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INTERNATIONAL TERRORISM: PREVENTION AND REMEDIES¹

Syracuse University College of Law Symposium

October 27, 1995

TERRORISM MUST NOT BE ALLOWED TO HIDE ITS FACE

Representative Charles E. Schumer²

The problem of terrorism is an unavoidable and undeniable reality of our life today. Its specter will hover over America -- and over Americans wherever they travel in the world -- for as far as we can reasonably see into the future. But that does not mean that we cannot take strong action to lessen the impact of terrorism. On the contrary, it is the responsibility of us all to fight terrorism, from the grass roots through every level of government, because it is a relentless assault on the very fabric of our nation.

¹Moderated by Professor Donna Arzt; Associate Professor, Syracuse University College of Law; J.D. Harvard Law School, 1979; L.L.M. Columbia University School of Law, 1988. Professor Arzt is an expert on international human rights issues.

²Representative Schumer is the ranking Democratic member of the House Subcommittee on Crime and former Chairman of the Subcommittee on Crime and Criminal Justice. He sponsored comprehensive anti-terrorism legislation in the 103d and 104th Congresses.

A major obstacle to this urgently needed sustained action against terrorism, however, is that terrorism is usually invisible. By its very nature, it lies concealed, strikes with stealth and surprise, and is most often directed against the innocent and the unprepared. Therein lies the difficulty for public policy makers, and the burden for others who care. For all of us are shocked, dismayed, and disgusted when terrorism strikes. We need only think back over what our nation collectively felt when faced with the tragedies of the Marine barracks in Lebanon, the bombing of Pan Am 103 over Lockerbie, the World Trade Center, and Oklahoma City. What is even more disturbing is that the list in all likelihood will continue to grow.

Emotions like those we felt when these horrible events occurred are the very goal of the terrorist. Terrorism is intended to frighten ordinary citizens, divide our body politic, and intimidate government officials. Its goal is to paralyze the legitimate machinery of government, substitute the blackmail of the gun and the bomb for democratic discourse, and provoke intemperate and counter-productive responses.

The cruel reality of terrorism, however, is that all but the most committed among us soon forget these horrors. Terrorism returns to its cloak of invisibility. Days, then months, even years pass. Emotions cool and memories fade between events. What seems painful and urgent to citizen and legislator alike while the ruins smoke and the survivors grieve, later becomes just another "issue" in the broad public debate. But terrorism is not just another "issue." It is a cancer of the most malignant sort. Terrorism is a political illness, an angry eruption of hatred, intolerance, and extremism. It will not get better if we ignore it. It will not go away on its own accord. It grows in its salient invisibility, and it will continue to grow until we face it down and cut it out. Americans must come to understand hard facts about terrorism, and then commit themselves to responsible action to fight terrorism.

The level of violence in individual terrorist acts is rising dramatically. The carnage of the Oklahoma City bombing reflects a trend in terrorism toward more devastating blows in single incidents.

The fact is that the World Trade Center bombing toll would have been much worse if the plotters had been slightly more competent or chosen somewhat different devices. The stakes are rising, and that makes the need to act even more urgent.

Terrorist groups are proliferating and many are small, independent groups without clear sponsors. Small groups of three or four, or even a dozen dedicated fanatics are hard to find, harder to infiltrate, and hardest to stop. Our counter-terror agencies need better investigative tools to help them find and thwart terrorists before they take innocent lives.

Terrorists are turning increasingly to "super-terror" -- weapons of mass destruction. The taboo against terrorist use of chemical and biological weapons has fallen, both here and abroad, and controls over nuclear materials are imperfect. The nerve gas attack on the Tokyo subway demonstrated to any rational thinker -- anyone with the slightest degree of imagination -- the unthinkable potentials for disaster in every city in the United States, and, indeed, the world.

In 1995, members of an extremist domestic group were convicted in the United States of plotting to use the lethal biological agent ricin. Another suspect was charged with trying to buy the plague bacteria. America cannot rely on luck or simply hope that no terrorist plot involving materials like these will ever succeed.

These grim facts counsel -- indeed, in my view, they compel -- swift and thorough action. There is no single act that will insulate us against terrorism. Federal, state, and local governments have taken a number of quiet steps to counter both domestic and international threats. But there are many more things we can do to minimize the risk that terrorism will occur, and to diminish the damage when it happens.

A few of these urgently needed steps include enhancing our national emergency preparedness and disaster response capability, cutting off the flow of funds to foreign terrorist groups, revising our federal criminal code to make it more directly applicable to acts of terrorist violence, improving federal

law enforcement investigative capability, and allowing civil remedies to Americans who are harmed in terrorist incidents sponsored by states or organized groups.

Many of these steps are incorporated in comprehensive anti-terrorism bills that I have introduced in this and the last Congress, and in legislation that I still remain hopeful will pass in the present Congress. Other actions will require different state, local, and federal action.

We must understand much better the culture in which domestic terrorism has thrived. Congress, the executive branch, and academia have produced tens of thousands of pages documenting our intense scrutiny of foreign terrorist groups. These international terrorists still operate behind screens and in shadows. But we know much more about them -- who they are and what drives them -- than we do about the potential sources of terror in our own country.

I find especially troubling the very concept of bands of private citizens organizing and arming themselves with weapons of war, and even laying plans to go to war against the government of *all* the people. These armed paramilitary organizations -- whatever we call them -- are certainly not the "well-organized militia" of the Constitution. The rest of us -- the overwhelmingly vast majority of the American people who do not plan to take up arms against their own homeland -- must not stand for the paranoid virulence that these groups spew. At the same time, we must be conscious of the fact that what distinguishes our society above all is that it is a free society. We cannot simply lash out blindly at the thought of potential terrorism.

We must be careful -- in everything we do -- to protect the fundamental freedoms that terrorists ultimately seek to destroy. However, we cannot allow our law enforcement agencies to be hamstrung by overblown fears that the "real" enemy is our own government, not those who seek to impose their particular visions on us by force of bomb and bullet.

America cannot allow itself to be bullied. We must neither be intimidated and paralyzed by angry threats nor frightened into rash action by the violence of terrorism. On the contrary, we must do

all that is necessary -- and no more than is necessary -- to stop terrorist violence. So it is the task of all of us, citizen and legislator alike, to keep our memories, and those of our neighbors, fresh. We must keep the full force of sunlight on the darkness of terrorism and fight it relentlessly.

By fighting terrorism, we will have preserved at the end of the day *all* the rights of *all* Americans -- not just imaginary "rights" proclaimed by those few who seek to impose their will through violence.

INTRODUCTION

Dean Daan Braveman³

I want to welcome you to the Syracuse College of Law's Symposium on International Terrorism. As an introduction, I want to mention how we developed the idea for this Symposium. Last year, a parent of a child killed on Pan Am 103 called to ask whether law students would be willing to conduct research on whether he and other relatives of the victims of the bombing could bring a lawsuit for civil damages against foreign governmental officials involved in the terrorist act. A group of students volunteered to research the legal issues, devoting many hours throughout the semester. During our discussions, some of the students suggested that the College host a symposium to discuss issues of international terrorism. Specifically, they proposed that we invite a panel of experts to explore the subject from a variety of perspectives.

³Daan Braveman is Dean of the Syracuse University College of Law. He received his J.D. from the University of Pennsylvania. Before joining the Syracuse faculty he was a law clerk for the Pennsylvania Supreme Court and an attorney for the Greater Upstate Law Project of Monroe County, New York, Legal Assistance Corporation.

I am very pleased that we have here today such a panel. Professor Beverly Allen has written extensively on culture and terrorism, and will challenge us to consider the effect of the many ways we talk about "terrorism." Professor Joseph Dellapenna has practiced and taught about transnational litigation, and has written the leading treatise about suing foreign governments. He will explore the availability of civil legal remedies against governmental officials responsible for international terrorism. Henry DePippo, a practicing lawyer, is an assistant U.S. Attorney who investigated and prosecuted those responsible for the bombing of the World Trade Center. He will describe the use of domestic criminal laws against international terrorists. Professor Joan Deppa is the principal author of the book describing the media's coverage of the Pan Am 103 disaster and will examine the journalist's sometimes conflicting roles in providing information about terrorism. Aphrodite Tsairis, the mother of a child killed in the Pan Am bombing, has been a spokesperson for the family group, Victims of Pan Am Flight 103. In that capacity, she has led lobbying efforts for changes that might prevent another Pan Am 103. She brings a powerful message about the development of citizen organizations as forces for change.

The timing for this Symposium is designed to coincide with the display on campus of Suse Lowenstein's sculpture, *Dark Elegy*. Ms. Lowenstein lost her son, Alexander, on Pan Am 103, and her sculpture portrays the bodies of women at the very moment when they learn of the loss of their child or spouse. The sculpture is a reminder of the horror and pain caused by hatred and acts of terrorism, a reminder that is particularly appropriate for the Syracuse campus community which lost 35 students on Pan Am 103. *Dark Elegy* is also a call -- a call for constant examination and reexamination of terrorism. This Symposium is a response to that call.

