



Department of Justice

STATEMENT
OF
ASSISTANT ATTORNEY GENERAL
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BEFORE SUBCOMMITTEE NO. 5
OF THE HOUSE JUDICIARY COMMITTEE
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Mr. Chairman:

I appreciate the opportunity to appear before this Subcommittee this morning to discuss the measures which the federal government can and should take to halt the rash of bombings and bomb threats that plague this country.

As you are aware, the President has been deeply concerned about these dangerous and senseless bombings. In March of this year, at his direction, the Department of Justice prepared and sent to Congress legislation to enable the federal government to deal firmly with those whose violence and threatened violence directly affects the federal government or its special responsibility for protecting interstate commerce. That legislation is now pending before this Subcommittee as H.R. 16699.

The cost of these bombings in this year alone has been staggering. Lives have been lost and bodies twisted and maimed. Property of foreign nations, that we have an obligation to protect, has been damaged. A State Capitol building and scores of municipal and other local government buildings have been destroyed or damaged. Private businesses -- theaters, restaurants and corporate offices -- have been hit. Military and other federal property has been bombed or threatened. We cannot tolerate the cost of this in lives, in fear, or in dollars.

These bombings must be stopped. We must do our best to stop bomb threats as well. The threats, as well as the bombings, take a heavy toll -- in fear and in dollar cost. While we have no figures to illustrate the cost of bomb threats nationwide, the cost that the General Services Administration estimates for federal buildings under its jurisdiction is illustrative. In the fiscal year 1970 actual bombing or arson incidents caused an estimated \$612,569 worth of damage. In the last half of that period, the dollar loss estimated as a result of 130 evacuations due to bomb threats was \$2.2 million. We must do our utmost to prevent this waste.

Existing law furnishes a basis for Federal investigative and prosecutive action in certain cases of destruction or threats of destruction by arson or the use of explosives and destructive devices. However, it is inadequate in many important ways.

The National Firearms Act, 26 U.S.C. 5801 - 5872 prohibits the making, transfer and possession of a destructive device unless it is registered to the possessor in the National Firearms Registration and Transfer Record. The Act does not, however, include dynamite and other explosives within its scope unless they are possessed in conjunction with other components necessary to construct a destructive device, and the Government can establish that the possessor intended to construct a weapon. Thus difficult problems of proof are presented. Furthermore, the registration scheme as applied to component parts of a bomb or other destructive device is still being challenged in the courts, despite the fact that a 1968 amendment to the Act sought to cure certain defects of the registration requirements indicated by the Supreme Court in its decision in Haynes v. United States, 390 U.S. 85 (1968).

Several other statutes provide to some extent for the prosecution of these terrorist acts:

One of these, Section 837 of title 18, United States Code is the statute which would be completely revised by the Administration's proposal, H.R. 16699. I will comment on Section 837 later in my testimony.

Section 231, of title 18, enacted in 1968 as part of comprehensive legislation pertaining to civil disorders, prohibits the teaching of the use or construction of explosive or incendiary devices, with the knowledge or intent that they will be used in furtherance of a civil disorder. It includes firearms and such weapons as the "Molotov cocktail", the principal weapon of the rioter and the urban guerrilla, and anti-personnel devices fabricated from dynamite, black powder, TNT, and other explosives capable of causing injury and death. The section also proscribes the manufacture of firearms, incendiary devices, or explosives knowing or intending that they will be used in a civil disorder; and acts which obstruct or interfere with firemen or police officers engaged in the performance of duties incident to a civil disorder. For the purposes of the statute, a civil disorder is defined as a public disturbance involving acts of violence by assemblages of three or more

persons, which causes immediate danger of damage or injury to persons or to property. The statute is limited in its utility because of the necessity for proving the requisite elements of assemblage, intent and present danger.

Section 1361 of title 18 proscribes damage to or destruction of Government buildings or personal property. It is too narrow to reflect the Government's legitimate interest in this area although it has the advantage of being free of specific limitations.

