary the discretion to choose which of those factions or groups would be the ones to which the statute applies. That's where there is free rein to the Secretary. And I think Mr. Berman would agree with me that there is a definition of terrorism, although the definition of terrorism isn't one that's easy to apply. But going beyond that, the real problem created in this area of the statute is that the Secretary is free to choose those terrorist countries or groups which the U.S. citizens may support and those which they may not.

So in the case you described with the Congressman, assuming that this bill applied to that kind of activity, it could so easily happen that the gunman tracking Congressman X was free to do so under this law, because he came from a group that the Secretary's list said was permissible, whereas the gunman tracking Congressman Y would be covered by the statute. And that's the real gist of this designation part of the statute. It's a failure—it's a failure on the part of the proponents of this legislation to face up to the inherent wrongfulness of shooting the Congressman but to punish shooting the Congressman, only when the gunman's ideology is not acceptable. That's what's wrong with this. It's the creation of this double standard of legislation.

Mr. EDWARDS. Is there a constitutional problem here? Declaring another nation out of bounds, or a terrorist, comes very close to a declaration of a kind of war, which is reserved for the Congress to decide. Do you see any constitutional problem in the Secretary of State having this eminent power?

Mr. HASSETT. I don't know that in my own mind it would raise a question, a constitutional dimension. Whether it's wise for him to have this power, I wonder. There is now a requirement in the Fenwick amendment that the Secretary of State report to the Congress on countries, determined to be terrorist countries. Without having studied it, and speaking only off the top of my head, I'd be surprised if it would interfere with the war power. But it's a power that's so great and so potentially dangerous that it would make sense, I think, to a legislative body not to delegate it, unless there was good reason to do so, and here, I think, there's nothing but a bad reason for doing so.

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Mr. EDWARDS. Has a similar law such as this ever been passed before in our history? Can you name one or two?

Mr. HASSETT. Well, the legislation that purported to outlaw mere membership in the Communist Party, without regard to whether the membership in the party was for the purpose of advancing the unlawful goals of the party, is this kind of legislation. Sedition bills in the early federalist period of the country, which made it a crime to have a particular point of view, were similar kinds of legislation. Sedition laws, laws outlawing mere membership in a group, without regard to an attempt to carry out out any unlawful activity, have all been held to be fundamentally unconstitutional and totally at odds with our American way of life. And this statute is exactly the same kind of statute.

Now we'll hear from the proponents of the bill. They'll say, oh, but look. Look, we're not that kind of people. And we don't mean to interfere with anybody's right to free speech, and therefore, we'd never apply it that way. Or if we did, the courts would stop us. But it's the responsibility of the Congress under the Constitution, to enact legislation that is constitutional, because should Congress pass this kind of a statute that on its face covers both protected political activity and unlawful activity, the statute has the effect of prohibiting people from engaging in a protected activity and it prevents them from exercising their political rights. And that is a fundamental constitutional principle that this statute ignores.

Mr. EDWARDS. Thank you. Counsel?

Mr. BRILEY. I have no questions, Mr. Chairman.

Mr. KIKO. H.R. 5613, in a June draft, I think, is intended to get at acts of the terrorism, before they occur.

On page 1 of your testimony, you state, and I quote:

> We would not oppose carefully drafted legislation designed to punish such aiding and abetting of terrorist acts as may not be covered under present law, such as the knowing provision of services or training in the United States with the specific intent of aiding in the commission of sabotage, bombings, or other terrorist acts outside the United States.

Thus, I think that several aspects would be required. A specific act would have to be committed and the act would have to be a terrorist act.

If applied to the definition—with this definition, how would you be able to prevent someone from aiding and giving services to terrorist groups before the act occurs?

Mr. BERMAN. I presume that, first of all, that what we describe here would cover the Wilson & Terpil situation, which is the only example that the administration has come up with for the kind of support activity they're trying to stop. The way you would prevent it, if there was a statute, presumably, the FBI would have investigative jurisdiction over this criminal activity, and if it had reasonable suspicion to believe that this crime was about to be committed—they would engage in an investigation. It is the same as the enforcement of any other criminal statute.

Mr. KIKO. What is your definition of "terrorist act" then?

Mr. BERMAN. This gives me a chance to clarify my example. I do not mean that there was not a definition of terrorist act in the legislation. It's from the Foreign Intelligence Surveillance Act. It's a narrow definition. I think it is a clear definition, and it's one that

could be applied in a statute such as this. But the trouble with it is, as I mentioned, while the definition is there, the Secretary, because his discretion is unreviewable, can ignore the definition. But the definition of any act of violence or force and violence intended to affect political behavior by intimidating the civilian population that's the definition in the Foreign Intelligence Surveillance Act, and that is an adequate definition of terrorism.

Our proposed legislation would criminalize aiding and abetting terrorism; namely, an act of violence, intended to intimidate the civilian population anywhere in the world. That would not be covered by the first amendment. It would be clearly a criminal violation, and it raises no civil liberties.

Mr. SENSENBRENNER. Will the gentleman yield?

Mr. Berman, what would you do about trying to cut off money that goes to the Provisional Wing of the Irish Republican Army, which I think is, by common consensus, a terrorist organization that operates in Northern Ireland, so great, in fact, that the late Cardinal Cooke refused to appear at a St. Patrick's Day parade because the Provisional Wing of the IRA fundraiser was the grand marshal of the parade.

Mr. BERMAN. Well, this is far closer to what the legislation is aiming at. But this bill does not deal with that situation that you discussed before.

Mr. SENSENBRENNER. I think it could, if the domestic political opponents of the Congressman got together with the foreign opponents of the Congressman's policy. Now there is no evidence that that did take place in the case of that Congressman, but I am just wondering what you do to shut off the water of the American fundraisers for the IRA.

Mr. BERMAN. The problem there is that people give money for different reasons. Some think that they're supporting a political cause, and some think that they're supporting a lawful activity of the political wing, and that they have no intent or no knowledge that the money is being used for terrorist acts. They may even say, stop the terrorism. Let's win this, politically.

This legislation would, in trying to cut off the money, would make it a crime for someone who is knowingly giving the money to build bombs, as well as for someone who is trying to support the legitimate organization.

Mr. SENSENBRENNER. Well, once the money goes over to Ireland or wherever it goes, how are we going to be able to audit the books of the Provisional Wing of the IRA to see if the restricted gifts are used for propaganda purposes rather than building bombs?

Mr. BERMAN. We're not going to be able to.

Mr. SENSENBRENNER. There's no way to do it?

Mr. BERMAN. And that's why we're going to put an American in jail—because of his inability to trace where that money went to—instead of going to a lawful political activity it went to a terrorist activity. But he'd be in jail for supporting something which was a lawful exercise of his free speech.

Mr. SENSENBRENNER. I would presume that this would be at least constructive knowledge, since the Secretary of State's list would be a public document?

Mr. BERMAN. It would cut off—it would make it a crime to provide money. And this legislation could do it. But one would think it is unconstitutional.

Mr. SENSENBRENNER. What you're saying is that a few more kids ought to be blown up in Northern Ireland, simply because we can't audit the books of the IRA, to see what goes for propaganda and what goes for bombs.

Mr. HASSETT. No; that's not what we're saying. Let me point out why. The representatives of the State, of the Justice Department, when presented with this kind of hypothetical before the Senate Judiciary Committee, took the position that this statute was not designed to cover the situation you describe. But I'm interested to take your hypothetical and apply it, because it shows what is so wrong with the legislation.

As you apply it, the giving of funds to the IRA and the making of a speech favoring the cause of the IRA, however misguided that speech may be—and I for one feel particularly strongly the misguided nature of it, the making of a speech, and the giving of funds, although the giver intends to give the funds for the widow and the orphan of the dead gunman, are all crimes. Do we want to do that, make all of these things crimes, and the giving of speeches and money for anybody that the Secretary of State says are not entitled to speeches and money.

If we want to do that, if that's what you want to do, then this legislation is the way to do it. And I'm glad to see that you appreciate it, even though the proponents disclaim it.

On the other hand, if one is to say, well, let's not punish just giving money to widows and orphans, but let's undertake the hard work of punishing, in those cases where money is given consciously with the intent of carrying out crime—actual crimes and violence, let's find the facts and prove it. Then we have to have a different kind of statute. And if you elect to have the latter statute, and if in the interim—however much we don't hope it happens—someone is killed, they won't be killed because the statute wasn't enacted. Those problems exist in the world. One of the things that's wrong with the promotion that goes on in support of this legislation is the creation of the false impression that merely passing a law is going to solve these problems.

Counsel asked, well, how are we going to stop something in advance versus worrying about it after the bill? The answer to that is, by good, tough, hard policework, which is not glamorous and doesn't capture many headlines. But these things are done by hard work and people out in the world, and not—they are not the result of somebody saying, because this bill is against terrorism, I am for it.

Mr. SENSENBRENNER. Well, you know, in the meantime, just because some of the terrorist activities are lawful you're saying keep the money flowing to the terrorists, even if 90 percent of their activities are clearly unlawful.

Mr. HASSETT. I'm not saying keep the money flowing to terrorists. All I'm saying is that I don't think it's any wiser or would be constitutional to send somebody to jail for giving money to give food and clothing to widows and orphans. And I think—and on the other hand, if somebody would sit down and do the hard work of

trying to trace who is doing what for what organization and how the funds are being used, they would be able to find those situations in which people were engaged in raising money for the purpose of aiding and abetting terrorism.

Mr. SENSENBRENNER. Well, you know, Mr. Berman is a very regular witness before this subcommittee and I just remembered that when Director Webster of the FBI tried to approve the guidelines to get to the bottom of these things, the American Civil Liberties Union was before this subcommittee raising the roof.

Now, every time there is an attempt to get at the problems of international terrorism we see Mr. Berman's smiling face at the witness table raising all kinds of objection. Now, when are we going to get some kind of constructive legislation that the ACLU will bless to give law enforcement the tools to get at terrorist activity before it occurs?

Maybe the Sun will rise in the west before that happens.

Mr. BERMAN. Congressman, I think there is a constructive suggestion of how to draft carefully drafted legislation in this testimony. I think that in discussing the Director's security guidelines, I think that I pointed out we've argued this before that the FBI says itself that it's doing a far better job under the narrow criminal standards that exist today because of quality control and the focus in their investigations on real terrorists than they did in the early 1970's when there were no guidelines and no restrictions on the FBI at all when they were investigating broadly.

They spread their net very wide and did very little to prevent terrorist activity. Today the number of terrorist incidents are down and the FBI says that it's managed to penetrate and to be effective with real terrorist activity, staying clear of lawful political activity and that—I think that that same balance is appropriate here. I think that if you sweep within this legislation protective political activity in order to try and do something about terrorism, I think you will do little about terrorism but alter the fundamental constitutional system that we're trying to protect.

So, I think that what we're looking for also—since you're looking for careful proposals from us—is some careful proposals from the administration. This was thrown out of the President's door at Christmas at the end of the session without much explanation.

I've listened to four hearings where the administration can only come up with one example of support activity that they're talking about, the *Wilson/Terpil* case. That's not much of a record to build for sweeping legislation like this. So, I think that we've tried to be balanced.

I think the administration should go back to the drawing boards and come up with some reasonable proposals on its own.

Mr. SENSENBRENNER. Well, the administration will testify next week. On this subcommittee, they always come last.

Mr. HASSETT. I might just add, their coming last would give them the opportunity to indicate to the committee whether they're going to put the IRA on the list.

Mr. SENSENBRENNER. OK. That question will be asked.

Mr. EDWARDS. There are no further questions. We thank you.

Mr. BERMAN. I have one further comment, Congressman.

In his testimony before the House Foreign Relations Committee, the Secretary of State was asked what support activity he wanted to reach and he said, we're trying to get a handle on that, how much support activities are going on in the United States. Lately, our office has received a number of statements from different groups—religious groups and other groups—who are sympathetic to the Nicaraguan regime, unsympathetic to the Government in El Salvador, who engage openly in propaganda activities saying we ought to stop the covert activity there.

And, according to them—and I can't verify this, but I think it's something that the committee ought to pursue—these groups say they are being approached by FBI agents, asked where their funds are going to, whether they are engaged in any illegal activities and so forth. If they're engaged in an illegal activity that's one thing; but if they're engaged in mere political speech for and against foreign policy against the United States, I think that deserves some scrutiny by the committee and it may also give some indication of who the administration would like to reach under this legislation.

Hopefully, it's not that kind of activity.

Mr. EDWARDS. Thank you, Mr. Berman. Thank you, Hassett. We appreciate your testimony very much.

Our last witness today is Mr. Charles Maechling, Jr., who is a senior associate with the Carnegie Endowment for International Peace.

Mr. Maechling has a distinguished background as a lawyer, law professor, and as State Department head of what was then known as Counter-Insurgency.

Mr. Maechling, we welcome you. Without objection, your statement will be made a part of the record and you may proceed.

[The complete statement follows:]

STATEMENT OF CHARLES MAECHLING, JR.

Mr. Chairman and Members of the Subcommittee, my name is Charles Maechling, Jr. I am a Senior Fellow of the Carnegie Endowment for International Peace and director of the international law and foreign policy project. I appreciate this opportunity to testify on such an important and timely subject.