TALKING "TERRORISM": IDEOLOGIES AND PARADIGMS IN A POSTMODERN WORLD

Professor Beverly Allen⁴

I am very happy to be here to share my concerns with you today. I am particularly honored to be participating in a panel that includes Aphrodite Tsairis. She is a prime example for me of how personal experience can spur effective and thoughtful activism, which is one of my own constant goals.

Semiotics -- the study of signs and sign systems -- is helpful in any work on clandestine political violence for a very simple reason: "terrorism" is the most linguistic of violent political acts because its success depends entirely on whether or not it gets its message across. Such violence does not claim territory or establish new sovereignties; it works in a largely communicative mode, where the language is destruction, injury, and murder. This was clearly evident in Italy during the so-called "Years of Lead," the decade-and-more of violence that spanned the 1970's and the 1980's. There, maiming by kneecapping, or shooting someone in the knees, was so consistently practiced by clandestine groups on the left that it virtually became their trademark. Likewise, fascist groups adopted bombs as a kind of signature. These identifying modes of violence became so codified that they could easily be counterfeited. Leftist groups could plant bombs, and the public would assume they had been the work of fascists. Likewise, fascists could perform kneecappings with the reverse inversion of attribution.

⁴+dBeverly Allen is Professor of Italian, Comparative Literature, and Women's Studies at Syracuse University, where she directs the Humanities Doctoral Program and is Faculty Affiliate at the The Global Affairs Institute at The Maxwell School of Public Policy.

The word "terrorism" and all its derivatives do something much more basic than this. We could spend all afternoon attempting to define "terrorism." I and others here have spent years seeking a satisfactory definition, and by that I mean one that, like any good dictionary definition, applies in all cases. In my opinion, there is none. Therefore, the "terrorism" we speak of when we speak about "terrorism" at some very significant semantic level (the level upon which in fact all our measures of prevention, prosecution, and redress are based), in some very real symbolic sense does not exist. In linguistic terms, the signifier has no signified, or at least not the one we might assume. Instead of working down toward the meaning we think it might have, it actually works back to tell us something about the speaker and outward to create a community of finger-pointers and/or potential victims.

The word works very well, in fact, as a cipher indicating practically nothing about the events we think it describes, but a great deal about the ideology of the person or state who uses it. Simultaneously, it tells us we belong to the same group as the user and should, along with the user, be blaming or be feeling threatened just as the user does. I am sure you are all already familiar with the adage, "one person's terrorist is another person's freedom fighter." Examples illustrating this leap out from the pages of history as they do from the pages and screens of the media: the Irgun in Palestine, members of which, having bombed the King David Hotel, later became the leaders of the government of Israel; Nelson Mandela, who the State Department still listed as an "international terrorist" when he made his first trip to the United States after his release from prison; the Tamil Tigers in Sri Lanka, who were rehabilitated by *The New York Times* in the space literally of about a week back in 1988 from "terrorists" to "guerrillas" to "freedom fighters" as the priorities of U.S. foreign policy shifted. These are some of the more blatant examples in recent times of the manipulation of the term according to ideology. (I'm thinking now about how this operation, this manipulation, isn't a steady one. A good example of this has been the snub that Yasir Arafat, now rehabilitated to world leader, received from Mayor Giuliani at the U.N. 50th anniversary celebration recently. Giuliani hasn't yet caught up with

Clinton's rehabilitation of Arafat.)

The word "terrorism" then, like the word "terrorist," is more than anything else a shifting indicator of a user's point of view, a rhetorical device aimed at influencing the listener, a cipher that can play an enormous symbolic role and lead, as symbolic representation does, to profound practical results. "Terrorism" makes time stand still because it implies a universal category not bound to social formations dependent on modern institutions such as the nation state. Thus, it obscures the historically necessary connections that may well exist between violence aimed at imparting a political message and democratic states where political enfranchisement is less than universal, or where certain ideologies are in fact banned. The kind of illegitimate political violence we mean when we say "terrorism" is in fact closely related historically to the modern nation state because the state is always one of its referents.

The phrase "*international* terrorism," then, presents *two* semiotic enigmas. It is, at best, a highly ambiguous sign of the political violence it stands for, and, secondly, it presumes an international political context that will somehow provide appropriate preventive measures and responses, some kind of global guarantee. You can get a sense of this implicit community from Benazir Bhutto's interview on the Charlie Rose show where Rose asked her if returning "terrorists" -- allowing them to be extradited from her country -- had not been politically embarrassing for her, or politically troublesome. She said it certainly had been, but in her heart she knew it was right because it was working for "our common interest." So there is a global community in that "our common interest" phrase, but it is not clearly any single state.

The postmodern paradox here is that such an international political context, to the extent that it does exist within the U.N. is entirely dependent upon individual states; but, the world community "international terrorism" creates is in fact not that. It is a community of air travelers with many diverse passports and no single representative government.

So whatever tangible, event-describing meanings of the sign, "terrorism" exist, shift according to

location. In Northern Ireland, it means one thing; in Japan, quite another; and internationally, still another. What it means is not just bombs as opposed to lethal microbes as opposed to hijackings and worse. It also means that this state, or that, or an international consortium of states, should respond.

I want briefly to talk about the civil response in Italy, a cultural response, an ideological operation performed on and by the civilian population. When the violence began, the early perpetrators on the left were the children -- literally, historically they were the children -- of the privileged upper middle class, university students for the most part, economically advantaged northerners, in general. For several years, the criminal nature of their activity, which consisted of robberies and the destruction of property as well as maimings and some killings, was not enough to rob them entirely of the support of a large sector of the populace.

In fact -- and we see this clearly in Italian novels about this violence -- many Italians viewed the perpetrators as prodigal sons, children who had gone wrong but who were ultimately recuperable to dominant class ideologies. As time went on, however, and the violence continued, severely impacting the Italian economy particularly in its tourism sector, the symbolic representations of the perpetrators began to change. By the mid-1980s, no representations of "terrorists" as anyone's children were to be found in the novels.

Now, with an economic crisis looming large, and with a sense that life on the streets and in cafes and trains has become more dangerous than before, Italy's novels instead offer up "terrorists" who are, in fact, nobody's sons. Instead, they are adults, all of whom deviate from the dominant class norm, mostly by means of some sort of sexual perversion (in this such novels echo a quite distressing representational practice found in Claire Sterling's purported analytic work on what she calls "international terrorism.") Implicitly, in Italy, the "terrorists" are, by 1985, people with no relatives, people who are no longer Italian, no longer members of the body politic that spawned them.

Let's briefly compare the past Italian situation with the present one here in the United States in

order to see what this comparison may tell us about illegitimate transnational violence. Our own country has recently been forced to recognize most tragically that not all "terrorists" are swarthy males from non-English-only countries, and that not all American victims are those who venture into foreign lands. The World Trade Center bombing taught our citizenry that clandestine political violence with an international state-directed message could happen here, but it was still the work of *foreigners*.

Now -- and I'll be interested in hearing from others about this later -- the Oklahoma City bombing has taught us that even Americans can be "terrorists." In fact, the accused perpetrators in the Oklahoma City bombing are in some ways quintessentially American, farm boys who are every bit as much products of the heartland as were the bomb's innocent victims. They are also, like many of their victims, young, and their very youth enters into the way the media represent them and the citizenry thinks about them. These "sons of the heartland" are so transgressive that they fray the very fiber of the social contract upon which civic serenity depends. Public culture in the U.S. lacks the parental patience displayed by the dominant class in Italy during the early 1970s.

There are no metaphors of prodigal sons here in spite of the tabloid-tone coverage devoted to the family members of the accused. (No such coverage, you will have noticed, was ever given to the foreign perpetrators of the World Trade Center bombing, or for that matter, any act of "international terrorism" which by definition is carried out by individuals who lack all normative human bonds.) The relatives of the Oklahoma City accused are shamed. None has attempted to defend those accused or even to recuperate their images to that of a kid gone temporarily wrong but not intrinsically evil. The symbolic operations that now obtain are complex.

In conclusion, I want to look with you at a single aspect of these to see what it might mean. Like the early perpetrators in Italy, the suspects in the Oklahoma City bombing figure as youth, as the children of the heartland, as our children, in representational practices now underway. Unlike the early Italian situation, however, the citizenry in this case practices no Biblical tolerance but rather accepts the

State's wrathful expulsion of these sons from the body politic and in fact from the body itself. For them, the Attorney General suggests the death penalty.

The "bad kids," then, must be expelled from the family in as permanent a way as the good kids have been taken from it. The State, which is after all the figure to which the message of the bomb in the Federal Building was addressed, *as it is the addressee of all other acts of modern clandestine political violence*, assumes a *punitive* parental role.

But where another group of good kids is concerned, and here I am speaking about those killed in the airline bomb over Lockerbie, the State may well have abdicated its Oedipal role entirely. Without even addressing the possibility that the U.S. government had information about the bomb and failed to warn the airline and travelers, we can note clearly that the State's insufficient participation in mourning for the victims was a shutout at the symbolic level of this most horrible crime.

