



Department of Justice

STATEMENT
OF
ASSISTANT ATTORNEY GENERAL
WILL WILSON
BEFORE THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS
ON
BOMBINGS AND TERRORISM
JULY 17, 1970

Senator McClellan
and Distinguished Members of the Subcommittee:

I appreciate your invitation to appear today to testify concerning the acts of violence by bombings and threatened bombings which the country has experienced in recent months, and legislative measures which may be undertaken to curtail them.

The President, the Attorney General, my associates at the Department of Justice and I share the concern of this Subcommittee over the recent increase in these and other acts of terror in communities across the United States.

Assistant Secretary of the Treasury Rossides has given you statistics of bombing incidents compiled by the Alcohol, Tobacco and Firearms Division of the Treasury which indicate the magnitude of this threat to our security. I wish to speak primarily of prosecutions initiated by the Government under existing law, and the need for strengthening our Federal criminal laws pertaining to explosives and explosive devices.

As you recall, in the fall of 1969 an unprecedented wave of bombings began with a series of explosions in New York City. Corporate offices, public buildings, city courts and police stations were targets of the attacks. One explosion ripped the city criminal court offices while night court was in session. In the spring, the attacks were renewed with increased intensity. In March 1970, a blast in Greenwich Village demolished a townhouse bringing death to several occupants. And in the same month, explosions in the Manhattan skyscraper offices of three of our largest business corporations caused thousands of dollars in property damage.

Equally serious bombings have occurred elsewhere in the country since the first of the year: In San Francisco an explosion in a police station killed one officer and wounded six others. In Cambridge, Maryland, a bomb ripped the venerable old Dorchester County Court House. In Buffalo, New York, a blast thought to be caused by a time bomb heavily damaged a ten-story office building. In Chicago, in a North Side apartment building, a stock of explosives and bomb components were uncovered. And in Ann Arbor, Michigan, a CIA recruiting office was bombed. Military recruiting offices and ROTC buildings have been targets of arson and explosives in many communities and on university campuses. In Berkeley, California, an explosion toppled an eighty-foot, 115,000 volt utility company tower. A Utah National Guard building in Salt Lake City was damaged by a homemade bomb which narrowly failed to set off a store of small arms ammunition. In Baton Rouge, Louisiana, an explosion damaged the State House.

I could continue to cite examples, but I am certain that your Subcommittee, as a result of your investigations to date, is thoroughly cognizant of these well-publicized incidents. I mention them primarily to indicate the complexity of the problem which confronts us in undertaking Federal legislative measures.

We must do our utmost to stop these inherently dangerous and costly crimes against the public safety. The Department of Justice does not have precise information as to the toll in lives and in damages which they have exacted. As you are aware, many of these incidents are not within our jurisdiction. We do know that a survey of 776 bombing and arson attacks which occurred during the period September 1, 1968 to March 15, 1970 (slightly more than eighteen months), which was conducted by the FBI, revealed total property damages of nearly twenty-four million dollars. However, available statistics do not begin to portray the total dollar costs of the attacks. They do not include many corollary expenses such as the costs of salaries and overtime pay for police, fire and military personnel, or loss of employment for persons who are victims of the incidents. Nor do they include the substantial costs incurred by Federal and local authorities in connection with bomb scares.

The bombing and arson attacks reported in the FBI survey resulted in eleven deaths, of which six were self-inflicted due to premature or accidental explosions. In addition to these fatalities, more than one hundred personal injuries were reported.

The General Services Administration reported 46 threats to bomb Federal buildings in a twelve-month period ending June 30, 1969, and 383 bomb threats in the corresponding period ending June 30, 1970. Actual bombing and arson incidents in Federal buildings increased from 13 in in the twelve-month period ending June 30, 1969, to 38 in the corresponding period in 1970. Losses in property damage increased accordingly from \$7,250 to \$612,569. The General Services Administration estimates that 130 evacuations of Government personnel resulting from the receipt of bomb threats during January to June, 1970, cost the Government \$2.2 million in man hours lost—a loss far exceeding the reported loss in property damages. This needless waste cannot be tolerated.

Existing law furnishes a basis for Federal investigative and prosecutive action in certain cases of destruction or threats of destruction by 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).

Two other statutes provide to some extent for the prosecution of these terrorist acts.

Section 837, enacted as part of the Civil Rights Act of 1960, proscribes the transportation in interstate or foreign commerce of explosives with the knowledge or intent that they will be used to damage buildings used for educational, religious, residential, business or civic objectives, or for intimidating a person in the exercise of these objectives. It also prohibits the use of interstate commerce facilities to communicate threats or false reports of attempts to damage property used for the foregoing purposes. While the scope of the statute is broad in some respects, the difficulty of proving all the elements of the offense—such as the transport in interstate commerce and the intent to intimidate or to interfere with the use of property for particular objectives—makes it inadequate for dealing with the random malicious acts with which we are now confronted. The statute as enacted by the Congress provides, where personal injury results, for sanctions of imprisonment for up to ten years and a fine up to \$10,000, or both; and where death results, for imprisonment for any term of years or for life, or the imposition of the death penalty "if the jury so recommends." However, the provision for the imposition of the death penalty appears to have been invalidated by the Supreme Court's decision in United States v. Jackson, 390 U.S. 570 (1968). That case held that a similar provision in the Federal Kidnapping Act for

the imposition of the death penalty was unconstitutional because it tended to coerce the defendant to waive his right to trial by jury.

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. Other criminal statutes which are used for the prosecution of acts of wilful destruction include: Section 81 of Title 18, U.S.C., 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 wilful 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.