My interest and policy experience in terrorism as a grisly phenomenon of contemporary international life dates back to the nineteen sixties. During the Kennedy and Johnson administrations I served as the counter-insurgency adviser in the office of the Secretary of State, holding the titles of Director of Internal Defense (in the office of Politico-Military Affairs) and Staff Director of the NSC Special Group (Counter-Insurgency). The latter was a cabinet-level coordinating group consisting of the Attorney General, Under Secretary of State, Chairman of the Joint Chiefs of Staff and Director of Central Intelligence, among others.

Before addressing the specific provisions of H.R. 5613, let me summarize my own views about terrorism in general and the terrorist threat to U.S. national security in particular.

Without denigrating the abominable nature of terrorist crimes it seems to me that the terrorist threat to U.S. national security has been somewhat overdrawn. We have had the Puerto Rican FLN attacks on President Truman and the House of Representatives in the past, the Weathermen of the sixties, and bomb blasts by Cuban and Croatian nationalist groups, but nothing comparable to the Red Brigades of Italy, the Baader-Meinhof gang in West Germany, or the periodic horrors in Israel and Northern Ireland. The principal reason for the current eruption of high-level interest is that the word "terrorism" is being so loosely applied by governments, political leaders, (including our own) and the media that it has become a generic term for political violence employed by enemies and adversaries—not merely our own but those of allies, friends and surrogates. As such, the term is rapidly

losing the precision it once had, and is now little more than a demagogic tool to berate revolutionary violence.

Properly speaking terrorism is the sustained clandestine use of force to achieve a political purpose. By no means all political violence is terrorism. For example, the term is quite inappropriate for the suicide attacks of fanatical Moslems on U.S. and French military personnel housed in fortified bunkers in Beirut. This was a war zone, teeming with heavily armed militias and sectarian gangs; and characterized by continuous irregular warfare and massacre. Nor is the term really applicable to attacks on U.S. or other military personnel assisting one side or another as advisers in civil war situations. The latter are no less belligerents than the armed forces they are serving. Nor can we say that political assassination—Abraham Lincoln, John F. Kennedy, Pope John Paul II—is necessarily terrorism absent a sustained program to intimidate the population or force a change in government policy.

The terrorist label loses all meaning when pinned on underground fighters against foreign occupation forces, as in the case of the Polish Home Army and French resistence movements of World War II (or even the old IRA of 1918–1922), or on every variation of insurgency or guerilla movement. This abuse of language only substantiates the cynical and fallacious maxim that one man's terrorist is another man's freedom fighter. When applied to Polisario guerrillas, Salvadoran insurgents, and Sikh religious militants the term becomes nothing but a cheap rhetorical device to malign an enemy.

As a footnote let me add that the most flagrant clandestine killers of the twentieth century have been governments—15,000 "disappearances" in Argentine, 40,000 murdered civilians in El Salvador, and the same number in Guatemala and Uganda, to name only a few. The security forces of these countries can with some justice be called state terrorists.

In my view, a tighter definition is necessary, not only to neutralize the harmful effects of inflammatory rhetoric, but to give remedial and preventive measures a sharper focus. The term terrorism should be confined to the clandestine and conspiratorial use of violence for political purposes, and especially to acts of violence against the civilian population in order to intimidate the population at large. It must be part of a deliberate program of coercion, not merely episodic outbursts of savagery motivated by frustration or revenge. (I note that I am supported in this concept by ex-CIA Director William Colby in his Op-Ed piece in the New York Times of July 8, 1984, attached, though I think he goes too far in excluding systematic attacks on civilian officials.)

The bill before us, H.R. 5613 reflects this confusion in terminology in the sense that its underlying premise is whatever broad definition of terrorism the Secretary of State chooses to apply for the political purposes of the moment. If you will, it is the typical case of the use of a sledge hammer to kill a gnat. The apparent purpose of the bill is to rectify gaps in the U.S. code that hampered the prosecution of ex-CIA operative Edwin Wilson for furnishing equipment and services to Libya. Its target is Americans or U.S. residents who support terrorist activities overseas with training, logistic support and or recruitment of personnel.

My objection to the bill is not to its purpose, which is laudable, and in a modest way necessary, but to its scope and language. In the first place, the target class is statistically insignificant, even if one throws in Miami-based supporters of Central American death squads and Nicaraguan "Contras." Support of political violence overseas or indeed at home is not a typically American proclivity. The few cases that come to mind either involve disaffected ethnic or emigre groups not yet housebroken to American political values or the occasional mercenary or profiteer.

H.R. 5613 casts a much wider net. The bill would authorize the Secretary of State to in effect draw up a black list of foreign governments, factions or international terrorist groups based on his own unilateral determination. Any person convicted of providing support or assistance to an organization or individual on the black list would be subject to a prison term of up to 10 years and a fine of up to $100,000.

The first objectionable feature of the bill is the absence of tight definition of international terrorism or terrorist activity. Anyone with the slightest knowledge of history knows that the United States (as well as other great powers) have invariably justified minor military interventions in less developed countries by playing up the subversive or criminal nature of local resistance or revolutionary groups and tagging them with a pejorative label. In the old days the code word was "bandits", as applied to Emilio Aguinaldo; and his followers in the Phillipines; to Pancho Villa (perhaps with justification) in Mexico; to Augustino Sandino in Nicaragua; and to long-forgotten insurgency movements in Haiti, the Dominican Republic, etc. In the late 19th century the British called the followers of the Mahdi "dervishes" (implying religious fanaticism), and the French called the resistance forces in Indo-China

"pirates." Today the code word for guerillas, insurgents and their supporters is "terrorists"—which is not to say that the real article does not exist.

An even greater objection is the totally unacceptable discretionary mandate that the bill gives to the Secretary of State to make unilateral determinations as to which foreign governments, factions, or international terrorist groups go on the black list. The bill empowers to the Secretary to make these determinations not only on the basis of national security and threats to the "person, and property of a private entity of the United States" but also on the basis of "foreign relations." These determinations would apparently be unchallengeable by both Congress and the Courts.

In combination, these two features give the executive branch entirely too much latitude. Of course we cannot expect our political leaders to tone down their rhetoric in cases where there are threats of violence to U.S. citizens or property, and one must recognize that the terrorist threat exists. But this is a criminal statute where precise definitions are essential. The issue is whether American citizens should be exposed to prison sentences and fines every time an administrator chooses to get embroiled in the turmoil of the third world, exposes its personnel to the political violence and atrocities endemic to such regions, pins the terrorist label on whichever revolutionary movement, extremist factor or fanatical religious group has failed afoul of U.S. policy, and then lashes out at people engaged in commerce with the opposition.

If enacted, H.R. 5613 would certainly be used against supporters of third world revolutionary movements far more than against supporters of bona fide conspiratorial terrorism. The Secretary of State would have the power to make shipments of books, computers and food, and contracts for every kind of raw and manufactured goods (with the possible exceptions of medical supplies) a criminal offense if destined for any entity that in his sole judgment is a terrorists organization. His determinations, both as to the character of recipient countries and organizations and the prohibited categories of support, would be final and unchallengeable in the Courts.

H.R. 5613 is the type of legislation that positively invites arbitrary interpretation and selective application to suit the political biasses of the moment. I have no doubt that if it becomes law its vagueness of language combined with the latitude of discretionary powers vested in the Secretary of State would soon make it unenforceable in the Courts if not declared unconstitutional. Although hardly as baleful to our liberties as the old Alien and Sedition Laws, in its own small way it is just as objectionale—another example of legislative overreaction to revolutionary upheaval abroad, most of it none of our business.

I see no present justification to burden the statute books with such an all embracing law. Statistically, casualties resulting from terrorism in the civilized Western democracies have been minor compared to other classes of homicide, and absolutely insignificant compared to highway deaths. These is no class of terrorist crime or outrage that is not amply covered in state and federal criminal codes. Existing statutes in the munitions and export control field already serve most of the purposes of H.R. 5613 or could be amended to do so. H.R. 5613 is one trip that is not necessary.

In conclusion, a few words on two draft bills that I understand the State Department has proposed as possible substitutes for H.R. 5613 but which apparently have no formal status. The first is an improvement on H.R. 5613 in that it narrows the class of prohibited recipient to the armed forces and intelligence services of "terrorist" governments only, and provides for an elaborate joint determination and prior ratification procedure. Nevertheless, this version also contains the same open-ended definition of international terrorism. Despite the elaborate (and unnecessary) rigmarole of prior consultation it still empowers the executive branch to make unilateral determinations not challengeable in the courts.

The second bill seems to do little more than subject the furnishing of training and supplies to the security forces of foreign governments to presidential license, whenever such governments are officially declared to be implicated in "international terrorism." Without having researched the point my impression is that this authority either already exists in present export control legislation or could be provided for by a few trifling amendments. Again, the term "international terrorism" is not defined. This bill is not nearly as objectionable as the other two but has the doubtful merit of being even more superfluous.

[From the New York Times, July, 8, 1984]

Taking Steps to Contain Terrorism

(By William E. Colby)

WASHINGTON.—Terrorism is having yet another periodic revival as a major political issue.

President Reagan and Secretary of State George P. Shultz have denounced state-supported terrorism and insisted at the economic summit meeting in London that the industrialized democracies collaborate better to bring this under control. Debate is raging over the implications of the Italian prosecutor's report on the attempted assassination of Pope John Paul II, which implies that the Bulgarian Government, and perhaps even the Soviet Government, were behind the attack. A bill has been submitted to Congress that would impose criminal sanctions on Americans assisting or training terrorists identified by the Secretary of State. Behind these problems looms the nightmare of possible nuclear terrorism.

Such concern is hardly new. We heard much the same unease and the same call for a definitive remedy after the Palestine Liberation Organization attack on the Munich Olympics in 1972, the Red Brigades' kidnapping and murder of the former Italian Prime Minister Aldo Moro in 1978, the attack by the Japanese Red Army at Lod Airport in Israel in 1972, and on back to concerns about the Bolsheviks in the 1920's. None of this concern is unwarranted, but we should beware of undue alarmism and unrealistic hopes for a comprehensive solution.

In fact, the more grave the terrorist threat, the more certain it is that it will be suppressed before it causes serious disruption, threatening the state or the public order. Today, the Red Brigades are impotent, the Bader–Meinhoff gang, in West Germany, has been suppressed and the Japanese Red Army is hardly existent. The extensive terrorist actions in the 1960's by the Argentine Montoneros and the Urguayan Tupemaros were brutally but effectively suppressed by the military of those countries. India's crackdown on the Sikhs is the latest demonstration of a state's ability to crush such a threat to its authority.

Besides, in most cases, the drama of terrorism grossly exaggerates its real effect. Thus, Irish Republican Army terrorism has made essentially no progress against British rule in Northern Ireland. Che Guevara's romanticism brought concern over possible mass insurgency in Latin America but little change in its political or social systems. Certainly, the Symbionese Liberation Army and the Weathermen had little effect upon the ordinary American citizen's life, compared to many social problems we tolerate with equanimity such as the 23,000 Americans who die each year from handgun misuse or the 25,000 killed by drunken drivers.

What exactly is terrorism? It is a tactic of indiscriminate violence used against innocent bystanders for political effect—and it must be distinguished from the selective use of violence against the symbols and institutions of a contested power, which is unfortunately a norm of international life.

The difference is critically important: Without it, there is no way to distinguish "your" terrorist from "my" freedom-fighter or to differentiate aid to terrorists from covert support of friendly forces like the Nicaraguan contras, or counterrevolutionary fighters. Aid to friendly guerrilla forces, from the American colonists to the Afghans today, is a regular part of the international contest, whereas the indiscriminate use of violence can be denounced on a solid moral basis.

We probably cannot eliminate terrorism, but we can take steps to contain it. Intelligence is the first arm of defense against the terrorist, identifying him, his cause and his supporters. Such intelligence can provide tips about general plans or specific tactics that can lead to the frustration or capture of the terrorist. Along with the careful accumulation and collation of data, it may often include exchanging information with other friendly nations and occasionally launching risky and difficult missions to infiltrate terrorist groups.

This requires resources, but it also requires that the intelligence services not be hamstrung in their operations by great public exposure or excessive legalistic restraints. Obviously, the innocent citizen must be protected from excessive governmental intrusion, but reasonable protection can be obtained by legislative and judicial supervision.

The second major step to protect against terrorists involves security practices that make their task more difficult. The barriers around public buildings, the electronic screening of crowds, irregular schedules for multinational executives and effective police work can all be carried out with minimum inconveniences to the public but maximum deterrence against the would-be terrorist.

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But finally—and this may be the most important rule for any government hoping to protect itself and its citizens from terrorists—success against terrorism can be achieved only if the public supports the effort. The difference between a public that reports evidence of terrorists to the authorities, even at some personal risk, and one giving covert support or even cowed into silence, can mean the entire difference between success and failure.

In this, international public opinion can also be enormously important. The international rejection of the South American tactic of "disappearances" severely weakened those governments who practiced such abduction and arbitrary killing. The death squads in Central America have made it difficult for international friends to support the governments in some of those nations.

Morever, the best way to insure public support is to insist that the rule of law be fully applied in the fight against the terrorists. The French use of torture in Algeria in the 1950's was widely repudiated by French public opinion, greatly undermining what had been a successful strategy against the National Front for Liberation.

Why is the rule of law so important? The most successful tactic against the guerrilla or terrorist is to recruit him, not shoot him. To do that, he must be confident that he will benefit from any amnesty that is offered and be subjected only to a coherent rule of law. The terrorist also must be turned from his belief that violence can advance a cause valuable to his compatriots by a demonstration that a better result lies in the programs and policies of a government determined to ameliorate the lot of its people and to treat even its enemies with justice, even if this must be stern in some cases. If terrorism is the indiscriminate use of force against innocent bystanders, it is clear that a government resisting terrorism must be discriminate in its use of force to insure the safety of its bystanders.