My reading of these several events indicates, then, that the State, at a highly significant symbolic level, one with immense practical consequences, cannot tolerate the parental metaphor it generally adopts, as caretaker of the interests of the body politic, when the issue is clandestine political violence involving American youth *either as victims or as perpetrators*. If it were to hang onto that implicit parental metaphor, the State would then appear as a parent incapable of either raising or protecting "its" children.

Let me come at this from another angle. In order to maintain its symbolic power, the State must present itself as an unattached adult male among other unattached adult males. This leaves us with more voided linguistic signs. It leaves us in fact with a cliché: "terrorists" cannot be anyone's children. Prevention and punishment must pass between adults here, adults gendered as male, in fact, and adults not acting as parents, as is the State with its overwhelming power to legitimate the taking of life.

The State prosecutes unattached adult male foreign perpetrators, it negotiates with other states in matters of extradition, it establishes codes of legitimate and illegitimate violence and, in deals cut for

political exigency, breaks those codes without telling the citizenry. But just as the youth movement of the 1960s, the women's movement of an entire century, and recent economic and demographic sea changes have been establishing transnational discursive and market communities, so "international terrorism" challenges the traditional parental response of the individual state or group of states.

Here it seems to me we can draw some practical conclusions from this brief excursus into the symbolic culture of "terrorism." The modern state is capable only of a kind of policing that some call prevention or of judgment and punishment that exiles perpetrators, figured as inherently evil, from any notion of the body politic. The ethics are in place, but the symbolic dynamics are askew: none of them leads to a reevaluation of the parental role of the State. Such a reevaluation would point, I think, to some new authority other than that of the nation state. It would point perhaps to an institutionalization of forms of transnational governance, seeds of which exist at present in such instruments as trade agreements, Interpol, international conventions and protocols against war crimes and genocide, and human rights legislation. We might envision a body to which prospective perpetrators might bring grievances even if those prospective perpetrators do not enjoy legitimation as a state, as is currently necessary to qualify for the jurisdiction of the World Court. It might be a body to which prospective victims could bring grievances or concerns without having had to gain previous legitimation under the tragic rubric of "victims." To be successful, such a body would have to learn the Oedipal lesson of the symbolic culture of "terrorism:" it would have to abdicate a fatherly role and allow for the institution of patterns of civic kinship that would recognize the multiple directionality of social relations and identities. It would have to give up the patriarchal family metaphor for postmodern nonpatriarchal, nonmatriarchal ones, or abjure the family metaphor all together. It would have to learn the lesson Mary Wollstonecraft Shelley gave us in her far-seeing novel of the paradigms of modernity, *Frankenstein*: the demons we create in a society where the State takes on the symbolic role of the father are always, like the monster child Frankenstein created, images of ourselves.

When the parent is the State, such a binary gives tremendous authority to the demon and can be interrupted only by a profound revision of hierarchic identity categories. If the fatherly State makes way for nonhierarchic local councils operating at a global level, or local parent groups, or some other, unimaginable-as-yet globally-linked or crosscutting global institutions, the possibility of civic terror that is built into the guarantees of democracy need not be the final recourse or the tragic end of anybody's children.

LEGAL REMEDIES FOR TERRORIST ACTS

Professor Dellapenna⁵

I am here to speak about legal remedies for terrorist acts. I will not attempt to define terrorism as it is a heavily political term. What I have in mind as terrorist acts are--I borrow the phrasing from the Torture Victims Protection Act--kidnapping, torture (including rape), and extrajudicial killing. Those acts, if not legally or morally justified (I leave it to you to worry about which is more important), clearly cry out for legal remedies, for some sort of social response. I thus leave aside some of the more exotic uses of the term "terrorism" that have recently become popular.

⁵ Professor Dellapenna is currently a Professor of Law at Villanova University. He received his L.L.M. in Environmental Law from Columbia University and in Public International Law and Comparative Law from George Washington University.

I have only a few minutes to talk about this fairly complex topic, so I shall get right to the bottom line. My concern is with civil remedies, that is, suing someone and asking that person to be ordered either to do some act or to pay money as compensation for the injury already done. Why is that important? Well, for one thing, although there are attempts afoot to prosecute terrorist acts as crimes, criminal prosecutions of terrorist acts in fact have not been very effective up until now. So the question becomes: Can you make the wrongdoer, the perpetrator, pay in a very literal sense for the wrong? While monetary compensation will never fully, or in many cases even to any great extent, make right what was done to the injured persons, still if you can make the wrongdoer feel some sort of pain for having done the wrong, you have accomplished something. Recognizing this, lawyers and others have invested a great deal of effort over the last fifteen years in attempts to bring successful civil suits against people and political entities responsible for kidnapping, torture, and extrajudicial killing.

I have been involved in some of these attempts. Despite the effort put into this endeavor, by myself and others, we have actually achieved very little success. We are not likely to do better along these lines except in the extraordinary case of the Marcos family, unless there are significant changes in American law.

Notice that I am leaving out of the picture the possibility of international fora. Most international fora, including arbitration as well as litigation before the World Court or similar bodies, are really only available if the two governments involved agree to resolve the dispute in the particular forum. And it has proven problematic, to say the least, to get our government--and here it does not matter whether there is a Democrat or a Republican in the White House--to agree to submit these sort of issues to an international forum. If our government ever did choose to go that route, it probably would be even more difficult to get the alleged terrorist state to agree to have its actions judged by the international forum. International fora simply are not a realistic option, at least not as those institutions are presently structured or are likely to be structured in the foreseeable future.

The question thus becomes: Can you bring a civil claim in a national court? It is pretty much unthinkable that you could bring such an action in a court of a terrorist state. If that were a realistic possibility, the state probably would not be involved in terrorist acts in the first place. Can you successfully bring a civil claim against a foreign government responsible for terrorist acts in a court in the United States instead? To answer, one must consider both the legal and the practical aspect of the problem.

On the legal side, you can bring suit in a U.S. court against the individual actor, the actual person who did the torture, the raping, the killing, if you can identify that person, if you can serve a legal summons on her, and if the court is able to exercise personal jurisdiction over him. The practical answer, however, is that such suits seldom make much sense. Apart from the difficulty of identifying the person you would want to sue and then finding that person and establishing personal jurisdiction over her in an American court, the person who actually did the terrorist acts seldom has any money, and therefore, in terms of making that person feel some pain from having to pay a judgment, you don't accomplish much even if you win the suit. Only if you are satisfied with the moral victory of having a court declare this act to have been unlawful and condemning the wrongdoer (possibly at considerable expense), will you gain anything from suing most perpetrators of terrorist acts. Typically, you will not realize any money out of that person. Again, the Marcos family is the notable exception.

The alternative, of course, is to sue the sponsoring organization. The sponsoring organization usually, but not always, is a state, at least if you can trace it back far enough. You may have difficulty proving in court that a particular state was the sponsoring organization because states seldom stand up in public and say, "Yes, we did this and we're proud of it." States usually act through surrogates, and then deny any knowledge of the action, so you may face a practical problem in proving your case in court. But assuming you can do that, you have legal barriers to overcome.

First and foremost, the only way you can sue a foreign state is under the Foreign Sovereign

Immunities Act--the exclusive basis of judicial competence in an American court over a foreign state. The Act was drafted by the State Department for its convenience, and not for the convenience of persons injured by a foreign state. The Act is in my view very poorly drafted; interpretation problems abound. Basically, the Act allows suits against foreign states based upon the state's commercial activity. In all, the Act provides eight exceptions to the judicial immunity of foreign states, but by far the bulk of the litigation arises under the commercial activity exception.

Only rarely would one of the other exceptions apply to terrorist acts by a foreign state or its operatives. The exception to immunity for noncommercial torts, for example, requires that both the tortious conduct and the injury occur in the United States. Therefore, if you were tortured or your loved one were "extrajudicially" killed abroad, the Act does not permit suit in American courts based upon the commission of a noncommercial tort. A waiver of immunity by the foreign state would be effective to remove the state's immunity, but foreign states almost never waive their immunity for claims that they are responsible for terrorist acts. Despite a great deal of effort (including some of my own) put into convincing courts that a state violating certain basic norms of international conduct must be deemed to have waived its immunity, our courts have consistently rejected those claims. Barring a wholesale change in the personnel on the federal bench (something that would take a generation), the pattern of rejecting claims of implicit waiver is simply not likely to change.

As a result, if you have been tortured abroad, you will find yourself in a position like that of Scott Nelson. Nelson, an employee of a government-owned hospital in Saudi Arabia, was (if he take his version of the events as true) held and tortured by the Saudi police for more than a month and then expelled from the country. His offense: He had reported his suspicions that his superiors at the hospital were accepting bribes. He subsequently sued both the Saudi government and the hospital, as well as some other people, for his injuries. Nelson was reduced to claiming that this was a commercial dispute because it arose out of an on-the-job dispute. To no one's great surprise, a majority of the Supreme

Court, eight out of nine justices, said this was not a commercial dispute, this was a suit about torture by the police. As this case suggests, you cannot, except under the most extraordinary circumstances, sue a foreign state for terrorist acts--even if you can prove the state's responsibility.

