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Introduction

The Federal Bureau of Investigation welcomes the efforts by the United States Sentencing Commission to promulgate and assign appropriate Sentencing Guidelines for terrorism offenses. I am going to leave any detailed discussion of specific Guidelines to the written comments that the Department intends to submit. In my testimony today, I would like to briefly address several specific areas of importance to the Bureau. I hope to provide you with a practical, law enforcement perspective on the need for effective guidelines that will deter and appropriately punish terrorism offenses, together with some examples of real world cases investigated by the FBI.

Threats and Hoaxes

Let me begin with threats and hoaxes. Threats to commit terrorist acts and hoaxes falsely reporting terrorist acts are serious offenses and should be penalized accordingly. Terrorist threats frequently involve a threat of death or serious physical injury to many people. They can cause great psychological harm and trigger significant disruption. And investigative agencies like the FBI are keenly aware of the need to evaluate and respond to such threats so as to prevent the threatened conduct from occurring. The drain on our resources can be significant.

Similarly, hoaxes and false reporting of terrorist acts can cause great psychological harm and significant disruption. As was done before September 11, both victims and law enforcement agencies must take such reports seriously until they are disproved. Moreover, the FBI and other

law enforcement agencies need to devote their resources to investigating real threats to the United States and its citizens. Terrorist hoaxes undermine our ability to do so.

Let me tell you about an actual threat case. A disgruntled employee threatened to blow up an oil refinery unless he was paid a significant amount of money. The employee threatened to place the explosives at a vulnerable place in the refinery, and talked about the possibility of mass casualties from the explosion, as well as monetary loss to the refinery. The FBI was alerted, and eventually discovered a large cache of weapons and ammunition, together with technical documents on the structure of explosive devices. Clearly, this type of case warrants substantial punishment. But even if we had not discovered the weapons and documents, a threat of this type has to be taken seriously by the object of the threat and by the FBI and warrants appropriate punishment. Resources used to verify the threat as credible or non-credible are the same.

New Offenses for Unlawful Possession of Biological Agents

As you know, the USA Patriot Act created two new felonies relating to biological agents. First, the Act made it a crime to possess a biological agent of a type or in a quantity that is not reasonably justified by a peaceful purpose. Second, the Act made it a crime for people like felons and fugitives to possess or ship "select agents," which are extremely dangerous substances like anthrax or botulinum toxins.

From our perspective, these felonies are serious crimes and warrant appropriate penalties. The entire country has experienced what can happen when select agents such as anthrax fall into the wrong hands. Any future attacks involving such agents could be far more virulent and deadly than the anthrax attacks that panicked the nation last fall. Thus, it is imperative that select agents be possessed only by those people who lawfully have the right to possess them.

Similarly, the FBI takes very seriously the possession of biological agents or toxins that is

not reasonably justified by a peaceful purpose. Absent a reasonable justification, such possession raises serious concerns about public safety. It too should be appropriately punished.

Providing Material Support to Terrorists or to Designated Foreign Terrorist Organizations

We applaud the Commission's efforts to assign appropriate guidelines to 18 U.S.C. 2339A (providing material support to terrorists) and 18 U.S.C. 2339B (providing material support to designated foreign terrorist organizations). Here, too, let me share with you the FBI's perspective on these offenses.

With regard to section 2339A, our view is that a defendant who provides material support to a terrorist, knowing or intending that the support be used to commit a terrorist act, is no better than the terrorist himself, and should be punished accordingly.

As for section 2339B, that statute blocks the provision of material support to foreign terrorist organizations that the Secretary of State has specifically designated because of the threat they pose to the national security of the United States or to the security of U.S. nationals. We do not need to look past September 11 to see the extraordinary harm that foreign terrorist organizations can cause the United States. And al-Qaida is far from the only foreign terrorist organization that has killed Americans or that poses a threat to American interests. Anyone who provides such organizations with the resources they need to operate commits a serious offense.

Furthermore, material support that directly facilitates the recipient organization's violence and terrorist capabilities is particularly deserving of harsh punishment. In one pending case, the defendants are charged with conspiring to provide various physical assets, including explosives, to a designated foreign terrorist group in order to facilitate its violent attacks. This type of alleged behavior is particularly dangerous.

Attacks on Infrastructure

Let me turn to the issue of attacks on infrastructure. The FBI believes that attacks on infrastructure facilities pose unique risks and harms. Whether or not an infrastructure facility is publicly owned, its destruction or disabling may affect thousands or even millions of people who rely on the facility for basic services. And the destruction of facilities such as natural gas pipelines may pose a direct threat to public health and safety through the potential release of toxic substances.

Consider, for example, the threat case I discussed earlier, and imagine what might have happened if the employee had actually blown up the refinery. Or consider the Alaska Pipeline case, in which a defendant has been charged in connection with an alleged plot to blow up several sections of the Alaskan Pipeline. The pipeline supplies one fifth of domestic U.S. crude production, and the defendant allegedly intended to profit from the resultant disruption in oil and gas supplies. As these cases illustrate, attacks on infrastructure facilities pose unique risks and harms to the United States.

Terrorist Conspiracies

Another issue under consideration by the Commission is how to punish terrorist conspiracies. In our view, the punishment for conspiracies to commit terrorist acts should mirror the punishment for the completed offenses, at least where Congress has provided for the same penalties. Terrorists are typically fanatical zealots who do not voluntarily withdraw from conspiracies. If their conspiracies are aborted before completion, that will typically be the result of law enforcement work or of other factors beyond the conspirators' control. We see no reason why factors such as these should lead to any lesser punishment.

Consider the case of Ramzi Yousef, mastermind of the 1993 World Trade Center bombing, who went to the Philippines and planned a number of additional terrorist attacks, including a plot to simultaneously bomb 12 American passenger planes in flight over the Pacific in January, 1995. There were thousands of passengers aboard the targeted jets.

This massive scheme was foiled when Yousef started a fire in the kitchen of his Manila apartment while mixing explosive chemicals. Should it matter, in sentencing someone like Yousef, that an accident foiled his plans? I don't believe it should.

Terrorism Adjustment under Section 3A1.4

The Commission has also requested comment on the terrorism adjustment in section 3A1.4. The FBI strongly supports an appropriate adjustment for terrorist crimes, commensurate with the harm they cause and the threat they pose, and we completely agree with the points made by Ms. Corken in her testimony pertaining to this adjustment. Let me single out, in particular, the need for severe punishment for persons who lie to FBI agents, falsify documents, or otherwise obstruct the investigation or prosecution of a terrorist offense. Offenders who engage in this type of behavior are accomplices to terrorism and undermine our efforts to prevent and punish terrorist attacks. They should be treated accordingly.

Supervised Release

Finally, turning to the issue of supervised release, we would point out that a lengthy term of supervised release, possibly including life, may be appropriate in at least some terrorism cases. As noted above, terrorists tend to be fanatical zealots, and their support for terrorism will not necessarily dissipate in prison. The risk of recidivism is therefore quite high. Thus, it may be appropriate to impose an especially lengthy term of supervised release in some cases.

Conclusion

Thank you for the opportunity to testify today. I would be pleased to answer any questions.