[From the New York Times, June 27, 1984]

WHAT TERRORISM IS AND ISN'T

(By Charles Maechling, Jr.)

WASHINGTON.—Bombings and kidnappings in Lebanon and gunfire from the Libyan Embassy in London have put terrorism back at the top of the international political agenda. At the summit meeting in London, Western heads of government issued a guarded statement of condemnation. President Reagan has asked 26 Federal departments and agencies for new counterterrorist options and has sent Congress a legislative package aimed at strengthening antiterrorist provisions in the Federal criminal code.

All told, the latest spate of high-level attention may plug a few loop-holes but is not likely significantly to diminish the threat. For one thing, the security infrastructure to fight terrorism is in place and operational in most civilized countries. There is hardly a terrorist crime imaginable that is not well covered in the statute books. The real obstacle to effective containment of terrorism is the growth of its international dimension and its politicization by government leaders and the media through a broadening of the definition to encompass virtually all political violence.

Properly speaking, terrorism is the sustained clandestine use of force to achieve a political purpose. But all political violence is not necessarily terrorism. The term is totally inappropriate to suicide attacks on military personnel in a war zone, as in the case of the Marine bunker in Beirut. Even political assassination may or may not be a terrorist act, depending on the degree of commitment to a program of terror behind it. If extended to every variation of insurgency, armed rebellion and civil warfare, terrorism as a concept loses meaning and becomes a propaganda tool to stigmatize an enemy.

This confusion in terminology does damage in several ways. Failure to discriminate between the deliberate killing of civilians by terrorists and government death squads in order to intimidate a population, and resistance groups' clandestine paramilitary warfare against official and military targets, adds up to the (fallacious) maxim that one man's terrorist is another's freedom-fighter.

By any definition, the Palestine Liberation Organization, Provisional Irish Republican Army and Libyan "hit squads" are terrorists, but one can hardly apply the term to the Polish and French resistance movement of World War II. For the Indian Government to attach this label to Sikh extremists, and for the press to blindly parrot it, is a disservice to public understanding.

The confusion also spills over to remedies. For example, the legislation proposed by President Reagan is off-target. Two of the bills would implement earlier treaties

on aircraft hijacking and hostage-taking. Another, much-publicized measure aimed at penalizing American citizens and residents who engage in "training, supporting or inducing" terrorist activities is almost certainly unconstitutional.

Designed to rectify gaps in the law that hampered the prosecution of Edwin Wilson, a former Central Intelligence Agency operative, for furnishing equipment and services to Libya, this bill strikes at a statistically insignificant group while potentially penalizing a wide range of legally permissible activities. In authorizing the Secretary of State to embargo supplies and services to countries and organizations that support terrorism, it could make shipments of food, computers, books and medical supplies a criminal offense. Logically applied, the prohibition would encompass not only obvious targets like Libya but also the contras of Nicaragua and, of course, Saudi Arabia and other Arab states that support the Palestine Liberation Organization. The bill's most objectionable feature is a grant of authority to the Secretary to make determinations unchallengeable in the courts.

What is needed is not more indiscriminate application of the label "terrorist" and superfluous legislation but international cooperation in tracking terrorist conspiracies and blocking the movement of terrorists across frontiers.

The first requirement is better, more up-to-date intelligence through collaboration between national police forces. The second is tighter controls at airports and border-crossing points. In line with Prime Minister Margaret Thatcher's proposal at the summit conference, the third should be an end to immunity for diplomats and embassy installations that depart from bona fide diplomacy, and an international boycott of official personnel implicated in terrorist activities. None of these goals can be achieved without international agreement based on a much sharper definition of what constitutes terrorism.

Reaching a consensus will not be easy. But a start might exclude the predictable attacks common to civil war and anarchy since the beginning of history and concentrate on conspiratorial attempts to export violence to stable, law-abiding communities. Even ideological adversaries should be able to agree that bombings, shootings and other outrages that put the lives of ordinary men, women and children at risk are common crimes that deserve the full measure of international retribution.

TESTIMONY OF CHARLES MAECHLING, JR., SENIOR ASSOCIATE, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

Mr. MAECHLING. Thank you, Mr. Chairman. I'll speak extemporaneously from my statement. I appreciate the opportunity to testify on such an important and timely subject.

My interests and policy experience on the subject of terrorism as a grisly phenomenon of international life dates back to the 1960's. I was the counter-insurgency advisor in the Office of the Secretary of State during the Kennedy and Johnson administrations, holding the titles of Director for Internal Defense—I was in the Office of Political-Military Affairs—and Staff Director of the NSC Special Group that was chaired by Averell Harriman and was a Cabinet-level coordinating group set up by the President and consisting of the Under Secretary of State, Chairman of the Joint Chief of Staff, Director of Central Intelligence, and Attorney General Robert Kennedy.

Before addressing the provisions of H.R. 5613, let me summarize my own views on terrorism in general and the terrorist threat in particular.

The United States has been singularly and happily free from terrorism. We had the Puerto Rican FLN attacks on President Truman and the House of Representatives. We had the Weathermen of the 1960's. We've had these bomb blasts by Croatian and Cuban nationalist groups. I think one was in LaGuardia Airport. But we've had nothing comparable to the Red Brigades, nothing comparable to the Baader-Meinhof gang of West Germany and we've had, of course, nothing comparable to the continuing turmoil and horror that goes on in Northern Ireland. now happily quieter

than it was before, or the occurrence in Israel—bomb blasts and so forth, the Lod Airport Massacre.

One of the reasons for the current eruption of high-level interest is that the word terrorism is now getting to be too loosely applied by governments, political leaders—including our own—and by the media. It has become a generic term for the political violence employed by enemies and adversaries—not merely our own that would be confusing enough but of our allies or surrogates. At times I often wonder whether this isn't just a demagogic tool to berate opponents.

Terrorism does exist and I consider—and I think this is close to the definition in the Intelligence and Surveillance Act—that it is the sustained clandestine use of violence to achieve a political purpose. I don't think that all political violence is terrorism. I certainly do not think that political assassination is necessarily terrorism unless there is a sustained program of terror behind it.

I don't think I could call the assassin John Wilkes Booth or the conspiracy that killed Lincoln a terrorist act. Even if one assumed that Mr. Oswald was politically motivated, I don't think that we would really think of him as a terrorist. We think of him as a political assassin.

There are plenty of gray areas here. I think that the term is quite inappropriate incidentally for the suicide attack of the Moslems on the United States and French military bunkers in Beirut. That was a war zone. It was teeming with heavily armed militias; a scene of constant violence and massacre—wartime hostilities almost.

I'm also doubtful if the term is really applicable to attacks on either United States or military advisors of other nations when they assist one side or another as advisors in a civil war. It seems to me that these people are no different than the headquarters staff, the colonels, the generals, who are not in the field fighting, whichever side they're on.

And I think where it starts to lose all meaning is when you pin the terrorist label on the Polish Home Army in World War II or the French Resistance Movement or various guerilla or insurgence movements.

I notice in the paper that the Indian Government has taken to calling the violence of Sikh militants "terrorism." Well, this is really nothing but a political device to malign an enemy when you engage in that. Certainly, these are revolutionaries. These are rebels. But is that what we mean by terrorism? I don't think so.

I should add that the old code word if we remember the early 20th century—was "bandits." Aguinaldo and his group of rebels were popularly called bandits by the U.S. Government at the time. When the French conquered Indochina—in the 1880's—they termed the opposition "black flag pirates."

We also called Pancho Villa and various Mexicans revolutionaries "bandits" during the early part of the 20th century. I think probably with some justification in Villa's case. He *was* a bandit. The modern code word for this type of violence seems to be terrorist, which is again not to say that the real article doesn't exist.

So, I consider that a much tighter definition is needed. I think it should be defined as the clandestine and conspiratorial use of violence for a political purpose, especially the act or violence against the civilian population in order to terrorize the population at large. And I note that I am supported in this concept by ex-CIA Director William Colby in his Op-Ed piece in The New York Times of July 8, though I think he goes a bit too far. He seems to exclude systematic attacks on civilian officials. I would not do that.

Now, the bill before us, H.R. 5613, reflects this confusion in terminology. I think it's a typical case of using a sledge hammer to kill a gnat. It has apparently been proposed to rectify a gap in the U.S. Criminal Code that hampered the prosecution of the ex-CIA operative Edward Wilson, and its targets are Americans or U.S. residents who support terrorist activities overseas.

My objection to the bill is not for its purpose, which I think is laudable and I think in a modest way necessary, but to its scope and language. I think first of all that the target class is statistically insignificant. Americans are not prone to support political violence either at home or abroad unless you take into account ethnic groups who, in my view, are not politically housebroken to American political values. One could throw in the Miami-based supporters of Central American death squads and Nicaraguan "Contras" but I doubt if this was the purpose of the Administration.

H.R. 5613 casts a much wider net. It authorizes the Secretary of State to draw up a black list of foreign governments, factions, or international terrorist groups based on his own unilateral determination. Any person convicted of providing support or assistance to such an organization or an individual would be subject to very heavy criminal penalties.

I think that the first objectionable feature is the absence of a tight definition of international terrorism or terrorist activity. Anyone with the slightest knowledge of history knows that the United States and other countries invariably do justify their interventions by playing up the subversive or criminal nature of local resistance or revolutionary groups.

I have already described the code words that were used in the past and the code words that are being used in the present time period. I think an even greater objection is the unacceptable discretionary mandate that the bill gives to the Secretary of State to make unilateral determinations. It empowers the Secretary to make determinations not only on the basis of national security and threats to the person and property of a private entity of the United States, but also on the basis of foreign relations. And as far as I can make out, these determinations would be unchallengeable by Congress and the courts.

It seems to me that the two features together—and you have to take them together—give the executive branch too much latitude. I don't think we can expect our political leaders to tone down their rhetoric in cases where there are threats overseas to U.S. citizens or property and a real terrorist threat does exist.

But the terrorist threat that we're speaking of is basically a criminal threat. If you accept my definition, in most cases it's a threat that's really outside the scope of the United States' ability to do anything, and certainly outside the scope of its legal jurisdiction, I'm troubled by the fact that this gives the executive branch a good deal of latitude to pin the terrorist label on whichever revolu-

tionary movement, extremist faction, or fanatical religious group that has fallen afoul of U.S. policy, and then it more or less obliges the administration to lash out in opposition.

I think that H.R. 5613 would certainly be used against supporters of third world revolutionary movements far more than against supporters of bona fide conspiratorial terrorism. I don't know what is included by support. I don't know whether this support includes shipment of books, computers, food, or even supply contracts with the offending government, or, whether it makes those a criminal offense.

The problem here is a unilateral determination by the Secretary that appears to be not challengeable in any other forum. I think it is the type of legislation that more or less invites arbitrary interpretation and selective application to suit the political biasses of the moment.

I don't incidentally think that this is threat to our civil liberties. But I do think that the language is so vague, that is so susceptible to what you want it to mean—kind of an empty vessel—that any prosecution would be thrown out by the courts on one ground or another, either because of the vagueness of the indictment or the fact that the evidence didn't meet the indictment or because it's indeed unconstitutional.

Frankly, I don't see any justification to burden the statute books with this kind of a law. I don't think that this is the solution to terrorism. I think that from a domestic standpoint (which I would clearly distinguish from the foreign aspect of terrorism) the FBI seems to have the matter well in hand through the one major tool that has proved effective not only by the U.S. Government but by foreign intelligence services and that is penetration and the use of informers. Without these two elements no law enforcement agencies can do other than dissipate its efforts across such a wide spectrum that it would not be effective.

I will comment very briefly on two draft bills that I understand the State Department has proposed as possible substitutes. I think the first is an improvement on H.R. 5613 in that it narrows the class of prohibited recipients to the armed forces and intelligence services of "terrorist" governments only and that at least is a benefit.

But, obviously, the number of covers that would be used by a foreign government would be so manifold and so everchanging that I doubt that this would be a particularly effective definition. The bill also contains such a wide and open-ended definition of international terrorism that once again you run into the same problem of the executive branch using wide latitude to describe any revolutionary insurgency movement or fanatic religious group that engages in terrorist activity as "terrorist" although that may not be its prime purpose.

The second bill—that's a three page bill—seems to me does not do much more than subject the furnishing of training and supplies to the security forces of foreign government to a formal presidential license. I haven't really researched the point, but my impression is that this authority either exists in present export control legislation or could be provided for by a few trifling amendments. And, once again, international terrorism is not defined.

The Congressman who just left asked, of course, the usual question. Well, what do you want to do about it? How can you prevent people over here from sending funds to the IRA? Well, the answer is they don't send funds to the IRA. They send it to what I believe is known as the Northern Ireland Relief Association, Noraid, or some such organization and this actually has a reasonably legitimate history. It dates all the way back to the relief organizations that were formed by the earlier IRA under Michael Collins and the fund raising activities that were engaged in by DeValera when he was in the United States just before the outbreak of the really severe part of the troubles in the 1920's.

This has been going on for some time. The channeling of funds for illegitimate purposes is a difficult thing to control within the United States. I find it incredible that anybody here would believe that in this day and age with the number of cover organizations that exist, secret bank accounts, constantly changing names, definition changes, and personnel changes of terrorist groups, that one could possibly exercise control on a local basis of what goes on overseas.