It can be even worse if you are trying to sue some entity other than a foreign state. If the entity is an arm of, or a corporation owned by, a foreign state, it will be shielded by the Foreign Sovereign Immunities Act under the same circumstances as the foreign state itself would be. If the entity claims to be a state, but is not recognized as such by the United States, such as the PLO, the consistent response of our courts is that you cannot sue them, they do not exist because our government does not recognize them as existing. There have been a number of suits over the years against the PLO for sponsoring terrorism, and those suits have all been dismissed. You could sue individual members of the PLO, but then you must prove that the individual being sued actually was involved in or responsible for the particular terrorist act that forms the basis of your suit. If you overcome that and other problems in obtaining a judgment against the individual, it merely brings you back to the practicality that you almost certainly never collect your judgment.

There is another case I was personally involved in that some of you may have heard of. The case is called *Von Dardel v. U.S.S.R.* Now, you may never have heard of Guy von Dardel unless you have read this case. Von Dardel is the uncle of Raoul Wallenberg, one of the few genuine heroes of the twentieth century. Wallenberg, for those of you who are not familiar with his name, was a banker in Sweden. Sweden was one of the few neutral countries in World War II, and as a result he was able to travel freely in Nazi-occupied Europe during the war, and to and from Sweden, although he could not travel safely from Sweden to an Allied country. He was sufficiently disturbed by what he saw in Europe, that he agreed to go to Hungary as an affiliate of the Swedish embassy with the specific task (paid for and directed by the United State) of trying to save as many victims of Nazi persecution, primarily Jews, as he could. He is credited with saving at least 100,000 lives. He did so at considerable personal risk; he spent

the last three or four months of the German occupation of Budapest literally hiding underground from the Nazis. The Nazis had tired of his interference and had decided to ignore his diplomatic immunity. As soon as the Russians captured the city, Wallenberg came out of hiding and turned himself over to his “rescuers.” The Russian government had him arrested and he was never seen again.

We sued the Soviet government in 1984 under the Foreign Sovereign Immunities Act. Largely because the Soviet government refused to participate in the proceedings, we got a judgment for \$39,000,000. That judgment was vacated six years later at the request of our Justice Department. During that six years we had tried in vain to find assets that we could execute the judgment upon, but we never got a penny. This is yet another problem under the Foreign Sovereign Immunities Act: Difficult as it might be to get a judgment against a foreign state, it is even more difficult to execute a judgment against a foreign state once you get it. And it is easier for the foreign state to have such judgments vacated than for ordinary judgments.

That brings me to my final point in this brief discussion: As the story of the *Von Dardel* and many other cases suggests, our own government does not look kindly on litigating these claims in our courts. From the government’s point of view, such suits interfere with the smooth operation of diplomatic relations. I expect in this context that we shall see a Bosnian peace plan supported by our government that will include a mutual agreement by the several groups fighting in Bosnia not to pursue war crimes prosecutions. I must say that I am very skeptical of the prospects for any such peace to work, but that is a separate question. Our government, on the other hand, feels that working out these problems diplomatically--often meaning without any meaningful resolution of the wrongs that were done to individuals--is in this country’s best interest. And again, this attitude on the part of the government seems to be independent of whether there is a Democrat or a Republican in the White House.

A proposal in Congress could change this pattern of governmental resistance to civil litigation

over terrorist and other politically sensitive acts of foreign states. The bill was originally introduced in the Senate by Senator Specter and in the House of Representatives by Representative Mazolli. The bill would amend the Foreign Sovereign Immunities Act to allow anyone to sue in an American court, under certain conditions, against a foreign state responsible for kidnapping, torture, and extrajudicial killing. The bill has now been included in the Dole/Hatch omnibus terrorism bill working its way slowly through Congress.

There are restrictions in each version of the bill. The Senate bill, for example, would allow suit only if the Secretary of State has listed the defendant-foreign state as a "terrorist state." There are only about a half-a-dozen such states. Most of you in this room could probably guess which states are listed. This version of the bill would not, for example, have helped Scott Nelson for we do not list Saudi Arabia as a terrorist state. The House version does not have this restriction, but it has others that could be almost as confining.

Both the Justice Department and the State Department have sent representatives to the Hill to testify against these amendments to the Foreign Sovereign Immunities Act. In the past, opposition by the State Department was enough to kill any proposed amendment to the Foreign Sovereign Immunities Act. This time things might be a little different. To begin with, there is more of a constituency out here concerned with this issue. Most amendments to the Foreign Sovereign Immunities Act simply do not have a broad constituency; most amendments are of interest to only a narrow group of people, mostly inside the Beltway. Here we have people outside of Washington who are paying attention and who are concerned about these bills, and that might make all the difference. Each of you, if you are concerned about these issues, should familiarize yourself with these bills, form a view of the merits of the proposals, and make your views known to Congress. You just might make the difference whether one of these bills is enacted. As the Senate proposal is now included in the Dole/Hatch bill, whether it will be voted up or down, whether there will be a Presidential veto (which has been discussed), and whether a

veto will be overridden, will perhaps turn more on the overall bill rather than one the particular amendment to the Foreign Sovereign Immunities Act. Still, you should educate yourself on the problem, and when you have formed an opinion, you should make it known to Congress.

CRIMINAL REMEDIES FOR TERRORIST ACTS

Henry DePippo⁶

As Professor Allen Beverly pointed out, with the bombing of the World Trade Center in February of 1993, terrorism was practiced in the United States on a massive scale for the first time, and indeed with that bombing terrorism arrived on our shores. Just to illustrate to you the state of the criminal law concerning terrorism at the time, the four defendants in that case were prosecuted for violating federal statutes that prohibited bombing a motor vehicle used in interstate transportation, and for setting off a destructive device in a building used in interstate commerce. In short, there was no federal terrorism or anti-terrorism criminal statute for acts that were perpetrated here in the United States. Ironically enough, if a terrorist act had been committed against a United States citizen while abroad, a defendant could have been criminally prosecuted for terrorism here in the United States. But if those same acts were committed within our geographic boundaries, there were no antiterrorism statutes that applied. And so the World Trade Center bombers were never prosecuted for "terrorism," but rather under other statutes that we could be applied to the crime.

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For those of you -- and I'll be very brief in these remarks -- but for those of you who may not recall or have followed closely the bombing of the World Trade Center, it was roughly a 1,500 to 2,000 pound fertilizer-based, improvised explosive that was used. The bomb was contained within a Ryder van. That van was parked in the parking garage right up against the base of one of the Twin Towers. The hole -- or the crater as it was referred to -- was roughly six stories tall. You could comfortably fit two two-story homes complete with yards within what was left as a crater some one hundred and seven stories below the actual top of the World Trade Center tower.

The bombing occurred at lunch time on a Friday afternoon. During that day, and in fact on any given day in the World Trade Center, between the employees, the visitors and all the commercial tenants, there are roughly 100,000 people in that complex, all of whom had to be evacuated. The bombing itself claimed the lives of six people, including a woman who was seven months pregnant. There were roughly one thousand people injured. It was the largest patient-producing single incident in United States history apart from certain battles of the civil war. And in terms of monetary damages, it cost in excess of half a billion dollars to restore the Trade Center.

Again, Professor Allen Beverly talked to you about the definition of terrorism, and I do not claim any expertise in trying to define terrorism for you. I will say this: I don't know how to define terrorism, but I certainly know it when I see it. And having spoken to many of the victims who survived that bombing in the days afterward, trying to get investigatory leads, and in the months following actually preparing them to put them on the witness stand for trial, I can tell you that six months after this bombing, you could actually see the terror etched in these persons' eyes and in their tears and in their words as they described for us in painstaking detail exactly what they experienced in that one single day back in February of 1993.

I can also tell you that when I first visited what was known as "the crater" approximately a week after the bombing, it was the most eerie sight that I'm sure I will ever see in my life. It was nothing other

than just mass destruction. There were cars and other vehicles, and just the exposed innards of the World Trade Center. They were all totally devastated beyond my ability to describe for you.

At the time, many construction workers had been inside the Trade Center to shore up the structure of the building itself. To reach a point where one could view the crater, there was a stairway. When walking downstairs, the building appeared absolutely normal. There was a door at the bottom of the stairs that when opened and then suddenly the crater was before you. On that door one of the construction workers had spray painted "[w]elcome to the gate to hell." And I think that is probably the most apt description for that sight.

In terms of the law enforcement response to terrorism in the days following the bombing, there were prosecutors assigned to the case along with a massive investigatory team. In those first few days following the bombing, some of the prosecutors remarked that maybe our grandchildren would be able to prosecute this crime. In fact, there was a terrorist who had planted two car bombs outside Israeli banks in New York City in the early '70s. The individual who had planted those bombs, which never went off because they were detected, fled overseas. He was captured in Italy, and the extradition process alone took approximately three years even after his capture. He was extradited to the United States just slightly before the time of the bombing of the World Trade Center. With that experience in mind, we thought that this crime would never be prosecuted.

