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## **Terrorism at Home and Abroad: Applicable Federal and State Criminal Laws**

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# Terrorism at Home and Abroad: Applicable Federal and State Criminal Laws

## Summary

Terrorists' attacks on the World Trade Center, the Pentagon, the Murrah building in Oklahoma City and the American Embassies in Kenya and Tanzania have stimulated demands that the terrorists responsible and those like them be brought to justice. American criminal law already proscribes many of these acts of terrorism and there have been proposals to expand that coverage. This is a brief overview of the state and federal laws which now prohibit terrorism in this country and abroad.

Since terrorism is a creature of motive in whose name almost any wrong might be committed, the interests of time and space require a more limited focus. For purposes of this report, terrorism is conduct, committed or foregone, which instills a fear of physical injury or of property damage or which is intended to do so.

Although ordinarily crime is proscribed by the law of the place where it occurs, more than a few American criminal laws apply to terrorism committed outside the United States. The power to enact such laws flows from the Constitution and is usually limited by little more than due process notice. Reticence to offend another sovereign, however, has traditionally limited American exercise of such authority to instance where there is a discernible nexus to the United States.

In the United States, the conduct we most often associate with terrorism – bombings, assassinations, armed assaults, kidnapping, threats – are generally outlawed by both federal and state law.

The federal approach builds upon individual national interests: the protection of federal officers, ensuring the safety of foreign diplomatic officials, guaranteeing the safety and integrity of the mails and the channels of interstate and foreign commerce, and honoring our international obligations. Consequently international terrorism is first and foremost a matter of federal law.

Crime within the United States, however, has traditionally been the domain of state law. It is therefore not surprising that the reach of state criminal law, concerning terrorism as well as other matters, is more comprehensive than that of the federal laws which supplement it. Where federal law condemns presidential assassination, state law prohibits murdering anyone.

Until recently, the seemingly boundless reach of the Commerce Clause suggested state primacy may have begun to erode. In a shrinking nation, few saw any activities that could not arguable be characterized as affecting commerce, the threshold for federal legislative authority. In at least two areas central to control of terrorism, firearms and explosives, those assumptions may now be open to question as a result of recent court interpretations.

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# Terrorism at Home and Abroad: Applicable Federal and State Criminal Laws

## INTRODUCTION

Terrorist attacks on the World Trade Center towers, the Pentagon, and the American Embassies in Kenya and Tanzania raised questions about the adequacy of the law's condemnation of terrorism. American criminal law clearly proscribes terrorism in this country and reaches a surprising number of terrorist incidents overseas.

This report is a brief overview of when American criminal law outlaws terrorism, whether committed within the United States or beyond our borders. It examines the constitutional power of Congress and of state legislatures to enact anti-terrorist legislation and the extent to which they have done so.<sup>1</sup>

### Definition

The definition of terrorism for purposes of American criminal law involves two very different concepts both prominent in federal law – one violent and the other threatening violence. The first, usually considered international but now too well known in the United States, has a political stripe and consequently has proven particularly resistant to consensus definition. It is the stuff of bombings, assassinations, and air piracy, committed for political purposes.<sup>2</sup>

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<sup>1</sup> Other recent CRS terrorism-related products include *Terrorism Briefing Book: Legislative Issues*, available at [www.congress.gov/brbk](http://www.congress.gov/brbk); Perl, *Terrorism, the Future, and U.S. Foreign Policy*, CRS ISSUE BRIEF IB95112 (updated regularly); Krouse & Perl, *Automated Lookout systems and Border Security Options and Issues*, CRS REP.NO. RL31019 (June 18, 2001); and Brake, *Terrorism and the Military's Role in Domestic Crisis Management: Background and Issues for Congress*, CRS REP.NO. RL30938 (April 18, 2001).