I think that the answer to international terrorism is really twofold. One is, again, intelligence, and, the second is much stronger border controls, record keeping, and attempting to freeze the movements of terrorists. And I don't see that this requires legislation. I think that the structure for this is already in place in the CIA and the intelligence organizations of advanced Western industrial countries.

That concludes my statement, Mr. Chairman.

Mr. EDWARDS. Well, thank you very much, Mr. Maechling. Your work for a great number of years has been very scholarly and very helpful.

This subcommittee has been studying terrorism—chiefly domestic terrorism—since 1980 or before then, and we have tried to concentrate on the roots of terrorism so that we could learn more and advise Congress more about what happens in a country when you have native terrorism activities take root and flower like they did in Germany for a considerable amount of time. And I guess we found there were two kinds: one from external sources—religious groups, political groups, et cetera from Puerto Rico, from jail, and other prejudiced groups—that consist of just a very few; and, then the kind that are indigenous. You have mentioned the Baader-Meinhof gang and the death squads in Europe that didn't have roots outside of the country. They grew up out of certain frustrations and certain conflicts within the country themselves. And what we tried to show I guess the conclusion we came to in one of the reports we issued—was that in a domestic society where young people's aspirations are generally respected, and where you don't allow these conflicts and high emotions to take root and grow into your own country, then this domestic type of terrorism can be discouraged.

However, this is an entirely different situation, and I think the United States is an example, as you pointed out in your testimony, that we have very little domestic terrorism. Very, very little as a matter of fact. We keep track of the FBI's statistics, and it has gone down in the last few years from 100 incidents a year to some-

where around 35 or 40 last year. The FBI is doing a good job in trying to continue their good work, and they are doing good work.

But this is entirely aimed at terrorism—a lot of it aimed at Americans—in different parts of the world, and we are trying to resolve it by actions here.

Mr. MAECHLING. May I comment?

Mr. EDWARDS. Go ahead.

Mr. MAECHLING. I think that there is an assumption of a linkage here that perhaps is really quite weak. If you are trying to protect Americans abroad, I find very little evidence that the Americans abroad who are threatened are in any way being threatened as a result of funds or support emanating from the United States. There doesn't seem to me to be much of a connection there.

Frankly, Mr. Chairman, I think that the administration wanted to do something about terrorism and had tucked away in a package of four or five bills some perfectly useful legislation that was of a rather technical nature, this bill being one of them, that was designed to get at certain gaps in the "Terpil/Wilson" prosecution. This bill was then advanced with much a more ambitious and, so to speak, highly publicized programming. But I think it is off the target.

The State Department's concerns are with its embassies and its personnel abroad who have been the subject of attacks and even assassinations, such as the U.S. Navy Attaché in Greece and the political counselor kidnapped in Beirut. I don't think there is any solution as regards so-called terrorism in a non-nation where the whole atmosphere is terrorism and we are in there with other foreigners. I am therefore not speaking about the attack on the Marine bunker, which I think was part of outright hostilities. I am speaking of the U.S. embassy that was bombed, and also the case when our Ambassador Frank Meloy was assassinated 6 or 8 years ago.

Mr. EDWARDS. How about the taking of our hostages in Iran? Was that terrorism?

Mr. MAECHLING. I think that was just irresponsible foreign action by an armed mob employed or stimulated—egged on—by a fanatical nonwestern government. It is absolutely contrary to international law. But I don't think that is what we are talking about. I think what we are talking about is the terrorism that originated in the nineteenth century such as the attacks in Russia when they threw bombs and blew up Alexander II, anarchist programs by fanatical political groups in advanced societies designed to destabilize and throw "off base" the political structure or perhaps to achieve some visionary political end.

Basically we are talking about political conspiracies, and I think that that is the instinctive reaction of the people when they think about terrorism. Unfortunately by now of course the term has gotten so broadly used that we forget what it really means. In other words, I am dubious about the connection of this legislation the professed aim of the State Department in trying to protect its people overseas.

Mr. EDWARDS. Well, we are very concerned over the plight of the day-to-day embassy employees overseas. It is a difficult position, as anyone who has visited India recently will understand. They live a

life that at least has a great deal of action, much more perilous than you and I live on a day-to-day basis, and the work that police do on a day-to-day basis to protect the embassy and the American personnel has been improved enormously. But it is still, I assure you, only a third of the way.

You could go to an embassy in the Far East and there will be driveways without any real protection at all right to the embassy, where trucks could go up and everything else.

Mr. MAECHLING. Now, these are basically defensive measures, security measures to protect personnel. I would assume that an effective antiterrorist program would go much further and would attempt to prevent the tragedy before it occurred.

Mr. EDWARDS. Would it be in cooperation with the governments?

Mr. MAECHLING. It would have to be in cooperation with the intelligence services of other governments. And this gets politically so complex. I mean you have countries like Argentina—to a large extent El Salvador—where you have state terrorism. You have gangs from the security forces out at night in government cars without license plates who are deliberately engaged in intimidating the population for a political purpose.

In one country in Latin America (Guatemala) the people who are attacked and killed by these gangs are not what the government says are terrorists. They are legitimate politicians of a most inoffensive and nonviolent type who, if they were to reach power legitimately would constitute a threat to the dictatorship or the military government, so if we have to work with these intelligence services, why, we would have to watch our step. We would become implicated in organizations like the White Hand of Guatemala which is apparently still operating and responsible for thousands of civilian deaths.

Mr. EDWARDS. Thank you.

Counsel, do you want to ask a question?

Mr. KIKO. Yes.

On page 4 of your testimony you state: "My objection to the bill is not to its purpose, which is laudable and in a modest way necessary, but to its scope and language." And then on page 7 and 8 you state: "There is no class of terrorist crime or outrage that is not amply covered in State and Federal criminal codes. Existing statutes in the munitions and export control field already serve most of the purposes of H.R. 5613 or could be amended to do so."

These seem to be contradictory statements. How do you reconcile them?

Mr. MAECHLING. I think they are contradictory. I think you are right. I think in this sentence on page 7 I shouldn't have said "not amply covered." There should be the exception for the apparent lacuna in the statutes that has moved the executive branch to try to fill the gap.

Mr. KIKO. Do you think that there is a gap? You stated "in a modest way."

Mr. MAECHLING. Yes. From my study of it, I think there is a legitimate gap. But as I said to the chairman, I don't think it goes to the problem. In other words, I think that the target a statistically insignificant group—Americans or U.S. residents that make it a practice to support terrorism overseas.

Second, I think that if that support, such as it is, were withdrawn, the terrorism in question wouldn't abate one iota.

Mr. KIKO. Well, "in a modest way necessary," what would you propose? That is what your statement was, "in a modest way necessary to legislation."

Mr. MAECHLING. Well, I said that if both the executive branch and the legislative branch agreed that some measures, to fill this gap are necessary, then I think one could tinker with 5613 by including a much tighter definition of terrorism and making the determinations of the Secretary of State subject to challenge in the courts both as to the class of countries, organizations, entities that find themselves on a black list at any given period of time and the class or category of offending support that is objected to.

Mr. KIKO. So would you amend the current statutory definition of the current law of terrorism, I guess, because of what your definition of terrorism is?

Mr. MAECHLING. Well, in general I feel that in terms of the stated purpose of this legislation this is a trip that is not necessary. Much of this could be achieved through an amendment of the Criminal Code to tighten up the lacuna resulting from the "Terpil Wilson" prosecution after being thoroughly investigated by the Justice Department. The definitions need to be tightened up and the Secretary of State deprived of his unilateral mandates.

Mr. KIKO. I have no further questions.

Mr. EDWARDS. Thank you very much, Mr. Maechling.

Next Tuesday, August 7, we are going to hear from the State Department and from the Department of Justice.

The subcommittee is adjourned.

[Whereupon, at 11:30 a.m. the subcommittee was adjourned, to reconvene on Tuesday, August 7, 1984.]

ADDITIONAL MATERIAL

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, August 6, 1984.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: This is to express appreciation for your agreement to our request for a postponement in your scheduled August 7 hearing on H.R. 5613 relating to assistance to terrorist groups or nations supporting terrorist groups.

As you know, we believe that there is a serious gap in the law which makes it impossible to exercise any significant control over services to terrorist organizations. Although H.R. 5613 reflects our view as to a method of remedying this problem, it has become clear to all concerned that substantial adjustments will be necessary before such legislation can be enacted. Moreover, our efforts in recent weeks to develop a consensus in this area have demonstrated that it may be some time before a workable alternative to H.R. 5613 can be developed. We have concluded, therefore, that it would not be productive to have further hearings on this issue during the few weeks remaining in this Congress. Rather, we believe that it is preferable to begin anew early in the next Congress in an effort to address the problem that all of us seek to remedy.

We appreciate your willingness to consider H.R. 5613 and hope that we can submit a revised proposal to you early next year for your consideration. In the meantime, we stand ready to brief you and other Members of the Subcommittee or

staff concerning our continuing efforts to arrive at a consensus on this very difficult issue.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General.

U.S. DEPARTMENT OF STATE,
Washington, DC, October 19, 1984.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil Constitutional Rights, House of Representatives

DEAR MR. CHAIRMAN: Thank you for your letter of August 15th to the Secretary in which you invited the Department to submit statements and materials which the Department was prepared to present to the Subcommittee at the hearing scheduled on August 7th but postponed at the request of the Department of Justice.

Enclosed is a copy of the prepared testimony of Ambassador Robert M. Sayre for inclusion in the record.

Sincerely,

ROBERT F. TURNER,
Acting Assistant Secretary,
Legislative and Intergovernmental Affairs.

Enclosure.

STATEMENT OF AMBASSADOR ROBERT M. SAYRE

Mr. Chairman, members of the subcommittee, terrorism has been a growing problem since 1968 when our Ambassador to Guatemala was assassinated. Terrorist incidents reached a plateau in number in 1979. The number of recorded attacks has not varied significantly since then. In 1983 there were more than 500 attacks by international terrorists of which more than 200 were against the United States. This was only the tip of the iceberg because there were at least as many threats and hoaxes. These are a cheap way to create an atmosphere of fear and they also absorb a substantial amount of our resources as well as those of the host governments. Beyond this are national or indigenous terrorist activities which probably exceed by a factor of one hundred what we define as international terrorism.

This problem is not confined to any geographical area. Fortunately, inside the United States we experience relatively few incidents: The problem for the United States is primarily in other areas of the world. The largest number of incidents overall and against the United States occur in Europe followed by Latin America and the Middle East.

Why are we so concerned? Let me summarize briefly:

In 1983 more Americans were killed and injured by acts of terrorism than in the fifteen preceding years for which we have records.

The figures for the first six months of 1984 show a significant increase in the number of incidents: There are already 313 for the first six months of 1984 whereas we had 500 for all of 1983.

The attacks in 1983 were unique in the sheer violence of them. From our point of view the worst tragedies were the destruction of our embassy and the Marine Barracks in Beirut and of our embassy annex in Kuwait. But we were not the only victims. There was the bombing at Harrods in London. The bombing at Orly airport in Paris. The murder of four members of the South Korean cabinet in Rangoon. The bombing destruction of a Gulf Air Flight in one of the Emirates and others.

Closely tied to the rising violence has been the indiscriminate targeting of innocents—people who have no known role in either causing or redressing the alleged grievances of the terrorists.

A source of growing concern is the extensive travel of terrorists outside their own countries and regions to commit acts of terror abroad. Again, intelligence tells us that this occurs extensively in the Middle East. Europe and Latin America but reports are increasing of such travel to the U.S. And we also know that some Americans are engaged in supporting the terrorist activities of foreign states and groups that engage in terrorism.

The most disturbing trend of all is the extent to which the agencies of foreign states are engaged in terrorist acts. Seventy or more incidents in 1983 probably involved significant state support or participation. No longer the random acts of isolated groups of local fanatics. Terrorism is now a method of warfare, no less because it is undeclared and even (though not always) denied.

Some forty percent of all the incidents and a large proportion of all the threats and hoaxes are aimed at the United States—our diplomats, members of our armed forces, our businessmen, or other Americans.

We are now faced with a problem which is of major and growing significance. The problem is not only represented by the grim statistics but by the threat that terrorism represents to civilized life. The main target of terrorists is not just individuals but the basic interests and values of the democracies. It is a form of low-level warfare directed primarly at Western nations and institutions and their friends and allies. We are the targets because our belief in the rights of the individual is an obstacle to those who wish to impose their will on others. And it is precisely because the democratic nations respect the rights of the individual and maintain the most open and responsive societies that they are so vulnerable to terrorists. The goal of the terrorist is to create anarchy and disorder. For it is out of disorder that he hopes to instill fear, discredit governments, demoralize societies, or alter national policies.

What are we doing?

We are working with our closest allies to develop a consensus on how we deal with international terrorism and the security problems it presents for us. The consensus embodied in the declaration in London on June 9 is heartening. In earlier Summit Seven meetings we had addressed specific issues such as aircraft hijacking and protection of our diplomats. We have made considerable progress in these areas. But on this occasion we discussed the basic political problem of states engaging in terrorism and we acknowledged the international character of the problem. We noted that in our respective countries we have gaps in legislation for combating terrorism.

We are working in this Administration to review and apply the whole range of options available. We do not have any single answer that we think will work all the time. What we must do, therefore, is attack the problem on many different fronts:

We have organized ourselves better within the executive branch to deal with these problems. Within the Department of State the responsibility for policy, planning and operations on these matters has been consolidated in the Office of the Under Secretary for Management. The policy and planning for the Department as well as the government in general is the task of the Director of the Office for Counterterrorism and Emergency Planning while the operations are in the Office of Security.