I don't have the time to get into all of the details. With an enormous amount of hard work and frankly luck on our side, we made the first arrest six days after the bombing. It just so happened that we were lucky enough that there was a piece of the van that actually contained the explosive, or the bomb, that was recovered outside the crater. It was right on the edge of the crater. Had it fallen inside, it probably would have taken two weeks to find it. We lucked out, because the person to whom that piece of the van led us had not yet fled the country, and there was evidence that he was in the process of seeking to flee the country. We were also lucky because the thing that led us to him was a Ryder rental

agency, and this individual was still trying to get his deposit back claiming that the van that he had rented had been stolen.

So with an enormous amount of luck, we had an arrest in that case, and actually what followed was really quite miraculous in law enforcement terms. Within two months we had pretty much established the circumstantial trail, we had had four individuals, including one who had fled to Egypt and was returned to the United States. Even so, at the trial there were two fugitives, one of whom we argued to the jury was the mastermind of the whole conspiracy. That individual has since been arrested and brought back from Pakistan. And so there remains one fugitive, but by law enforcement standards, this was a miraculous success. We had four defendants in the United States, and the mastermind who had gotten away was subsequently captured. The trial occurred with unusual swiftness. It actually started six months after the bomb went off, and six months later all four defendants were convicted. Every defendant was convicted on every count on which they were prosecuted.

It was a time, you may recall, that both the A.T.F. and the F.B.I. were being lauded in the media for their hard work. The case became almost a paradigm of a successful response, a criminal response, to a terrorist incident.

That having been said, we did not see any immediate deterrence. At the very time that we were getting a lot of lucky breaks and arresting people and starting the process of bringing them to justice, there was yet another group of related individuals that was planning on bombing the Holland Tunnel, the F.B.I. building in New York City, the George Washington Bridge, and other targets.

It so happened in that particular case that law enforcement had an informant on the inside of the second conspiracy, and so the meetings among the conspirators were monitored, and they were tape-recorded. It so happened that the informant that was inside was an individual who could arrange the safe house, and therefore the activities of the group could be monitored. What happened was after that plot got moving along, at least far enough, but not too far, the decision was made to make arrests

in that case and -- using law enforcement lingo -- take down that organization. Those were traditional law enforcement tools that were at work in that particular case.

And even though that bomb plot was thwarted, in my opinion, generally law enforcement will not be able to successfully prevent terrorist acts. Generally when you have organized conduct, law enforcement has a few things on its side. First, the organization and the acts of its membership are generally motivated by profit. When you have organized crime, for instance, running gambling and prostitution rings, they are seeking, and the membership is seeking, to profit themselves. When you have massive large-scale drug organizations, the members are seeking to profit themselves. Typically, the other thing that law enforcement has on its side is the fact that the larger the conspiracy, the higher the profit. The larger conspiracies, and the most sinister groups as far as society is concerned, are generally the larger groups which have a great many co-conspirators. And what that means is that any time along the way law enforcement can arrest somebody and then can infiltrate those groups, because what happens when somebody who is motivated by self-interest is arrested, law enforcement can convince that person that it is in their self-interest to turn on his or her cohorts and become an informant. In addition, after law enforcement establishes that level of infiltration, they can get tape-recordings and wiretaps and build a solid criminal case. And that is in fact what happened in the "Bridge and Tunnel" case as it's come to be known.

I am here to say to you today though, in my experience, generally terrorist groups will not be susceptible to law enforcement infiltration. A terrorist group, however defined, is generally motivated by either political extremism, religious extremism, or some such other motive that's not going to make it likely for somebody to go and after they are arrested to turn on -- again, use the jargon -- to "flip" on their co-conspirators.

In addition, based on my limited experience in this area, you are not going to have the same types of numbers, in terms of member of the conspiracy. It is remarkable how few people it takes -- and

maybe we will learn that from Oklahoma City -- to actually build a weapon of mass destruction. It doesn't take extremely large numbers in contrast to organized crime and the big drug organizations, where the more persons that are working, the more money the organization makes. It is not the same in terms of destructive devices. With very few people you can create a weapon of mass destruction, and typically these individuals will be very tightly knit. They will hold things close to the vest, and obviously it is not in their interest to publicize their activities among a large group of people.

In conclusion, if I have a message here today, it is that you cannot be overly reliant on law enforcement to prevent terrorism. I just don't think that the criminal justice system or law enforcement agencies have the tools that they need to prevent terrorism, and I think that is the lesson that we learned in Oklahoma City. What you saw out there again was a very small, close-knit group of people who were able to carry out just a horrible, horrible act with only -- by judging from the arrests -- with only two people who were at the core of that conspiracy. Instead, what you did get emanating out of the World Trade Center bombing case was an experience in how to detect these types of crimes after the fact. And I think it was a direct result of the lessons that were learned by the law enforcement community in the World Trade Center case that led to the very quick arrests in Oklahoma City. For example, at the time of the World Trade Center bombing, one of the things that law enforcement did not specifically know to do was to look for the piece of the van that contained a confidential vehicle identification number, with which the bomb-laden vehicle could easily be traced. In Oklahoma City, the same bomb experts, who learned from the World Trade Center case, looked for the piece that contained this vehicle identification number immediately. Based on finding that piece of the truck, they were able to quickly find out which truck contained the bomb and who rented it.

In sum, while the public may look to the law enforcement community to detect terrorist acts and identify terrorists after the fact, and to the criminal justice system to punish terrorists, traditional law enforcement tools are not likely to be over effective in the prevention of terrorism.

MEDIA COVERAGE: HELP OR HINDRANCE?

Professor Joan Deppa⁷

The first thing that we need to think about when we are thinking about media coverage of international terrorism is how fast it comes. Within twenty minutes of this awful bombing over Lockerbie, Scotland, the Scottish broadcasters had the word out via television and radio. Within an hour of that, in fact, less than an hour, we were hearing the news on this side of the Atlantic. It was sparse; what I heard on the radio as I drove along Erie Boulevard was simply that a plane from London bound for New York City had gone down over Scotland. In that single act of international terrorism, we were made into part of the global village. Here in Syracuse we became linked with Lockerbie. That is one of the things that happens, and many of us looking back think it was a good thing that somehow we had these new neighbors.

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Acts of terrorism force the media not just to communicate news, but to be the bearer of the worst kind of news that we can imagine. They need to be there to help us all, whether we are the survivors of the disaster, families of the disaster victims, or part of a larger society. They have to help us to face the inhumanity of the act. But there is no doubt that they can also add to the distress. That is particularly true, as I learned in my visits to Lockerbie, because these acts bring together a huge international corps of journalists, of reporters, photographers, camera crews. And these are corps of journalists who are very different from one another. They will range in experience, for example, from some veteran correspondents to young interns. They will be part of the spectrum from newspapers of record down to the worst tabloid journalism. They will also represent a wide variety of national and international values with regard to how we cover disasters.

Now, the Lockerbie coverage went quite smoothly really, and that was due in large part to the fact that the Scottish authorities had practiced how to handle disasters, and they had considered as part of that, how to handle the communications. So even the police chief in Lockerbie, which is the very smallest police force in Scotland in the British Isles, had been trained in how to speak to the media. And the Scottish Information Office and the Scottish police got the information flowing rapidly and got the media used to coming in for news at regular intervals, and that helped to control the worst excesses. But there were still problems.

There were members of the press corps who behaved in ways that were very distressing. One of the worst problems was that there are some countries in the world where it is considered acceptable to publish bodies in mutilated form following such tragedy. So there were photographers who did go out into the countryside and lifted up tarpaulins -- over bodies and shot some of those scenes. We did not see them in this country, and they were not shown in Britain, but they were shown in some countries on the Continent and in Latin America. And because that kind of thing was shown, there was a rationale for the photographers who were there shooting for people in those countries to take that kind

of picture and engage in what to us is highly offensive behavior.

We are just a few months past the 10th anniversary of the hijackings of TWA 847, which led to the prolonged hostage situation at Beirut airport. And that was a story that caused even more controversy about how the media handled international terrorism than was caused by the coverage of Pan Am 103. About a hundred journalists went to Beirut. It was a very tense time in Lebanese history, a very dangerous time. Terry Anderson had already been taken hostage, but there were about a hundred journalists who went there and that seemed at the time to be a very large and very competitive news corps for the American television networks. ABC, CBS and NBC came in for particular criticism for how much coverage they gave it and for the fact that they covered the press conferences that were staged by the terrorists.

In terms of sheer numbers, realize that at Lockerbie we had more than a thousand journalists there during the first month, and that many of them stayed for a long time. Contrast that with 100 who were in Beirut and who were there for the 17-day ordeal. Now come forward in time and imagine what it would be like if we were to have either one of those kind of terrorist acts happen today, either another Beirut airport or another Lockerbie. All you have to think about is the O.J. Simpson trial, where out in the parking lot near there we had what was called "Camp O.J.," and there were approximately, I'm told, 1,200 broadcast journalists who operated from time to time out of that area. That is not print journalists, that is just broadcast journalists. And that is largely American journalists, because this was not a huge international story.