Other criminal statutes which are used for the prosecution of acts of willful destruction include: Section 81 of title 18, U.S. Code which relates to arson in the special maritime and territorial jurisdiction; Chapter 105 of title 18, which prohibits acts of sabotage of national defense premises and materials; and sections 1362 and 1363 of title 18 which prohibit willful or malicious damage to communications facilities used for military and civil defense purposes, and to properties located within the special maritime and territorial jurisdiction of the United States.

I will turn now to a discussion of the Administration's proposed revision of Section 837 and then take up the Chairman's bill, H.R. 17154.

H.R. 16699

The basic statutory provision presently covering crimes involving explosives is section 837 of title 18, United States Code. This section, enacted as part of the Civil Rights Act of 1960, prohibits the transport in interstate or foreign commerce of any explosive with the knowledge or intent that it will be used to damage or destroy property for the purpose of interfering with the use of such property for certain specified objectives or of intimidating any person pursuing such objectives. It also prohibits the making of bomb threats for such purposes. While the scope of this statute is broad in some respects, the difficulty of proving all the particular elements of the offenses, such as the transport in interstate commerce and the intent to intimidate or to interfere with the use of property for particular purposes, makes this statute an inadequate tool for dealing with the kinds of violent and senselessly malicious activities with which we are presently confronted.

Accordingly, we have entirely rewritten section 837, broadening and simplifying the categories of prohibited actions and increasing, in some instances, the severity of the penalties.

First, in subsection (a), we have expanded the definition of "explosives" to incorporate the category of explosive and incendiary devices defined in the civil disorders title of the Civil Rights Act of 1968 (P.L. 90-284, tit. X; 18 U.S.C. ch. 12). This would include incendiary bombs, such as Molotov cocktails.

Second, we have revised section 837(b), dealing with transport of explosives in interstate commerce for specified unlawful purposes, to broaden the coverage in certain respects. In particular, the revised subsection would cover receipt as well as transport, it would cover attempts, and it would abolish the test of specific forbidden purposes in favor of a general requirement of knowledge or intent that the explosives are to be used in substantially any crime of violence. In addition, we have increased the applicable penalties.

Two technical amendments are also made in subsection (b). The provision for imposing the death penalty is revised to meet the Supreme Court's decision in United States v. Jackson, 390 U.S. 570 (1968). That case held that the provision in the Federal Kidnapping Act for imposition of the death penalty only upon recommendation of the jury was unconstitutional because it tended to coerce the defendant to waive his right to a jury trial. The present provision for capital punishment in section 837(b) appears to be subject to the same objection, and we have modified it to a form consistent with the Court's ruling. See United States v. Jackson, supra, at 578-79. We have, in addition, deleted as unnecessary the present reference in subsection (b) to aiding and abetting.

Third, we have deleted the present subsection (c). This subsection creates a rebuttable presumption that a person who uses an explosive for certain destructive purposes or who possesses it with intent so to use it has violated subsection (b). This presumption is of dubious validity or value. Furthermore, the addition of new substantive prohibitions regarding possession and use (subsections (d), (f), and (g) of the revised section) would obviate the need to rely on the presumption.

Fourth, we have revised the provision dealing with bomb threats and hoaxes (present subsection (d), subsection (c) in the bill) to conform to the broadened coverage of subsection (b), and to replace the present requirement of showing the specific purpose of the threat or hoax with a more general requirement of willfulness or malice.

Fifth, we have added a new prohibition (subsection (d)) against malicious damage or destruction of federal property by means of an explosive. The penalties are the same as those applicable for a violation of subsection (b).

Sixth, we have added a prohibition (subsection (e)) against unauthorized possession of an explosive in a Government building. This is the only provision in the bill aimed at mere possession. We believe such a prohibition is justified because unauthorized possession of explosives is so dangerous as to call for punishment whether or not the possessor intends to use the explosives for a criminal purpose. Furthermore, this provision would be available in the situation where the person is apprehended with explosives on federal premises under circumstances where his specific intent might be difficult to prove.