We have added more resources to intelligence collection and we have strengthened cooperation with other governments. We have also streamlined our procedures for advising our posts abroad of threats and analysis of their security problems. We believe that this procedure is now working much better. We believe that we need to do more.

We have stepped up our training and are also conducting exercises for our personnel overseas on the types of terrorist incidents they might have to deal with. We have, for example, added segments in every appropriate course at the Foreign Service Institute on how to deal with such problems.

The Congress approved last year a program which will permit us to train foreign law enforcement officers on how to deal with terrorist acts. We are actively engaged in implementing that program. Although this program is designed to help other governments deal with these problems as it affects them, it should also improve considerably the response from other governments when we need help at one of our posts.

We are carrying out security enhancement programs at all of our high-threat posts. We appreciate greatly the consistent support we have received from this Committee in that effort.

We have also taken steps to improve our ability to respond when incidents occur overseas. We have teams available to assist on crisis management, security, communications and other matters.

The cooperation of other governments often depends on how responsive we are on the security problems their diplomatic missions may have in the United States. The Congress has approved legislation which will assure that we have a comprehensive program to protect foreign officials, not only in Washington and New York City, but other places in the United States. We are seeking funds for that program in the current budget.

We are actively seeking to improve our capability to prevent attacks against our interests abroad. The London Summit Declaration discussed, among other things, "closer cooperation and coordination between police and security organizations and other relevant authorities, especially in the exchanges of information, intelligence, and technical knowledge." And within the United States Government we are continuing to study other ways and means of deterring or preemptively dealing with a range of terrorist threats in conformity with existing law.

Finally, we seek to fill some existing gaps in US Law.

The legislation which the President submitted to the Congress will not fill all those gaps for the United States, but it will fill some of them. Part of the legislation we have proposed is to implement two international conventions that the Senate has previously approved. These are relatively noncontroversial, but it is time to get the job done. The two other bills deal with areas of law where we consider that legislative improvements can help in the fight against terrorism. We welcome this opportunity to work with the Congress in finding the best legislative answers possible to the complex questions that terrorism poses. The draft of the bill on training and support services has been modified significantly to take account of Congressional comments.

We know that Americans have and are assisting states to carry out terrorist activity. We want to stop this but at the same time we want to have a system that is feasible to administer and does not interfere in legitimate activity. The Administration proposal is modeled after existing provisions of the Export Administration Act which requires the Secretary of State to designate states that engage in terrorism. Once a state is designated, US exporters are required to obtain a license before exporting items of military potential to that country. There are civil and criminal penalities for failure to do so. There has been some suggestion that the proposal before you be modified to require a license to provide specified services to designated countries. We are considering that.

The legislation before you represents a modest but necessary step. It is an essential step because the problem will not go away: this is certainly not the last you will hear about the problem of terrorism.

But we need your help. We owe it to this country to do whatever is necessary to protect our people, our interests, and our most basic principles.

Thank you.

CENTER FOR CONSTITUTIONAL RIGHTS,
New York, NY

Re: Terrorism Legislation August 6, 1984.

JACK BRILEY,
House Judiciary Subcommittee on Civil and Constitutional Rights House Office Building Annex I, Washington DC.

DEAR JACK: Enclosed is a draft of the testimony we prepared for the Subcommittee. It includes a long section on recent FBI practices regarding solidarity groups and other organizations engaged in dissent on foreign policy issues. We believe these exemples, found in only 10 days, represent a major escalation of FBI harassment. We are planning to continue the gathering of such material. We would encourage the subcommittee to hold hearings on this particular aspect of FBI practice.

Additionally, I understand from the Subcommittee on International Security and Scientific Affairs that the revisions of H.R. 5613 are under serious consideration and that there is a probability of mark-up in September. We still believe these so-called narrowed bills are extremely dangerous and would encourage the Subcommittee to continue to assert jurisdiction and hold hearings.

Thank you for your consideration to date.

Very truly yours,

MICHAEL RATNER.

DRAFT TESTIMONY
on H.R. 5613

"Prohibition Against the Training or Support of Terrorist Organizations Act of 1984"

for the House Judiciary Subcommittee
on Civil and Constitutional Rights

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August 6, 1984

The Center for Constitutional Rights (CCR) thanks the Committee for the opportunity to testify on H.R. 5613 (S. 2626), a bill "to prohibit the training, supporting, or inducing of terrorism," and related draft bills. CCR is a non-profit legal and educational corporation founded in 1966 and is dedicated to advancing and protecting the rights and liberties guaranteed by the Bill of Rights. Since its inception CCR has taken a special interest in the fight against illegal F.B.I. and police surveillance and in favor of protection of dissent. This testimony is also submitted on behalf of the National Lawyers Guild, a nationwide membership organization of some 7,000 lawyers, legal workers, and law students. The Guild is dedicated to protecting the right to dissent.

Since the introduction of H.R. 5613, two subsequent drafts were introduced to meet the strong civil liberties objections to the original bill. However, these amended bills do little, if anything, to remedy the serious constitutional and civil liberties problems of this legislation. These bills cannot be tinkered with. They cannot be saved. They are wrong in both conception and execution. They represent a profound danger to democratic freedoms which in the long run may be greater than the evil to which they are addressed.

The three bills operate similarly: the Secretary of State is given unreviewable discretion to designate a country [faction or group] as perpetrating or sponsoring "international terrorism." Although the term "international terrorism" is defined in the legislation, there is no check on the Secretary's

abuse of this authority. This presents serious problems because of the highly politicized use of terrorism by the Administration. Once the Secretary designates a nation or group terrorist, the legislation criminalizes a wide range of activities, undertaken anywhere in the world, by United States persons dealing with the country, faction or group. These activities need have no relationship to international terrorism, nor need they further any criminal enterprise. Indeed, speech and association, entirely protected by the First Amendment and not furthering any criminal enterprise would be criminalized by these statutes.

Such an assault on civil liberties and individual rights in the name of combatting international terrorism, is not only patently unconstitutional but unnecessary and unwise. There are already numerous criminal laws which penalize actions in aid of sabotage, assassination and hostage-taking. The problem of US persons aiding such activities overseas is miniscule; it certainly does not need the remedy of this sledgehammer legislation. More importantly, to deprive citizens of their individual constitutional and democratic rights in the name of combatting international terrorism sets an extremely dangerous precedent. As one well-known expert on terrorism wrote regarding the importance of maintaining constitutional rights:

> It cannot be sufficiently stressed that this aim overrides in importance even the objective of eliminating terrorism and political violence as such. Any bloody tyrant can "solve" the problem of political violence if he is prepared to sacrifice all considerations of humanity, and to trample down all constitutional and political rights.

P. Wilkinson, Terrorism and the Liberal State (London: Macmillan, 1977)

The criminalization of a wide variety of protected conduct may not even be the worst aspect of this legislation. If these bills pass, the FBI and the CIA will be provided with a pretext to investigate and spy on a wide variety of domestic groups who attempt to influence foreign policy toward various countries and factions. There presently exist in the US numerous such groups, organizations and parties working to change or modify US foreign policy toward, among others, Central America, South Africa, ANC, SWAPO, Israel, the PLO, the Philippines and Northern Ireland. These groups have a First Amendment right to engage in their activities free from FBI harassment and surveillance.

Their protected activities will be in jeopardy under this legislation. For once a country, group or faction is designated as supporting or perpetrating international terrorism, any activities by domestic organizations, even if they may urge a change in US policy toward the designated country or a change in policy in general, will fall under suspicion. So, for example:

> if the African National Congress is designated, a domestic group espousing similar aims--the end of apartheid--would be subject to FBI investigation
>
> if the provisional wing of the IRA is designated, a domestic group espousing freedom for Northern Ireland would be subject to FBI investigation.

This scenario is not chimerical. Already groups and organizations seeking to change US foreign policy have come under FBI scrutiny. Frequently this surveillance is justified as an attempt to root out or find terrorists. Anti-terrorism is already being used as a scare tactic to chill free speech and association among groups where there is no evidence of violence

or criminal activity. As the examples below illustrate, there is already a serious problem of FBI overreaching in the name of combatting terrorism. Passage of this legislation will be an invitation to the FBI to declare open season on dissent.

Patterns of Current FBI Investigation

Let us be honest about the current state of affairs. There are growing fears that the aggressive military position the Administration has taken in Central America and elsewhere will result in deeper U.S. involvement in a foreign war. These are legitimate concerns that every U.S. citizen has a right to voice and act upon. The bills under consideration are the Administration's attempt to thwart this dissent. They are only the most recent in a series of measures designed to free the investigative hands of the FBI, the CIA, the DIA and other intelligence-gathering agencies. The measures include the Executive Order No. 12333 on Intelligence, promulgated on December 4, 1981; the revised and liberalized FBI guidelines; and National Security Decision Directive 138, signed by the President on April 3, 1984.

Of course the FBI does not advertise its activities. However, in less than two weeks we were able to document a pattern of current FBI harassment and surveillance of individuals and groups engaged in solidarity work with Central America, the Mideast, Cuba, Northern Ireland and Vietnam. The examples which follow are not isolated instances, but establish a pattern of harassment of dissent using the pretext of investigating

terrorism. The McCarthy witch hunts of the 1950's labelled people communists in order to investigate their legal political activities, and ruined many persons' lives without ever showing criminal activity. In the Reagan 80s, the administration is substituting the word "terrorist" for "communist." FBI visits are accusing activists of terrorism to their families, neighbors and employers. FBI abuse is geographically ubiquitous, national in scope, from New York City to Harlingen, Texas, and from Los Angeles to Anchorage, Alaska. In none of these incidents is there any evidence of illegal conduct much less terrorist activities. In no case has any indictment or prosecution resulted from the investigation.

We urge this committee to investigate these FBI abuses.

In our presentation of incidents we have omitted all names of individuals out of concern for further harassment. The case of individuals opposing current Central America policy is illustrative:

Central America:

-A Chicago staff person for the Human Rights Commission of El Salvador has been personally harassed by the FBI; an old friend was visited by the FBI who asked what terrorist groups the person was connected with. Other friends were visited and questioned, as were his brother, wife and children. The FBI offered the person help with immigration status if he would cooperate.

-A Los Angeles refugee project was visited by FBI agent Berrios five times between mid 1982 and early 1983, the FBI

stating that the project was screening and hiding people to go back to fight in the guerrilla movement.

-A San Francisco travel agency which arranges travel to Nicaragua received forged letters cancelling an activist's arranged travel plans to Nicaragua; such letters track FBI practice during COINTELPRO;

-On June 1, 1984 a 63-year-old Michigan woman who travelled to Nicaragua as part of a coffee-picking brigade received a phone call from FBI agent Dennis Evans asking her to meet with him; When she asked why he wanted to talk to her, the agent said that our government was not friendly with the Nicaraguan government and was worried about terrorism; he wanted to know if representatives of the Nicaraguan government had contacted her while she was there.

-In February, 1984, a Quaker pacifist spoke at an anniversary church service in Anchorage, Alaska, commemorating the assassinated Salvadoran Archbishop Oscar Romero. Two months later FBI agent Marchant visited the parish priest asking what organization the Quaker and his wife belonged to, expressing concern about terrorist connections. They stated they would do a computer check on the couple; they questioned whether the couple might engage in violent acts against the President, who was to visit the area a short time later. Subsequently the agent admitted that the couple had been cleared of suspicion. A Catholic nun and community worker were also questioned.

-In San Jose, California, a woman active in Central America solidarity work received a letter from the telephone company in

June, 1984, informing her that her telephone records had been subpoenaed by the FBI in a drug investigation; the local U.S. Attorney denied having asked the FBI to investigate. In March 1983 the same woman was approached at work by FBI and secret service agents, who called her every two weeks for months.

-In December 1983 and January 1984 12 or 13 persons associated with the solidarity movement in the Milwaukee area were visited by FBI agents. It appears that the main target of the investigation was CASC (Central America Solidarity Coalition), which includes both church sanctuary groups and the Committee in Solidarity with the People of El Salvador (CISPES). The agents alleged a link between CISPES and bombings in New York and Washington DC in the fall of 1983; they read a list of names of CASC members and implied that they may have had friends with links to terrorists in the past; they described solidarity groups as "fronts for illegal activities," and "fronts for bringing leftist guerrillas" to the U.S. They asked about the group's finances and about a Milwaukee interfaith delegation to Nicaragua in December 1983. The FBI further ignored requests by attorneys for people receiving visits to cease these visits, and refused to state the basis for their visits. They investigated the bank records of CASC, and visited members at their places of employment. One member, asked if CASC was "involved in terrorism," replied, "I told them CASC is concerned with peace, not terrorism."

-The Committee in Solidarity with the People of El Salvador (CISPES) has been repeatedly harassed and inquired about in

connection with bombings in Washington DC and New York, yet no evidence or charges against them of any kind have been brought. Members and associates have been visited repeatedly, and told that CISPES is involved in terrorist activities: in Austin, Texas, the FBI visited the ex-husband of a CISPES member in May, 1984, asking about the wife's activities and requesting information about CISPES. The CISPES member was also visited and refused to answer questions about funding sources and control by a foreign power. Again, in May, 1984, a local CISPES chapter member from Tampa, Florida was visited by the FBI. Under the pretext of investigating harassment by a right wing group, the agent informed the subject that there were terrorists in CISPES. Freedom of Information Act documents indicate that CISPES has been infiltrated by the FBI.