As you are aware, on March 25, 1970 President Nixon requested legislation which would substantially revise and strengthen present section 837 of Title 18. Among other things, the Administration's proposal would:

- Amplify the kinds of explosives and incendiary devices to which the statute applies.
- Broaden its scope to proscribe the transportation or receipt of explosives or incendiary devices in commerce with the knowledge or intent that they will be used to kill, intimidate or injure persons, or unlawfully damage buildings, vehicles or property, without requiring proof of a specific objective.
- Proscribe the malicious damage or destruction of property owned or leased by the Government by means of an explosive; and forbid the unauthorized possession of explosives in Government buildings.
- Prohibit malicious damage by means of an explosive to real or personal property used for business purposes by anyone engaged in interstate commerce, or in an activity affecting commerce.

- Add a provision covering the possession of explosives with the knowledge or intent that they will be transported or used in violation of the foregoing provisions.
- Revise the penalties in several significant respects.

I wish to comment in particular upon two features of these proposed changes:

The scope is purposefully broad, because it is our intent to make the statute co-extensive with our Federal interest. The provision relating to the use of property by activities affecting commerce utilizes the full constitutional extent of the commerce power as construed by the courts. However, it is not our intent that Federal law enforcement resources be utilized in every bombing or bombing hoax of the thousands which are reported. The legislation provides that no investigation or prosecution of a proscribed offense will be undertaken by the Government, except upon a determination by the Attorney General, or an Assistant Attorney General as his designee, that in his judgment a Federal investigation or prosecution is in the public interest. If the legislation is enacted, I anticipate that the Attorney General will issue guidelines to assist in the orderly exercise of this discretion. In bringing these terrorist acts under Federal jurisdiction, we will not displace the efforts of state and local officials in dealing with crimes involving explosives.

With regard to the penalty provision, I should like to point out that the legislation provides for a term of imprisonment up to twenty years and a fine up to \$20,000 for violations of the law where personal injury occurs; and where death results, the offender will be subject to life imprisonment or to the death penalty. The latter penalties will be imposed pursuant to section 34 of Title 18, which is not subject to the infirmities of the present statute as revealed by the Jackson decision. Although it is an open question whether any sanctions which the law may impose will effectively deter fanatics who engage in open warfare against society, we think that the danger inherent in their deeds justifies strict sanctions. There can be no crime more despicable than the wanton killing of innocent persons in public places.

The Administration's proposals as I have outlined them have been introduced in the Senate by Senator Hruska as S. 3650. I urge the members of the Subcommittee to support this bill when it is before the Senate.

The Subcommittee has expressed an interest in cases brought under the existing Federal statutes dealing with explosives and the destruction of Government property. I am at liberty to discuss a few of these. For example:

The leaders of the Minutemen organization, Robert DePugh and Walter Peyson, are facing trial and sentencing, respectively, for multiple violations of the Federal Firearms Act. (26 U.S.C. 5861.) Some of the charges against them arose out of the discovery in New Mexico of several caches of weapons, explosives, and anti-personnel devices.

In Oregon, following a series of bombings in the City of Eugene, Richard James Oba, a member of the Students for a Democratic Society, has been convicted of illegal possession of a dynamite bomb. His conviction is now being appealed.

In the Eastern District of Missouri, six persons have been indicted in connection with the burning of an ROTC facility on the Washington University campus in St. Louis. Four of the defendants have been charged with interfering with police and firemen, in violation of section 231 of Title 18. The other two are charged with acts of sabotage (Chapter 105 of Title 18) and destruction of Government property (18 U.S.C. 1361).

In Seattle, five persons affiliated with the Weathermen have been indicted in two separate cases involving a bombing of a branch Post Office, and an attempted bombing of an ROTC facility at the University of Washington.

In New York City, three defendants recently pleaded guilty in a Federal district court to charges of conspiring to bomb Government buildings in the city last fall. On June 19, Samuel Joseph Melville was sentenced to a term of ten years for destruction of Government property, and a term of three years for assaulting a Federal officer, the sentences to run consecutively. On a charge of conspiracy to destroy Government property, he was also sentenced to a five-year probationary period to commence at the expiration of his term of imprisonment. His associate, John David Hughey III, was committed to custody under the Federal Youth Corrections Act for observation and study for a 60-day period prior to sentencing. The court ordered a

\$25,000 bail forfeiture for Jane Lauren Alpert, a third defendant, who failed to appear. On the same day, a New York County Supreme Court Judge sentenced the defendant Melville to imprisonment for a period of six to eighteen years on State charges stemming from his bombing activities.

In addition to supporting the enactment of the legislation which the President has requested, to revise the criminal laws pertaining to the use of explosives and incendiary devices, the Department has also 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 concerning the need for Federal regulation of the explosives industry. An Administration bill which has been developed by the task force will be submitted to the Congress next week.

The use of terror as a political tactic is foreign to the American political tradition. We need to discourage the development of terroristic tactics and nip in the bud any effort to engraft the use of terror into our political processes as a device for shaping public decisions. Much of the bombing is the result of fanatics who are politically motivated and insist upon their own viewpoint being accepted. They are not interested in free speech or dissent or a dialogue with anyone who does not bend to their will. We wish to emphasize that the suppression of terroristic tactics is not a repression of free speech or the right to dissent or the right to protest, but is punishment for crime and that the prevention of crime

through firm and decisive action followed by appropriate punishment is, has been, and should continue to be the traditional response of the American political system to those who persist in violating the law.