That is how fast our communications are developing and that is why we have to think seriously about what will happen with coverage as we move forward in time. So one of my concerns for a long while, in fact, beginning with one particular October day when I was walking through the streets of Lockerbie, has been media ethics in an international setting. I realized, on that day that I had been hearing all of the stories about problems that had happened in Lockerbie, cases in which, for example,

the British tabloid press had invaded people's homes at a very difficult time for them, and that despite the fact that I had been a foreign correspondent for seven years myself and had had lots of contact with international journalists, that I had never talked with any of them about media ethics.

Media ethics has tended to be something we talk about in our own country among our own journalists, if we talk about it at all. It is even difficult when we do that. The Society of Professional Journalists in this country has been trying to revise its code of ethics, because the current code is very vague and just sort of makes nice noises. And they have been working very hard to address issues such as how do we cover grieving people. And they met this fall and decided they are not yet ready to adopt this new document, or to modify it. It has been tabled for a year, so it's not easy even if we talk about it nationally. And in Britain, the newspapers have been working cooperatively, or trying to work cooperatively, and voluntarily to end the worst invasion of privacy cases, and they are doing so under the threat of Parliamentary action to create privacy laws. And they have just about given up and recognized that they are going to have to go for some sort of legal "line in the sand" on this rather than do it voluntarily. So the idea of arriving at this international code of ethics is very daunting. Then, this fall I got a glimmer of hope, because I was invited to an international seminar in Salsburg, Austria, and the topic was "The Impact of the Media on Politics, Policy and World Events." And I was one of 57 fellows there, and as an American, I was in a distinct and very small minority.

Most of the people were from foreign countries. Many of them were from countries which have just newly achieved press freedom; for example, Eastern Europe, some African countries, and others around the world for whom this is a really very new concept. And as we stood up to introduce ourselves and went around the room, we were supposed to say what we were interested in. And many of them said media ethics. And I just went "Wow, this is so neat." So I volunteered to lead an informal discussion group on ethics.

The first meeting was very well attended and was very exciting, except the topics they wanted

to talk about tended to be about how we function inside news rooms and in competitive settings. And right at the end a young woman from Uganda, who is currently a journalist, stood up and said, "But who's going to protect the people from the press?" Now, as the moderator of this discussion, I felt this was what we ought to be talking about, but it was too late, and so we convened another meeting to talk about that specific topic. And in the meantime I had this crazy idea that maybe it would help if we had some language to work with, if I could draft something that would address especially the privacy issue. So I said to myself, "Where could I get some idea of the wording." And I thought, "Well, wait a minute, Universal Declaration of Human Rights . . . maybe if we got some wording that felt like the Universal Declaration of Human Rights."

So I went to the library there, and got the Universal Declaration and went through it, and lo and behold, I discovered something that I, as a journalist practicing all these years, did not know, and I will show you what I found. Article 12 of the Universal Declaration of Human Rights is very specific and to the point so that I didn't have to draft anything. It says, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right of the protection of law against such interferences or attacks." Now, that seems as applicable to the news media as it is to any other institution, even though, as far as I can determine, there has never been any real attempt by such groups as the Human Rights Watch to apply it in that way.

And in studying the document more closely, I found another article that could -- and I would argue should -- serve as a guideline to the media in cases of international terrorism and its aftermath. And this one is even more obvious, and the media know about this one: "Everyone has the right to freedom of opinion and expression. This right includes the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."

Now, actually the media have campaigned for this right in many countries, right along with the human rights organizations. These two articles can be seen as complementary. They might seem to be in conflict to start with, but they are not. What our research on the coverage of Pan Am 103 showed us is that while people right at the moment that they learn that they have lost someone do not want the media present -- that is a private moment to them. They vary a great deal in when and under what circumstances they would like to be able to speak to the media. And it becomes very important to some of them to be able to speak through the media, as it did after Pan Am 103, especially when it became clear that there had been a warning posted in the Moscow embassy so that people who went there knew not to be on a Pan Am flight. It was also interpreted as a right when it became clear that the State Department was not doing its job in helping the families of these victims, and when it became very clear that our government, first the Reagan Administration and then the Bush Administration -- and Mrs. Tsairis would say the Clinton Administration -- were not doing enough about Pan Am 103. It became very important for family members to have a chance to speak out as long as they could say, "Yes, I want to speak out now, and here are the circumstances under which I want to speak out." So, the privacy right is important, but so is this right for the people who are victimized. But I want to suggest that it is also possibly pertinent as a potential way to prevent terrorism. I think if you look at most of the controversies around media and terrorism, you will find a recurring theme, and that is that by covering acts of terrorism, the media encourage them.

Certainly in 1985 when the TWA 847 was sitting on the tarmac at Beirut airport, people like Henry Kissinger were saying very crass things, from my point of view, about the media and its coverage, accusing them of humiliating the American government by broadcasting what the terrorists had to say. I think there is another reading of Article 19, and that is that in most of these acts, including the bombing of 103, the real impetus seems to stem from the frustration of people who sense they are not being heard by the governments and institutions who hold life and death power over their lives.

In preparing for this symposium, I went back and looked again at the coverage of the Iranian airbus which was shot out of the skies by the U.S.S. Vincennes in July 1988, killing all 290 on board. Many of us have suspected that Pan Am 103 was an act of retaliation for that shooting, for that mistake. And when you look at the media back then, their focus was not on what had happened to the Iranians, but what was happening to our service people. Newsweek, for example, focused on what it was going to do to the career of the man who was the skipper of the Vincennes. Now, three years later, they did a very excellent piece in my estimation of showing how there had been a cover-up of what really happened with the Vincennes. But by then it was too late. Pan Am 103 had already been blown out of the skies.

What I am suggesting here is that the media have a very real responsibility to understand what the grievances are against the government and other institutions, including media institutions, and to enable everyone and anyone to -- in the wording of this article -- "seek, receive, and impart information and ideas through any media and regardless of frontiers." And that right should apply to domestic discourse as much as it does to international discourse. I think the failure of the government and the media to address the grievances about federal law enforcement at Ruby Ridge and Waco, Texas, until the Oklahoma City bombing are certainly signs that we ignore these problems at our peril.

During the 1985 standoff at Beirut airport, two voices called for more education of the American public about messages that the people of the Middle East were trying to send us. One was Morehead Kennedy who, as you may recall, was one of the hostages held in Iran in 1980. He expressed concern about the way that television, rather than educate people about these messages, played to what he called the more immature instincts of the audience. The other was Donald McHenry, who served as U.S. Ambassador to the United Nations during the Carter Administration. McHenry said of the coverage of terrorism, "There is a tendency now to talk about everything but the kinds of underlying problems which have made the United States guilty in the minds of many people around the world." I think that

McHenry was correct in his observations then, and unfortunately now, a decade later, it is equally true. Media coverage tends to be one-sided, and that side tends to favor the American status quo. In doing so, it serves neither the American people nor the interests of world peace. Its inattention to grievances tends to provoke international terrorism, not its coverage of the spectacular communications acts that result from the inattention of institutions to such grievances.

LESSONS OF LOCKERBIE

Ms. Aphrodite Thevos Tsairis⁸

Many have asked over the years, why do you persist, what keeps you so riveted to the injustices that caused the tragedy that took 270 innocent lives from 21 nations. What is it that empowers you, why won't you or why can't you let it go. The only answer I have been able to come up with is that I do what I do because it is the right thing to do. The most powerfully enduring legacy we can leave for those who perished is to do our very best to prevent its repetition. Not for this administration or the next, but for the historical memory that leads to the next millennium and beyond; to sensitize and forcefully engage our government; to make the eradication of state-sponsored terrorism a top priority agenda item; and to guarantee safe air travel to the flying public both here and abroad.

⁸Aphrodite Tsairis lost her daughter Alexia on the bombing of Pan Am 103. She has chaired two organizations dedicated to lobbying Congress to develop effective antiterrorism measures: The Victims of Pan Am Flight 103 (1989-93), and Terrorism Watch: Pan Am 103 (1993-present). She is the founder and executive director of The Alexia Foundation for World Peace, administered by the Newhouse School of Communications at Syracuse University.

Terrorism, the mere word, as we heard this afternoon from many quarters, sends shock waves of fear and revulsion through the minds and hearts of all freedom-loving individuals. The bombing of Pan Am 103 underscored the fact that Americans are vulnerable to attack anywhere in the world. The median age on Pan Am Flight 103 was 26 years. In the natural course of events, young people should not predecease their parents. But they did, and it happened to us. Bad things ought not to happen to good people. But they do, and it happened to us. The horrors you read in the papers and see on the nightly news is always happening to someone else, but it happened to us and our families. There we were in the glare of the public eye along with a hundred and eighty-nine other American victims' families. On December 21st, 1988, four days before Christmas, when the terrorist bombing of Pan Am Flight 103 over Lockerbie, Scotland, the course of our lives was changed forever.