This kind of incident is also taking place on a regular basis for activists concerned with US foreign policy toward other nations and organizations that the Reagan Administration has indicated may be labelled terrorist:

Cuba:

-Two Cuban-American women from the New York area who are activists known to support the normalization of US-Cuban relations were visited by FBI agent Federico Villalobos in August, 1983. After being requested by the womens attorney not to harass them further, the agent contacted the mother of one of the women and the father of the other. The agent told the father he was doing a study of the Cuban community in the US, and obviously possessed extensive information about the father's

life. He then approached one of the women's cousins, as part of what he described as a "routine investigation."

-Another woman, an artist not involved in political activity, was awakened early one morning in November, 1983 by an FBI agent asking her about her trip to Cuba with a group of artists. Also in NY member of the progressive Cuban community were visited by FBI agents Dougherty and Llewellan; The building superintendent of another Cuban-American was visited by the FBI, who told him not to inform the tenant of the visit.

Mideast:

-In July of this year an FBI agent visited an Iranian student, member of the Iranian Student Association, allegedly to prevent violence at the Olympics but apparently much more interested in Iranian student groups, demonstrations and other individuals, and offering immigration help in exchange for cooperation.

-In November, 1983, the mother of a Palestinian was approached by the F.B.I. with a letter from an aunt in the West Bank to the son that they had opened; the FBI threatened to inform the Israeli government of the aunt's land deals on the West Bank if the mother did not cooperate. One week later the agent returned and spoke to the son about Palestinians in military training in the U.S., offered him help getting into Harvard Medical School if he cooperated. Among Palestinians, the F.B.I. pattern includes repeated visits to family and employers, coupled with promises of immigration and other help in exchange

for information about assassinations and terrorist groups in the Middle East fighting each other in the U.S.

On December 13, 1983, an FBI agent called a woman who is active in the National Arab American Association in Birmingham, Alabama. Her husband is of Arab descent. The FBI agent questioned the woman as to her involvement and role in the N.A.A.A., and also questioned whether the N.A.A.A. was organized for the "betterment of the U.S." The agent told the woman she had been traced through the license plate on a car parked outside an NAAA meeting in a private home in Knoxville, Tennessee and one in Louisville, Kentucky.

A professor in Birmingham, Alabama, who was a Fulbright scholar in Jordan, and is active in organizing for peace in the Middle East, received a phone call sometime between Christmas and New Year's Day 1983-84. The agent requested a meeting with her. The agent, a woman, stated that the FBI was doing a routine check on all people who had gone to the Middle East. The agent said the FBI was concerned with US internal security, and wanted to protect the woman, a prominent local citizen, from "running into any difficulties." The agent asked if anyone had ever asked the woman to "do anything." When the professor asserted that the question was ridiculous, the conversation ended. In addition, the professor's Middle East-related mail from Washington, such as the Journal of Palestine Studies, is often received opened and resealed in plastic bags.

Vietnam:

-The Association of Vietnamese in the United States had been visited on a regular basis by the FBI. On every occasion, members of the Association have refused to talk to the FBI. The last visit occurred two months ago.

Northern Ireland:

-In the last six months supporters of Northern Ireland's independence have been visited at their homes and workplaces by FBI agents seeking to "determine who are the real KGB agents." One agent told an activist that he had seen films of people entering a courthouse for a criminal trial as part of an FBI training session. In late 1983 a Washington, DC resident who travelled to Northern Ireland was visited in her office by an FBI agent accompanied by a military intelligence agent, who questioned her for 2½ hours but told her not to mention the visit.

The Danger of the Designation Procedure

Under all of the proposed bills the Secretary of State makes the determination whether a country is perpetrating or sponsoring international terrorism. This determination is solely within the discretion of the Secretary of State. The designation procedure presents a serious political and legal problem as well as an unwarranted increase in executive power.

It is especially dangerous to permit the Executive to label certain countries, factions or groups terrorist. This Administration has a highly subjective and politicized view of what constitutes "terrorism:" its attitude is, "If I don't like

it, call it terrorism." For example, to Jeanne Kirkpatrick, the Sandinistas are "promoting terrorism" in El Salvador, "terrorism" referring to rebel activities. On the other hand, the activities of the death squads, the Treasury Police and the Army in El Salvador which have resulted in over 40,000 civilian deaths, are not deemed "terrorist" by this Administration. This Administration will not label Chile, Guatemala, El Salvador, South Africa or the Philippines terrorist. If past statements are a guide it may apply that label to Nicaragua, Cuba and the Soviet Union. To delegate such discretion to the Administration, Congress practically guarantees that designation of countries or factions as terrorist would be based primarily, if not solely, on partisan political considerations.

Vesting such broad discretion in the Executive could essentially end healthy, robust debate regarding foreign policy in the United States. For example, many groups and individuals in the United States disagree with the Reagan Administration's foreign policy toward Lebanon, Southern Africa, or Central America. This debate and the right to dissent from the Administration's policies, are critical to U.S. democracy and to the peoples' ability to change such policies. Labelling a target of the Administration's foreign policy as terrorist would make it practically impossible to advocate a change in policy with respect to that country or faction.

That such labelling and stigmatization can have a dramatic effect on dissent has been recognized by the Supreme Court. In Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123

(1951), the Supreme Court was concerned with an executive order authorizing the Attorney General to make determinations as to whether certain groups were "totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States...." In an opinion limiting the right of the Attorney General to make such determinations, the Court pointed out the harm that such designations could cause: "Their effect is to cripple the functioning and damage the reputation of those organizations in their respective communities and in the nation." For example if the Soviet Union were designated as sponsoring alleged terrorist activities of the African National Congress, would not such labelling seriously impede open and vigorous dissent regarding U.S. policy in Southern Africa, and end the right of US persons to give open support to the ANC?

All drafts of the legislation make the Secretary's findings both as to facts and as to the designations conclusive. Neither can be challenged in an affirmative litigation or as a defense to a criminal prosecution. Thus a person could be convicted and sentenced to ten years in jail solely on a determination subjective at its root, highly charged politically, and that broadly sweeps into its ambit protected speech. As stated in Joint Anti-Fascist Refugee Committee v. McGrath, such designations cannot be made if "patently arbitrary or contrary to fact." The Court further found that the organizations so designated could challenge such arbitrary classifications. The

concurring opinion in Joint Anti-Fascist Refugee Committee v. McGrath pointed out that such designation without notice and a fair hearing ran afoul of the due process clause of the Fifth Amendment.

The proposed legislation obviously permits designations that are arbitrary and without notice and hearing. It is one matter to designate a country and not give that country the opportunity to litigate the appropriateness of the designation. It is quite a different situation, on the basis of that designation, to convict a U.S. person of a crime with a possible ten-year jail sentence and not permit any challenge to the arbitrariness of the designation.

The overbreadth of H.R. 5613 is quite apparent when it is contrasted with conduct which authorizes the Attorney General to engage in foreign intelligence surveillance under the Foreign Intelligence Surveillance Act, 50 U.S.C 1801 et seq. That act permits wiretaps of groups engaged in international terrorism or activities in preparation therefore. However, there are crucial differences which demonstrate the all-encompasing nature of the proposed terrorism legislation. To engage in electronic surveillance on a group engaged in international terrorism the Attorney General must have special approval by the President of the United States, probable cause to believe the group is engaging or proposing to engage in terrorism, and must apply to a special court. Most important, the target of the electronic surveillance is the actual group involved in violent acts or acts dangerous to human life.

On the other hand, the terrorism legislation makes it criminal to carry out activities which may, in and of themselves, have no relationship to terrorism. The designation of the country or faction is solely in the discretion of the Secretary of State and is subject to neither court approval nor review. Thus, wiretapping can be directed only against those actually involved in international terrorism, while a person can be convicted of a crime carrying a ten-year sentence even if they themselves have absolutely nothing to do with terrorism.

H.R. 5613 Broadly Stifles Foreign Policy Dissent

As originally drafted H.R. 5613 (S. 2626) was sharply criticized as unconstitutionally restricting the exercise of speech and associational freedom protected by the First Amendment. In particular the bill was criticized for:

1. Including within its prohibitions factions or groups as well as governments;

2. Prohibiting association with groups having both legal and illegal aims;

3. Broadly prohibiting the exercise of fundamental freedoms of political speech, association and expressive conduct;

4. Widening the scope of FBI investigation of political activities that are peaceful and lawful.

None of these serious legal problems have disappeared in the "Revised Working Draft of June 12, 1984," or in a subsequent third revision. The revisions eliminate the terms "faction" and "group" and ostensibly only permit nations to be designated

terrorist. If we believe the Administration, this change means that the African National Congress, SWAPO, and the FDR/FMLN could no longer be designated by the Secretary of State. Thus, support for the aims of these factions or groups would supposedly no longer be criminalized.

This claim is deceptive. The bill's prohibitions run not only to designated governments' armed forces or intelligence agencies, but "to any agent of such forces or agencies." If the Secretary of State designated Cuba or the Soviet Union, then dealing with their agents would also be prohibited. Current Administration statements claim that Cuba is sponsoring the FDR/FMLN and the Soviet Union is sponsoring ANC. Thus, whatever is prohibited with regard to Cuba or the Soviet Union would be prohibited with regard to the FDR/FMLN or the ANC.

The new versions, like the old, still contain blanket prohibitions of association with any nation or its agents who engage in both legal and illegal activities. Contrary to Supreme Court precedent, the bill does not require a showing of specific intent to further the unlawful aims of the nation or its agents. See Elfbrant v. Russell, 384 U.S. 11 (1966). The bills criminalize all training, logistical, mechanical, maintenance or technical service to the armed forces or intelligence agencies or their agents, even if these activities have no connection with any act or likely act of terrorism, in fact even if they only involve protected speech.

The new bills eliminate from their penal provisions the prohibition on acting "in concert with" and providing "similar

support services" to the designated country or agent. These terms were sharply criticized as raising serious due process, vagueness and overbreadth problems. However, the remaining provisions on "training, logistical, mechanical, maintenance or technical service," are similarly vague and overbroad. They would encompass taking a member of the armed forces or intelligence agencies to dinner, having a conversation with them about politics or the economy. As the activities need have no connection with terrorism, such language prohibits any relationship, even purely associational, with the armed forces or intelligence agencies of a designated foreign government.

The broad definition given to armed forces and intelligence agencies and the inclusion of agents of either of these entities strengthens this conclusion. Intelligence agency includes entities which engage in the "collection, analysis or dissemination of information about activities, capabilities, plans, or intentions of governments, organizations or persons, in whole or in part by covert means." This definition could include almost any person who works for a government. Government entities receive quantities of information, much of it covertly. The state department or foreign ministry of a government receives information from other agencies obtained by covert means. The definition in the legislation would deem all such departments or ministries intelligence agencies.

Almost every entity and person attached to a government that is designated terrorist could be considered a member of an intelligence agency under the definition in the proposed

legislation. The definition is so broad and vague that it would frighten off any US person who merely desired friendly communication with foreign diplomats or officials. This vagueness and overbreadth clearly prohibits activities protected by the First Amendment.

The definition of armed forces is equally all-encompasssing. The term is defined to include any regular, irregular, paramilitary, or police forces. This Administration considers almost every able-bodied citizen in socialist or communist countries a member of the armed forces. For example, the Cuban construction workers in Grenada were considered to be members of the armed forces. In Nicaragua, every member of the militia might well be considered part of the armed forces. This broad definition would outlaw a number of activities once a country was designated terrorist. Work brigades are frequently sent to Nicaragua to better understanding between the two countries and to help in the coffee harvest. Much of the coffee, particularly on the northern border, is picked by Nicaraguans who are members of the militia, or who are protected by members of the militia. Might not aiding in the harvest constitute giving logistical aid to the armed forces either because fewer members of the militia are required to pick coffee or because Northamericans picking coffee might give some protection to the Nicaraguan coffeepickers by their very presence. Moreover, the coffee would obviously be providing some foreign exchange for Nicaragua. Some of this money would surely go to aid in the armed forces. This would run afoul of the prohibition on giving maintenance to the armed

forces. In effect, all foreign trade could be cut off with a designated country because trade makes money and money is used for the armed forces.

The recent gift to Nicaragua of "instruments for health and life, not implements of war," would also run afoul of the statute. The ship contained newsprint which would be used by the Nicaragua state-owned as well as private newspapers. These newspapers advertise the draft and other military matters. Provision of newsprint for such a purpose could easily fit within the definition of giving logistical or maintenance support to the armed forces.

Conclusion

Because of its breadth the legislation will be used for fishing expeditions to intimidate those whose political views the Administration does not approve of. This was the experience with recent terrorism laws in England where 207 of 279 persons detained were not charged and where even the selling of Irish Republican newspapers "became grounds for reasonable suspicion of support, assisting, or contributing to a proscribed organization." D.R. Lowry, Draconian Powers: The British Approach to Pretrial Detention of Suspected Terrorists, 9 Col. Human Rts. L. Rev. (1977) at 201. These bills leave the unmistakeable impression that the administration is exploiting the terrorism issue to enhance its own political powers and impede legitimate opposition, particularly to its much-disputed foreign policy. Passage of even modified versions of these bills would be a serious setback for constitutional liberty.