Seventh, we have added a new provision (subsection (f)) covering malicious damage or destruction by means of an explosive of any property used for business purposes by a person engaged in commerce or any activity affecting commerce. "Commerce" is defined earlier in the bill as interstate and foreign commerce and that commerce within areas, such as the District of Columbia, which are subject to plenary federal jurisdiction. Since the term "affecting commerce" embraces "the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause," NLRB v. Reliance Fuel Corp., 371 U.S. 224, 226 (1963), subsection (f) would cover damage by explosives to substantially any business property.

Eighth, we have added a provision (subsection (g)) covering possession of explosives with the knowledge or intent that they will be transported or used in violation of the section, that is to say, in violation of those subsections, (b), (d), or (f), which deal with transport or use. Subsection (g), would be available, for example, where the person possessing explosives is apprehended prior to their actual use.

We recognize that the provisions of this bill will, to a large extent, cover areas presently covered by state law. We do not intend that the federal government substitute for the enforcement activities of state and local authorities in this area. We have, therefore, included in the bill a provision, subsection (h), generally similar to present section 837(e), expressing Congress' intention that this statute not be construed as preempting state law or depriving state or local law enforcement authorities of their responsibilities for investigating and prosecuting crimes involving the use of explosives.

Indeed, it is evident that the federal investigative and prosecutive authority contained in this bill must be used selectively. The provisions of the bill have been drawn broadly, so that prosecutions need not hinge on such essentially artificial issues as whether the explosives were moved across state lines. However, the bill's prohibitions cover many acts of violence of predominantly local concern. It is not intended that federal law enforcement authorities should investigate and prosecute every bomb threat or incident. Indeed, we do not have the resources to do so. Accordingly,

we have provided in subsection (i) that no investigation or prosecution under section 837 shall be undertaken except upon a high level authorization in each case. This flexibility will enable us to achieve maximum economy of effort and to assure that federal law enforcement assists but does not displace the efforts of state and local officials in dealing with crimes involving explosives.

As is evident, this legislation is concerned with the prosecution of those who use or threaten the use of bombs in areas of federal concern. It is not, and does not purport to be a total solution to the problem of bombings. Nor is it a substitute for vigorous State action. It is, however, necessary to give us the tools we need to prosecute the terrorist and I urge your prompt and favorable action.

There is one other matter in connection with your consideration of H.R. 16699 to which we invite the Committee's attention.

We have received inquiries concerning the desirability of amending the definition of explosives in subsection (a)

of the bill to permit sportsmen who load their own ammunition to continue lawfully to do so. The Department of Justice has no objection to such an amendment.

H.R. 17154

The bill introduced by Chairman Celler takes a somewhat different although not necessarily inconsistent approach to the problem of bombings. It is designed to regulate the explosives industry in much the same pattern as the Gun Control Act of 1968 (18 U.S.C. 921 to 928).

Other than the Federal Explosives Act, (40 Stat. 385, as amended; 50 U.S.C. 121 to 144), which is operative in war time, there is no federal statute regulating the explosives industry. The recent rash of bombings, however, raised the question whether permanent regulatory legislation, as proposed in H.R. 17154, is necessary and desirable.

The Administration has been addressing itself to this question. Since the submission of H.R. 16699 to the Congress on March 25, 1970, the Department has participated in an intensive task force study with other concerned federal departments -- Interior, Treasury, Transportation, Commerce, and the Office of Management and Budget -- and with industry representatives.

As you appreciate, the federal regulation of any industry raises complex issues of both a policy and technical nature. In discussing the desirability of federal legislation in this area and the form of any such legislation the task force has attempted to resolve these issues. I am pleased to announce that the task force has developed an Administration bill which will be outlined in testimony before your Subcommittee by the Department of the Interior next week.

Because I am not in a position to detail the Administration bill to which I have referred, or to discuss its provisions as compared with H.R. 17154, I would prefer to leave that to the Department of the Interior. If, following the appearance of that Department's witnesses, the Subcommittee is of the view that the Department of Justice can assist further in the Subcommittee's deliberations, I should be pleased to return.

Thank you