The family organization entitled "The Victims of Pan Am Flight 103" evolved from the ashes of Lockerbie. For nearly seven years now, it has sustained a meteoric rise in influence, prestige and political power fueled by our common grief and collective loss. We frequently debate amongst ourselves whether it was emotion or politics that was the driving force of this family group. The matter will never be conclusively resolved, because the two are inexorably entwined. Over the years, one thing has become stunningly clear however, each of us came for different reasons, united only in the common bond of loss and collective support. Having said that, no one can or should minimize the tremendous political impact we have had as a committed victims' advocacy group lobbying for itself without pay. A rarity in our modern world. That has been the secret to our success. It gave us a way to channel our grief pro-actively in a wholesome, healthy, and most of all, healing manner. For me, the overwhelming motivator, aside from the painful personal heartbreak and the outrage of losing a most special child, was the horrifying injustices and the wrongs we have all been subjected to on the part of the terrorists, their sponsoring nation, our government's aviation authority, its State Department, and a now defunct airline. All were culpable. All could have prevented it or protected against it. Those injustices so

blatantly obvious are what motivated our action. Our loved ones, daughters, sons, husbands, wives, brothers and sisters, and we, their families, were terribly and horribly and unjustly wronged. What is at the core here is not some judgmental fuzzy gray area. There is documented unequivocal evidence and proof to implicate all the aforementioned parties, individual terrorists named Fhimah and Megrahi, a sponsoring state, Libya, our government's entities, the F.A.A., the consular division of the State Department, and the private sector, Pan American Airways. So in February of 1989, only two months after the tragedy which took 270 lives, the families came together in a hastily-arranged meeting, primarily for emotional support and a thirst for information. Not knowing, caring, or even bothering to ask what we did for a living, we just knew that we had to be together. But we quickly realized that what further bonded us was the overriding need to find out the truth about the bombing. We organized immediately. At the first meeting we picked the name, "The Victims of Pan Am Flight 103", began publishing a monthly newsletter, and set down the following goals: to press for a nonpartisan investigation into the events leading up to and following the bombing; to effect changes in airport and airline security; to mandate that our government adhere to a more viable stance on terrorism. And all the above were to take place within the framework of providing emotional support for each other and our families. A chronology of our group's development is probably best symbolized by the evolution of our buttons. The first one was a black and white one, and it said on it, "Pan Am 103, Their Spirit Lives On". That graphically illustrated our inward focus and our own personal pain. This evolved into a second button, a blue and white one which said, "Pan Am 103, The Truth Must Be Known." This typified our frustration during the searching process. And finally we developed a third button, this one, said, "Pan Am Flight 103, December 21st, 1988, Terrorism And Apathy: A Deadly Combination." That illustrated our need to reach out to others and raise their consciousness.

From this grief-stricken and politically naive pool of people, a proactive single-focused dynamic force was created. I personally wrote and delivered testimony in front of ten congressional committees. Others did likewise in other congressional forums, and that coupled with the public demonstration of our objectives at a White House vigil culminated in the Oval Office meeting with President Bush in April of 1989, four months after the bombing. This cemented our determination to continue to press for an aggressive and exhaustive investigation. By August of 1989, our efforts were rewarded. President Bush reversed his previous opposition, and in the closing moments of the congressional session relented and announced the formation of the Presidential Commission on Aviation Security and Terrorism to investigate the Pan Am 103 bombing and its ramifications. Serving as the liaison to the families for this commission, I attended all hearings in Washington and wrote and presented testimony on behalf of the family organization. The commission was chaired by the indefatigable Ann McLaughlin along with a distinguished panel of members including Senators Lautenberg of New Jersey and D'Amato of New York. But most importantly, its conclusive report was a stunning indictment of the State Department for its treatment of the families and the crisis itself; of the F.A.A. for its lack of accountability and gross violations of standard security procedures; and of Pan Am for its negligence, poor organization, and a blatant lack of concern for the safety of its passengers. The commission report was a damning one. It found without question that the bombing of Pan Am Flight 103 was clearly preventable. The commission issued its report on May 15th, 1990 with 60 empowering recommendations. This gave us the validation and framework from which to formulate and bring legislation to the Congress. With our group's efforts, the Aviation Security Improvement Act of 1990 was signed into law by the President on November 17th, 1990, one year and eleven months after the bombing, six months after the commission report. Its passage through Congress took less than three months. This is unheard of on Capitol Hill. With legislation of such magnitude and change, it normally takes many sessions of Congress which translates into years to get a bill passed, and then it is hardly recognizable from its initial intent and language.

Our bill went through almost verbatim. As a contrast, the Brady gun bill took years to become law and has suffered many, many compromises along the way. Needless to say, the families were gratified that air travelers were now going to have the protection we thought we all had in December of 1988. In fact, in 1988 Pan Am was charging an additional surcharge of \$10 per round trip ticket expressly for security - security they did not provide nor had any intention of providing. Slowly, since the passage of the Aviation Act, things began to change. Most notably at the Consular Division of the State Department, there was a 360-degree turnaround on how they deal with Americans in trouble and crisis abroad. We made a teaching video, which the State Department now uses to train all of their foreign service officers and employees. Telephone numbers now provide full and descriptive travel advisories worldwide, complete with practical and useable information for those traveling outside the country. Now you can access the electronic bulletin board from any computer outfitted with a modem and communications software. All of this emanated from the new Security Act and did not exist on December 21st, 1988. Just the other day, I called the number to test its effectiveness. I am still unhappy that it is not an 800 number, as we had hoped. It is a lengthy process which can incur significant long-distance charges from California or Hawaii to the D.C. area code 202. That aside, I was impressed with the detailed, complete and extensive travel advisory information provided for all countries. On that call I chose a test country, Greece. The message was specific as to the rare civil unrest, but mentioned the notorious terrorist group November 17 and the five Americans that had been killed. They went on to say that tourists are seldom targeted, but pickpocketing can be a problem in crowded tourist areas. Low crime rate overall, it continued, but Greece has the highest vehicular accidents, particularly motor bikes, because of heavy traffic and poor roads. It is a real message, lasting over two minutes and included practical, useable, updated information that would give a traveling American significant insight into the country in which he was traveling.

Other changes and salient points of the new Aviation Security Law included the following: At

the F.A.A., category X airports, those at risk, were identified, and 18 federal security managers were posted, one in each of the category X airports; seventeen federal security liaison officers were posted in foreign airports; research and development of bomb detection devices were accelerated in order to get as many devices on-line as quickly as possible. Airport employees were to be subjected to F.B.I. checks and the access areas were to be controlled, monitored and made sterile.

It was an ambitious beginning, but it has grinded to a halt, and some of what has been mandated has not been implemented. Just 18 months ago, the Inspector General made public a very damaging report on the F.A.A.'s implementation of the Security Act. They found the F.A.A. to be inadequate in the oversight and enforcement of the security regulations. They accused the F.A.A. of being generally nonaggressive in managing security. The auditing team for the Inspector General visited five category X airports and was successful in penetrating their security by gaining unauthorized entry into sterile secure areas in 15 of 20 attempts. In the passenger screening procedures, they tested 23 checkpoints and found them to be abysmally poor in detecting metal objects, weapons and the like. They criticized as well, the internal review testing that the F.A.A. does on its own, calling it predictable and poorly executed. Moreover, the F.A.A. has patently refused to implement criminal background checks on airport and airline employees, provide an accurate and complete flight manifest within three hours, and X-ray U.S. mail that travels in the hold.

The F.A.A.'s response to this audit was interesting in that they agreed that there is a need to greatly improve the security of the airport access areas by developing technology for system wide universal employee identification procedures to these entry access areas. However, the F.A.A. went on to challenge the audit by saying that their vulnerabilities need to be placed in the context of the current threat to aviation, otherwise they lead to overly alarming conclusions. The F.A.A. described the threat level as being very low with little evidence that it will not remain so. Here, again, is the thinking of being reactive to danger rather than proactive and preventative by having a solid aviation security network

that acts as a successful deterrent to terrorists. That is exactly why El-Al is rarely targeted, because the terrorists know that its security is formidable and virtually impenetrable. This week, security in and around the New York City area airports was at its highest level since the Persian Gulf war because the U.N. 50th anniversary celebration with scores of world leaders who attended simultaneously were there. It was so, just a few weeks ago, as well, during the Papal visit, and in the aftermath of the conviction of Sheik Rahman for plotting to destroy New York City bridges, tunnels, and the U.N. However, if you were a card-carrying terrorist today in New York City, you could penetrate the high-level security by using the most blatant loophole in domestic aviation security, curbside checking. As a terrorist, you could buy a ticket, check a Semtex-rigged bag in at the curb and go home, unleashing your weapon of destruction on innocent travelers. In the United States, there is no passenger/baggage match, just as was not on Pan Am Flight 103. Or as a terrorist, you could just merely send a package. There is no screening of luggage or mail in the hold. Or you can get to the departure gate without a ticket after passing through the X-ray machines, which do not detect explosives.