REPRESENTATIVE DON EDWARDS,
Chairman Civil and Constitutional Rights Subcommittee,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVE EDWARDS: Under the guise of combatting "terrorism," the Reagan Administration has introduced in Congress two bills (HR 5612 and HR 5613) which pose a serious threat to our constitutionally guaranteed rights of free speech, association and political dissent.

The first of these, HR 5612, allocates an unprecedented and unreviewable reward (up to $500,000) for information on terrorists. Such rewards have serious potential for abuse by unreliable political informers. The second, HR 5613, would make it illegal for an American citizen to provide "support services" to any country or political group which the Secretary of State has designated as "terrorist." In its current form, HR 5613 gives the Secretary of State sole discretion to decide which countries or political groups are "terrorist." Furthermore, the bill prohibits any challenge to the Secretary's designation.

While modifications to HR 5613 are currently being considered which may delete from the legislation the designation of groups, and which will require the Secretary of State to consult with Congress before he designates a foreign government as "terrorist," we firmly believe this legislation to be unnecessary and a threat to our civil liberties.

While we condemn random acts of violence, existing laws already prohibit the actual criminal acts involved in terrorism, such as bombing and murder, and provide mechanisms for rewards to informers. What is new and of greatest concern is the criminalization of a vaguely defined "support services." Since neither of these bills is necessary to combat terrorism, their primary effect would be to chill dissent, association, and many forms of humanitarian assistance which any given administration might find objectionable.

The Reagan Administration has adopted policies which affect adversely a broad range of human rights. The rhetoric of "anti-terrorism" has become the administration's weapon in its campaign against political dissent, especially in matters of foreign policy and international human rights. With the pretext of "combatting terrorism," government agencies have been harassing organizations, religious leaders and private individuals in the peace movement for lawful and constitutional activities. Members of the religious community, working with Salvadorean refugees, for example, have been visited by FBI agents and warned not to continue their humanitarian assistance program.

"Anti-terrorism" is becoming a new form of McCarthyism. It is being used as a scare tactic to chill free speech and association. Our democratic processes are threatened by this climate of fear. The aim of HR 5612 and HR 5613 is to exploit this fear in order to stifle legitimate political dissent. We urge you to oppose HR 5612 and HR 5613.

Sincerely yours,

Stephanie Farrior, Washington Director, National Committee Against Repressive Legislation; *Eqbal Ahmad, Fellow, Institute for Policy Studies; *Robert Z. Alpern, Director, Washington Office, Unitarian Universalists Association; *Munir Bayoud, President, United Holy Land Fund; Dewey M. Beegle, Professor of Old Testament, Wesley Theological Seminary; *Dale Bishop, Middle East Secretary, United Church Board for World Ministries; *Robert L. Borosage, Director, Institute for Policy Studies Center of Concern; Frank Chapman, Executive Director, National Alliance Against Racist and Political Repression; George Chauncey, Director, Washington Office Presbyterian Church (USA); Guillermo Chavez, Director, Political and Human Rights Department, Board of Church and Society, United Methodist Church; *Marilyn Clement, Executive Director, Center for Constitutional Rights; *Rev. John Collins and Sr. Blaise Lupo, Co-Directors, Clergy and Laity Concerned; *Rev. William J. Davis, Director, Christic Institute; *Richard B. Deats, Executive Secretary, Fellowship of Reconciliation; *James P. Driskell, Director, Mid-South Peace and Justice Center; Barbara Dudley, President, National Lawyers Guild; Gretchen Eick, Policy Advocate, United Church of Christ Office for Church and Society; Jerome Ernst, Executive Director, National Catholic Conference for Interracial Justice; *Ruth McDonough Fitzpatrick, National Assembly of Religious Women; *Peter Subser, President, American Near East Refugee Aid; *Michele Guimarin, Coordinator, Washington Peace Center; *Muhammad Hallaj, Director, Palestine Research and Educational Center; *Raymond H. Hamden, Chairman, American Druze Public Affairs Committee; *William Johnston, President, Episcopal Churchpeople

*Organizations listed for identification purposes only.

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I

98TH CONGRESS
2D SESSION

H. R. 5613

To prohibit the training, supporting, or inducing of terrorism, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 1984

Mr. FASCELL (for himself and Mr. BROOMFIELD) (by request) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs and the Judiciary

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A BILL

To prohibit the training, supporting, or inducing of terrorism, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Prohibition Against the Training or Support of Terrorist Organizations Act of 1984".

SEC. 2. Title 18 of the United States Code is amended by adding the following new chapter after chapter 113:

"CHAPTER 113A—TERRORISM

"§ 2331. Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups

"(a) Except as provided in subsections (h) and (i), it shall be unlawful for any national of the United States, any permanent resident alien of the United States, or any United States business entity to willfully perform or attempt to perform anywhere in the world any of the following acts:

"(1) serve in, or act in concert with, the armed forces or any intelligence agency of any foreign government, faction, or international terrorist group which is named in a determination in effect under subsection (d);

"(2) provide training in any capacity to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d);

"(3) provide any logistical, mechanical, maintenance, or similar support services to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d); or

"(4) recruit or solicit any person to engage in any activity described in subparagraphs (1) through (3) of this paragraph.

"(b) Except as provided in subsections (h) and (i), it shall be unlawful for any person or entity within the boundaries of the United States, its territories or possessions, to willfully perform or attempt to perform any of the following acts:

"(1) provide training in any capacity to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d);

"(2) provide any logistical, mechanical, maintenance, or similar support services to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d); or

"(3) recruit or solicit any person to engage in any activity described in subparagraphs (1) or (2) of this paragraph.

"(c) Whoever violates this section shall be fined not more than five times the total compensation received for such

violation, or $100,000, whichever is greater, or imprisoned for not more than ten years, or both, for each such offense.

"(d) Whenever the Secretary of State finds that the acts or likely acts of international terrorism of a foreign government, faction, or international terrorist group are such that the national security, foreign relations, or the physical security of the person or property of a private entity of the United States warrant a ban on the foreign government's, faction's or international terrorist group's receipt of services or other assistance in support of such acts as described in subsections (a) or (b), he may issue a determination naming such foreign government, faction, or international terrorist group for which such finding has been made. If the Secretary of State finds that the conditions which were the basis for any determination issued under this subsection have changed in such a manner as to warrant revocation of such determination, or that the national security or foreign relations of the United States so warrant, he may revoke such determination in whole or in part. Any determination issued pursuant to this subsection shall cease to have any effect one year from the date of its publication unless renewed at or before that time by the Secretary of State. Any determination, or the renewal or revocation thereof, issued pursuant to this subsection shall be published in the Federal Register and shall become effective immediately on publication. Any revocation or lapsing of

a determination shall not affect any action or proceeding based on any conduct committed prior to the effective date of such revocation or lapsing.

"(e) For the purposes of this section, any finding of fact made in any determination or renewal issued pursuant to subsection (d) shall be conclusive. No question concerning the validity of the issuance of such determination or renewal may be raised by a defendant as a defense in or as an objection to any trial or hearing if such determination or renewal was issued and published in the Federal Register in accordance with subsection (d).

"(f) An affirmative defense shall exist with respect to any act committed outside of the United States within thirty days after the effective date of any determination affecting such person if the act was performed pursuant to an agreement or contract entered into prior to the effective date of the determination.

"(g)(1) Whoever has been convicted of a violation of this section, in addition to any other penalty prescribed by this section, shall forfeit to the United States—

"(A) any property constituting, or derived from, any proceeds he obtained, directly or indirectly, as a result of such violation; and

"(B) any of his property used, or intended to be used, to commit, or to facilitate the commission of, such violation.

"(2) The procedures in any criminal forfeiture under this section, and the duties and authority of the courts of the United States and the Attorney General with respect to any criminal forfeiture action under this section or with respect to any property that may be subject to forfeiture under this section, are to be governed by the provisions of section 1963 of this title.

"(h) This section shall not be construed to prohibit the provision of medical services or medical training for humanitarian purposes, or the recruitment or solicitation thereof.

"(i) Nothing in this section shall be construed to create criminal liability for any activities conducted by officials of the United States Government, or their agents, which are properly authorized and conducted in accordance with Federal statutes and Executive orders governing such activities.

"(j) For the purposes of this section—

"(1) the term 'foreign government' has the meaning given it in section 1116(b)(2) of this title;

"(2) the term 'armed forces' includes any regular, irregular, paramilitary, guerrilla, or police force;

"(3) the term 'faction' includes any political party, body of insurgents, or other group which seeks to over-

throw the government of, become the government of, or otherwise assert control over or influence any foreign country or territory, possession, department, district, province, or other political subdivision of any such foreign country through the threat or use of force of arms;

"(4) the term 'group' means an association of persons, whether or not a legal entity;

"(5) the term 'international terrorist group' means a group which engages in international terrorism;

"(6) the term 'international terrorism' has the meaning given to it in section 101(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(c));

"(7) the term 'intelligence agency' means any entity which engages in the collection, analysis, or dissemination of information concerning the activities, capabilities, plan or intention of governments, organizations, or persons, in whole or in part by covert means;

"(8) the term 'United States business entity' means any sole proprietorship, partnership, company, association, or corporation organized under the laws of, or having its principal place of business within, the United States, any State, the District of Columbia, or any territory or possession of the United States;

"(9) the term 'national of the United States' has the meaning given to it in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(10) the term 'permanent resident alien of the United States' means an alien lawfully admitted for permanent residence in the United States as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

"(11) the term 'private entity of the United States' means—

"(A) an individual who is—

"(i) a national of the United States; or

"(ii) a permanent resident alien of the United States;

"(B) an employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

"(C) a sole proprietorship, partnership, company or association composed in whole or in part of nationals or permanent resident aliens of the United States; or

"(D) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the

United States and any foreign subsidiary of such corporation.".

SEC. 3. The chapter analysis of part I of title 18 is amended by adding the following new item after the item relating to chapter 113:

SEC. 4. Section 3238 of title 18, United States Code, is amended by—

(1) by striking out "The" and inserting in lieu thereof "(a) Except as provided in subsection (b), the"; and

(2) adding at the end the following new subsection:

"(b) The trial of any offense under section 2331 of this title which is committed out of the jurisdiction of any particular State or district may be in any district. Nothing contained in this subsection may be construed to restrict any right of a defendant under any rule in effect under section 3771 of this title.".

SEC. 5. Section 11 of title 18 is amended by striking out the phrase "as used in this title except in sections 112, 878, 970, 1116, and 1201," and inserting in lieu thereof: "as used in this title except in sections 112, 878, 970, 1116, 1201, and 2331,".

H.R. ___, Revised Working Draft June 12, 1984 (98th Cong., 2d sess.)

A BILL to combat international terrorism

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 "Act to Combat International Terrorism".

SEC. 2. (a) The State Department Basic Authorities Act of 1956 is amended by adding at the end thereof the following new title:

"TITLE III—INTERNATIONAL TERRORISM

"PART 1—PROHIBITION ON SUPPORT SERVICES FOR FOREIGN GOVERNMENTS ENGAGING IN OR SPONSORING INTERNATIONAL TERRORISM

"FINDINGS AND PURPOSES

"SEC. 301. (a) The Congress finds that—

"(1) international terrorism is characterized by, among other things—

"(A) the use or threat of violent acts to intimidate and coerce in furtherance of political ends; and

"(B) the regular employment of methods recognized as offenses against the law of nations or otherwise condemned by the international community, such as hostage-taking, aircraft piracy and sabotage, assassination, and indiscriminate bombings and shootings;

"(2) all acts of international terrorism are to be condemned;

"(3) international terrorism often endangers United States national security, gravely affects United States foreign policy, and endangers the lives and property of United States private entities; and

"(4) United States nationals and others subject to United States jurisdiction should be prevented from placing their abilities and expertise at the disposal of foreign governments which engage in or sponsor international terrorism to the detriment of the United States interests enumerated in paragraph (3).

"(b) The purpose of this part is to establish legal controls over the furnishing of specified services by United States nationals and others subject to United States jurisdiction which may materially assist foreign governments in the practice or sponsorship of international terrorism.

"DESIGNATION OF FOREIGN GOVERNMENTS ENGAGING IN OR SPONSORING INTERNATIONAL TERRORISM

"SEC. 302. (a) Whenever the Secretary of State finds that a pattern of acts or likely acts of international terrorism which are perpetrated or sponsored by a foreign government adversely affects United States national security, United States foreign policy, or the physical security of the person or property of a United States private entity, the Secretary shall issue a determination with respect to that foreign government. If the Secretary of State finds that the basis for any determination issued under this subsection has changed so as to warrant revocation of such determination, or that the national security or foreign policy of the United States so warrant, the Secretary may revoke such determination. Any determination issued under this subsection shall cease to be effective one year after the date of its publication in the Federal Register unless renewed at or before that time by the Secretary of State. Any determination, or the renewal or revocation thereof, issued under this subsection shall be published in the Federal Register, together with a statement of the reasons for it, and shall become effective immediately upon publication. Any revocation or lapsing of a determination under this subsection shall not affect any action or proceeding based on any conduct committed prior to the effective date of such revocation or lapsing.

"(b) Before issuing any determination under subsection (a), the Secretary of State shall consult with the Secretary of Defense, the Director of Central Intelligence, the Attorney General, and such other individuals or entities as the Secretary of State deems appropriate.

"(c)(1) In order to facilitate consultation with the Congress concerning determinations under subsection (a), the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate prior to publication in the Federal Register of any such determination, or the revocation of any such determination. Such notice shall be provided at least 20 days in advance of such publication unless the Secretary of State determines that United States national security, United States foreign policy, or the

physical security of the person or property of a United States private entity, requires more immediate publication.

"(2) At least 20 days prior to the renewal of a determination under subsection (a) or to the lapsing of such determination, the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of his intentions concerning renewal of that determination.

"(3) Each notification pursuant to this subsection shall include the justification for making the determination, for renewing the determination, for allowing the determination to lapse, or for revoking the determination, as the case may be. Notification with respect to a determination or the renewal of a determination shall specifically include a description of the acts or likely acts of international terrorism engaged in or sponsored by the foreign government, and the adverse effect of those acts on United States national security, United States foreign policy, or the physical security of the person or property of a United States private entity.

"(d) Not later than January 30 of each year, the Secretary of State and the Attorney General shall jointly submit to the Congress a report—

"(1) listing all foreign governments with respect to which a determination under subsection (a) was in effect during the preceding calendar year;

"(2) describing the charges set forth in any indictment under section 303 which was filed during the preceding calendar year; and

"(3) a description of other actions taken by the United States Government during the preceding calendar year with respect to each foreign government listed pursuant to paragraph (1).

"PROHIBITION ON PROVIDING CERTAIN SERVICES TO DESIGNATED FOREIGN GOVERNMENTS ENGAGING IN OR SPONSORING INTERNATIONAL TERRORISM

"SEC. 303. (a) Except as provided in subsection (c), it shall be unlawful for any United States person to willfully perform or attempt to perform anywhere in the world any of the following acts:

"(1) Serving with the armed forces or the intelligence agencies of a foreign government named in a determination in effect under subsection 302(a).

"(2) Providing training to the armed forces or intelligence agencies of a foreign government named in a determination in effect under subection 302(a), or to any agent of such forces or agencies.

"(3) Providing any logistical, mechanical, maintenance, or technical service to the armed forces or intelligence agencies of a foreign government named in a determination in effect under subsection 302(a), or to any agent of such forces or agencies.

"(4) Recruiting or soliciting any person to engage in any activity described in paragraphs (1) through (3).

"(b) Except as provided in subsection (c), it shall be unlawful for any individual or entity within the boundaries of the United States to willfully perform or attempt to perform any of the following acts:

"(1) Providing training to the armed forces or intelligence agencies of a foreign government named in a determination in effect under subsection 302(a), or to any agent of such forces or agencies.

"(2) Providing any logistical, mechanical, maintenance, or technical service to the armed forces or intelligence agencies of a foreign government named in a determination in effect under subsection 302(a), or to any agent of such forces or agencies.

"(3) Recruiting or soliciting any person to engage in any activity described in paragraphs (1) or (2).

"(c) This section does not apply with respect to the provision of medical services or medical training for humanitarian purposes, or the recruitment or solicitation thereof.

"(d) Whoever violates this section shall be fined not more than $100,000 or five times the total compensation received for the conduct which constitutes the violation, whichever is greater, or imprisoned for not more than ten years, or both, for each such offense.

"(e) For the purposes of this section, any finding of fact made in any determination or renewal issued pursuant to section 302(a) shall be conclusive. No question concerning the validity of the issuance of such determination or renewal may be raised by a defendant as a defense in or as an objection to any criminal trial or hearing if such determination or renewal was published in the Federal Register in accordance with section 302(a).

"(f) An affirmative defense shall exist with respect to any act committed outside of the United States within thirty days after the effective date of the relevant determination if the act was performed pursuant to a contract or other agreement which was entered into prior to the effective date of the determination.

"(g)(1) Whoever has been convicted of a violation of this section, in addition to any other penalty prescribed by this section, shall forfeit to the United States—

"(A) any property constituting, or derived from, any proceeds he obtained, directly or indirectly, as a result of such violation; and

"(B) any of his property used, or intended to be used, to commit, or to facilitate the commission of, such violation.

"(2) The procedures in any criminal forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any criminal forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by section 1963 of title 18, United States Code.

"(h) Notwithstanding section 3238 of title 18, United States Code, the trial of any offense under this section which is committed out of the jurisdiction of any particular State or judicial district of the United States may be in any judicial district of the United States. Nothing in this subsection restricts any right of a defendant under any rule in effect under section 3771 of title 18, United States Code.

"DEFINITIONS

"SEC. 304. For the purposes of this part and part 2 of this title—

"(1) the term 'armed forces' includes any regular, irregular, paramilitary, or police force;

"(2) the term 'foreign government' means the government of a foreign country, irrespective of recognition by the United States;

"(3) the term 'intelligence agency' means any entity which engages in the collection, analysis, or dissemination of information concerning the activities, capabilities, plans, or intention of governments, organizations, or persons, in whole or in part by covert means;

"(4) the term 'international terrorism' means activities that—

"(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

"(B) appear to be intended—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government by assassination or kidnaping; and

"(C) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum;

"(5) the term 'national of the United States' has the meaning given to it in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(6) the term 'permanent resident alien of the United States' means an alien lawfully admitted for permanent residence in the United States as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

"(7) the term 'sponsor' means that a foreign government deliberately—

"(A) furnishs arms, explosives, or lethal substances to any individual or entity with the likelihood that they will be used in the commission of any act of international terrorism;

"(B) plans, directs, provides training for, or assists in the commission of any act of international terrorism;

"(C) provides direct financial support for the commission of any act of international terrorism; or

"(D) provides diplomatic facilities with intent to aid or abet the commission of any act of international terrorism;

"(8) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States;

"(9) the term 'United States', when used in a geographic sense, means all areas under the territorial sovereignty of the United States;

"(10) the term 'United States business entity' means any sole proprietorship, partnership, company, association, or corporation organized under the laws of, or having its principal place of business within, the United States or any State;

"(11) the term 'United States person' means a national of the United States, a permanent resident alien of the United States, or a United States business entity; and

"(12) the term 'United States private entity' means—

"(A) an individual who is—

"(i) a national of the United States; or

"(ii) a permanent resident alien of the United States;

"(B) an employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

"(C) a sole proprietorship, partnership, company, or association composed in whole or in part of nationals or permanent resident aliens of the United State; or

"(D) a corporation organized under the laws of the United States or any State, and any foreign subsidiary of such corporation.

"PART 2—SANCTIONS AGAINST DESIGNATED FOREIGN GOVERNMENTS ENGAGING IN OR SPONSORING INTERNATIONAL TERRORISM

"SEC. 311. (a) If a determination is in effect with respect to a foreign government under section 302 of this Act, then—

"(1) assistance may not be provided to that government under part II of the Foreign Assistance Act of 1961;

"(2) credits may not be extended, guaranties may not be issued, and sales may not be made for that government under the Arms Export Control Act;

"(3) licenses may not be issued and approvals may not be granted with respect to that government under section 38 of the Arms Export Control Act; and

"(4) goods and technology subject to export controls under the Export Administration Act of 1979 may not be exported—

"(A) to that government's armed forces or intelligence agencies, or

"(B) to any other recipient in the country governed by that government if such exports would make a significant contribution to the military potential of that government (including its military logistical capability) or would enhance the ability of the government to engage in or sponsor acts of international terrorism.

"(b) Subsection (a) of this section supplements, and does not supplant, other provisions of law.

"PART 3—REWARD FOR INFORMATION ON INTERNATIONAL TERRORISM

"SEC. 321. (a) The Secretary of State may pay a reward to any individual who furnishes information—

"(1) leading to the arrest or conviction, in any country, of any individual for the commission of an act of international terrorism against a United States person or United States property; or

"(2) leading to the arrest or conviction, in any country, of any individual for conspiring or attempting to commit an act of international terrorism against a United States person or United States property; or

"(3) leading to the prevention, frustration, or favorable resolution of an act of international terrorism against a United States person or United States property.

"(b) A reward of $100,000 or more may not be made without the approval of the President or his designee.

"(c) Before making a reward under this section in a matter over which there is Federal criminal jurisdiction, the Secretary of State shall advise and consult with the Attorney General.

"(d) Any reward granted under this section shall be certified by the Secretary of State. If the Secretary determines that the identity of the recipient of a reward or of the members of the recipient's immediate family must be protected, the Secretary may take such measures in connection with the payment of the reward as he deems necessary to effect such protection.

"(e) An officer or employee of any governmental entity who, while in the performance of his official duties, furnishes information described in subsection (a) shall not be eligible for a reward under this section.

"(f) There are authorized to be appropriated for use in paying rewards under this section $5,000,000 for the fiscal year 1985. Funds to pay rewards under this section for subsequent fiscal years shall be authorized to be appropriated in the annual authorizing legislation for the Department of State. Amount appropriated to carry out this section are authorized to remain available until expended.

"(g) As used in this section—

"(1) the term 'act of international terrorism' means an activity occurring outside the United States that—

"(A) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and

"(B) appears to be intended—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government by assassination or kidnaping;

"(2) the term 'government entity' inciudes the government of the United States, any State or political subdivision thereof, any foreign country, and any state, provincial, municipal, or other political subdivision of a foreign country;

"(3) the term 'State' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any possession or territory of the United States;

"(4) the term 'United States' when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States;

"(5) the term 'United States person' means—

"(A) a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(B) an alien lawfully admitted for permanent residence in the United States as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

"(C) any employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of international terrorism by virtue of that employment;

"(D) a sole proprietorship, partnership, company, or association composed principally of nationals or permanent resident aliens of the United States; and

"(E) a corporation organized under the laws of the United States or any State, and a foreign subsidiary of such corporation; and

"(6) the term 'United States property' means any real or personal property located outside the United States, the actual or beneficial ownership of which rests in a United States person or any Federal or State governmental entity.

"PART 4—INCREASING INTERNATIONAL COOPERATION TO COMBAT INTERNATIONAL TERRORISM

"SEC. 331. The President is urged to direct the Secretary of State to seek international agreements to assure more effective cooperation in combatting international terrorism. High priority in the negotiation of such agreements should be given to the establishment of a permanent international working group which would combat international terrorism by—

"(1) promoting international cooperation among countries,

"(2) developing new methods, procedures, and standards to combat international terrorism, and

"(3) negotiating agreements for exchanges of information and intelligence and for technical assistance.

This working group should have subgroups on appropriate matters, including law enforcement and crisis management.

"PART 5—REPORTS ON UNITED STATES EFFORTS TO COMBAT INTERNATIONAL TERRORISM

"Sec. 341. Not later than April 1 and October 1 of each year, the President shall submit to the Congress a report on the implementation of National Security Directive 138, issued April 3, 1984.

"PART 6—STATE DEPARTMENT SECURITY MEASURES

"SEC. 351. Given the ever increasing threat of international terrorism directed at United States missions and diplomatic personnel abroad, the Congress is concerned that there is a need for the Department of State to revise its approach to providing security against international terrorism. Therefore, the Secretary of State shall report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives by September 30, 1984, on the Department's current management practices with respect to security and antiterrorism. This report shall also include proposals to improve the Department's ability to anticipate and respond in a timely and comprehensive fashion to terrorist threats, giving special attention to funding, threat assessment, the management, training, and recruitment of personnnel, coordination among the various offices and bureaus of the Department, the role of the chief of mission, the Department's management of buildings abroad, the relationship between United States missions abroad and local authorities, and the relationship between security and political issues."

[Draft Bill]

AUTHORITY TO CONTROL PROVISION OF CERTAIN SERVICES

SEC. . The State Department Basic Authorities Act is amended by adding thereto the following new section to follow section :

"SEC. . PROVISION OF CERTAIN SERVICES.—

"(a) In addition to the authorities granted in other provisions of law, the President is authorized to control by regulation the following acts, in the circumstances described in subsection (b) of this section, when he determines that the threat posed by acts or likely acts of international terrorism to United States persons or property or to the national security or foreign policy interests of the United States, warrant such controls—

"(1) serving in or with the security forces of any foreign government;

"(2) providing any training, logistical, mechanical, maintenance, or technical services, of types specified by regulation, to or for the security forces of any foreign government; and

"(3) recruiting or soliciting others to provide the services described in subsections (a)(1) or (a)(2) of this section.

The President is authorized to require licenses for this purpose, which may be revoked, suspended or amended, without prior notice, whenever such action is deemed to be advisable. Whenever the President issues regulations pursuant to this subsection, he shall indicate the specific categories and types of services which will require licenses.

"(b) The provisions of subsection (a) of this section shall apply—

"(1) in the case of a United States person, to such services provided anywhere in the world; and

"(2) in the case of any other individual or entity, to such services provided within the United States (including any area under its territorial sovereignty).

"(c) As used in this section—

"(1) the term 'security forces' means any military or paramilitary forces, any police or other law enforcement agency, and any intelligence agency of a foreign government; and

"(2) the term 'United States person' means any United States national or permanent resident alien, or any sole proprietorship, partnership, company, association or corporation organized under the laws of or having its principal place of business within the United States, any State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, or any territory or possession of the United States.

"(d) Whoever willfully violates any provision of this section, or any rule or regulation issued thereunder, shall be fined not more than $100,000 or five times the total compensation received for the conduct which constitutes the violation, whichever is greater, or imprisoned for not more than ten years, or both, for each such offense.

"(e)(1) Not less than 30 days prior to issuing any regulations under this section (including any amendments thereto), the President shall transmit the proposed regulations to the Congress.

"(2) Not less than once every 180 days, the President shall report to the Congress concerning the number and character of licenses granted and denied during the previous reporting period, and such other information as he may find to be relevant to the accomplishment of the objectives of this section."

END