So while most travelers are welcoming the cosmetic security changes and are not complaining about additional delay caused by photo ID checks, Frank McGuire, a friend of the Pan Am families and a terrorism analyst, described the new security measures in an October 24, 1995 article in the *New York Times* entitled "Clamping Down on Airport Security". He said, "It's a 50-50 blend of hype and hope. The government hypes the fact that it is protecting the public and hopes that nothing will happen." In reality, as businessmen and frequent flyers begin to complain more and more about the inconveniences, the F.A.A. will cower to the pressure of financial concern for the industry.

After the Lockerbie tragedy, the Security Act we helped pass ordered the F.A.A. to devise a system of explosive detection for each bag, accompanied or not, and to have it in commercial use by November 1993. It is now two years later than that mandated time and none are in place. Since the legislation, the F.A.A. has and still is spending a lot of money developing and testing bomb detectors. In

Pomona, New Jersey, an F.A.A. tech center was set up in direct response to our call for accurate bomb detection deployment. The tech center has encouraged and helped manufacturers design more accurate bomb detectors. Several of the CTX-5000 certified automatic detection systems are being bought by the F.A.A. for demonstration testing only in three domestic airports and one foreign airport. The first in San Francisco may be starting right now.

These demonstrations will last until the fall of 1996 at the earliest. If they are a success, the F.A.A. could mandate that the airlines buy them as early as 1997 or 1998. That sounds promising and impressive, does it not? However, what that actually means is that all flights by U.S. carriers are today, and still will be tomorrow, protected by the same useless X-ray machines and untrained people as were there in December of 1988, seven years after 270 innocent people were murdered in Pan Am Flight 103, and 15 years after the first Semtex bomb was exploded on an American carrier.

The F.A.A. can appear to be making great strides while doing nothing, because they continually change the rules of the game. The systems in operation in 1988 and today are manual. They depend on the operator's judgment, training and experience to interpret the X-ray picture. Conversely, enhanced X-ray systems and trace detectors known as sniffers are now being used by Customs agents to detect narcotics and by the Secret Service to screen people going into the White House. So the technology exists, it works, and it is available today, but the F.A.A. will not authorize its use in the airline industry.

Instead, the F.A.A. decided that aviation bomb detectors must not only see plastic explosives, but they must also decide if the suspect object is a bomb and not a salami, or a wet wool sweater or ski boots. It has to do this for a very small bomb. How small we do not know, because that size requirement is classified. It has to do it in six seconds, and it has to do it without an operator, that is to say -- automatically. It must be able to detect not only Semtex, but also TNT, dynamite and four other types of explosives. But to everyone's surprise, above all the F.A.A.'s, the CTX-5000 passed the test. But

it requires two CTX-5000s side by side in order to make the required thru rate, and each of them costs \$850,000. That amounts to \$1,700,000 plus installation, plus the conveyor belts to move the bags into and out of the detectors. Total installed cost per station, about three to four million.

The inadequate X-ray machines now in use in our airports cost only \$25,000. The enhanced units and sniffers used by Customs and the Secret Service, which are infinitely better than today's outmoded X rays, but are not automatic, cost \$100,000 to \$260,000. Why haven't they been deployed? Because the F.A.A. suffers from an inherent conflict of interest.

It is not only tasked with regulating the aviation industry, but is also charged with promoting it. It is an advocate for the airline industry. So it is not just a question of money, but rather political expediency that has stymied deployment of existing bomb detection systems. The F.A.A. is trying to delay the cost of bomb detection for as long as possible in order to protect the financial picture of struggling American air carriers.

While all this posturing and incessant delay is occurring on this side of the world, England, Japan, Israel, Germany and the Pacific Rim countries have capitalized on the testing results from the F.A.A.'s tech center. These countries have been buying automatic and semi-automatic detection systems for the past two or three years. They run them slower than the F.A.A.'s required rating, they accept higher false alarm rates, and they operate them, not automatically, but with trained alert operators. They are in operation now. If you fly from Moscow, Frankfurt, Tokyo or Tel Aviv, your carry-on bags and your checked luggage are being screened by an effective bomb detector. In our own country, this is not happening. The fact of the matter is that the F.A.A. and the airlines believe there is no threat of terrorism in the United States, and that the cost and inconvenience of examining roughly one million pieces of luggage checked every day outweighs the potential risk. How is it that we do not believe them? Is it because of the World Trade Center bombing, or maybe it is the thwarted but nefarious plot to destroy the Lincoln tunnel, and George Washington Bridge in one fell swoop. Or maybe it's the

United Airlines timetable and computer data with times for detonating bombs found in the raided apartment of Ramzi Yousef, the alleged mastermind of the World Trade Center bombing. So, as much as we have made progress, the battle never seems to be won. We are the continual watchdogs of airline security. It is imperative to remain vigilant and engaged in the process or the government will slip back into its former apathetic state. We cannot afford to let this happen. Airline travel is here to stay and provides an essential link in the global market place.

On other fronts, we have been following the progress of the comprehensive Terrorism Prevention Act of 1995 which was discussed at length by Professor Dellapenna. I will not go into the details except to say that we are advocating the Foreign Sovereign Immunities Act amendment because one must use every possible tool available to combat terrorism. We have strong indications from our lobbying on the Hill that this part of the larger bill is not in trouble, that it will -- if the larger bill passes -- go along, as well.

I think by now you are beginning to see the most significant characteristic of our self-help advocacy group. It is our grass-roots approach to civic action. No vested interest in political office, monetary, or personal gain, but rather to adhere to the basic tenets of our constitution based on government of, by and for the people. The civic partnership that developed between the families, the media and the public struck a responsive chord in the hearts of the American people. This has energized and empowered us to move forward and not look back. It has inspired us to action.

The quest for the truth linked with the sympathetic reactions inherently evoked by our plight have galvanized us into a powerful uncompromised entity. Yet, none of us were trained for this unwanted new role. All of us have other jobs. We are not professional lobbyists. We have succeeded in Washington in spite of this, and I believe because of it. We have no other assets but our intense pain and the overriding commitment and motivation to find the truth. We are the ever-present thorn in the government's side, sniping and accusing. We work the system like seasoned politicians, massaging and

schmoozing.

The final result was that we effected enormous change to begin to right those horrible wrongs that changed our lives forever and denied our loved ones their most basic freedom, their right to live. Yet the one thing that would bring closure continues to elude us. How much longer must the families wait for justice in the premeditated murder of a hundred and eighty-nine Americans by a Libyan terrorist bomb which felled Pan Am Flight 103? Since that time, the United States has intervened militarily in countries as far flung as Bosnia, Somalia, Rwanda, Haiti, Kuwait, and Panama, all without the initial provocation of American lives being lost.

If these interventions were justified based on the national interest, then why has there been no definitive action against Libya? It has been nearly seven years since the explosion over Lockerbie, and justice has not been served. The indicted terrorists remain protected in their sponsoring state, Libya, by their leader and co-conspirator, Colonel Qaddafi. Even faced with unequivocal proof, the U.N. Security Council has not been successful in galvanizing support for action against Libya for its use of terrorism as a political tool. Consequently, the wrong message is being sent to terrorists around the world. You can get away with it.

The Pan Am 103 bombing case is one with extraordinary evidence indicating who ordered the bombing and who carried it out. Rarely in events such as this are the facts so stunningly clear, yet, the Clinton Administration cowers and allows the case to languish in the Security Council of the United Nations where little hope of success exists. Libya's strongman Qadhafi is lethal and audacious. Under his leadership, Libya has the capability to acquire weapons of mass destruction, to continue to oppose the peace process, to give active support to Islamic fundamentalism, to assert her right to rotational membership in the Security Council, and to support the Phillipine Muslims who sought to bomb American air carriers. Add to this the carnage he wrought on 270 people from 21 countries, 189 of them Americans, and an American flagship carrier in the bombing of Pan Am Flight 103, and in the French UTA

bombing, 171 people killed, seven of them Americans, including the wife of an ambassador, and you have a monumental threat to world peace coupled with a direct assault on United States sovereignty.

The U.S. must raise the costs of terrorism. It must address it as a form of low-intensity warfare and not treat it as a purely criminal matter culminating in dust-collecting indictments. It requires a coordinated, firm, and relentless presidential effort in concert with the world community while always maintaining the option to retaliate unilaterally with decisive force as an essential deterrent.

Presidents Bush and Clinton have failed in this effort. We feel an enormous sense of moral outrage each time the United Nations Security Council rolls over the weak existing sanctions against Libya. The United States government and President Clinton have tolerated ten reviews of sanctions with no visible anger or frustration despite the fact that they have yet to have the desired effect of releasing the two Libyan bombers for trial in the United States or Scotland. It continually falls to us, the aggrieved families, to highlight the growing vulnerability of Americans, not only as they travel abroad, but also as they conduct their daily lives. Tragically and painfully it falls to us to remind our leaders of their moral responsibility. We know who ordered and carried out the bombing of Pan Am Flight 103. The message that we hear from the government is that our lost loved ones are worth less than a Bosnian, Somali, Kuwaiti, Rwandan, Haitian, or Panamanian.

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