<sup>2</sup> One of the difficulties in formulating a uniformly acceptable definition is that terrorism is a term of opprobrium with adverse legal consequences; many are therefore reluctant to endorse any definition which might apply the term to those they admire or support; "one man's terrorist is another man's freedom fighter." *Extraterritorial Jurisdiction Under International Law: The Yunis Decision as a Model for Prosecution of Terrorists in U.S. Courts*, 22 LAW & POLICY IN INTERNATIONAL BUSINESS 409, 410 (1991), quoting MURPHY, STATE SUPPORT OF INTERNATIONAL TERRORISM: LEGAL, POLITICAL AND ECONOMIC DIMENSIONS 3 (1989). Terrorism is described as:

[1] "activity, directed against United States persons, which – (A) is committed by an individual who is not a national or permanent resident alien of the United States; (B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and (C) is intended – (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by assassination or kidnapping," 18 U.S.C.

The second brand of terrorism, the more distinctly American cousin, although at times violent and politically motivated or a harbinger of more serious misconduct, need be no more than a threat designed to engender fear;<sup>3</sup> it is blackmail or extortion without their mercenary elements; it is at the heart of our contemporary stalking laws.<sup>4</sup> At various points the two share common ground,<sup>5</sup> but the difficulty is to mark

921(22);

[2] “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents,” 22 U.S.C. 2656f(d)(2);

[3] “an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any state; and appears to be intended – (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by assassination or kidnaping.” BLACK’S LAW DICTIONARY 1473 (6th ed. 1990), citing, 18 U.S.C.A. §3077;

[4] “the use, or threat of use, of violence by an individual or group, whether acting for or in opposition to established authority, when such action is designed to create extreme anxiety and/or fear-inducing effects in a target group larger than the immediate victims with the purpose of coercing that group into acceding to the political demands of the perpetrators.” WARDLAW, POLITICAL TERRORISM 16 (1982);

[5] “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine state agents, usually intended to influence an audience.” Alexander, *Maritime Terrorism and Legal Responses*, 19 DENVER JOURNAL OF INTERNATIONAL LAW AND POLICY 529 (1991);

[6] “a strategy of violence designed to inspire terror within a particular segment of a given society.” Bassiouni, *Terrorism, Law Enforcement, and the Mass Media: Perspectives, Problems, Proposals*, 72 JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 1 (1981); and as

[7] “the systematic use of terror as a means of coercion” or “an atmosphere of threat or violence.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE: UNABRIDGED, 2361 (1986).

<sup>3</sup> E.g., Haw.Rev.Stat. §707-715 (“a person commits the offense of terroristic threatening if he threatens, by word or conduct, to cause bodily injury to another person or serious damage to property of another or to commit a felony; (1) with the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person, or. . .”); MODEL PENAL CODE §211.3 (1985) (“a person is guilty of a felony of the third degree if he threatens to commit any crime of violence [committed] with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience”).

<sup>4</sup> E.g., Cal.Penal Code §646.9(a)(“any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a creditable threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking. . .”).

<sup>5</sup> Terrorism is “public, impersonal, repetitive violence or threats of violence that inspire fear in people who have not yet been, but could be, victims . . . [and includes] pathological terrorism (solo psychotics and serial killers); hedonistic terrorism (motorcycle gangs tattooed with the slogan ‘born to raise hell’ and ruffians who bully subway riders for fun and profit); larcenous terrorism (‘enforcers’ for crime syndicates); . . . official terrorism (Hitler had his Gestapo in Nazi Germany, ‘Papa Doc’ Duvalier had his Ton Ton Macoutes in Haiti) . . . [and] transnational terrorism, whose advocates hope to achieve sociopolitical objectives by creating such fear and suffering in targeted countries that senior officials find concessions

the ground occupied by either.

If motive alone, whether to instill fear or to instill fear for a political purpose, defines terrorism, only those crimes which defy such motivation are excludable. Few crimes could escape the definition. Yet to define terrorism more narrowly risks exclusion of misconduct which American criminal law embodies within its concept of terrorism. Consequently for purposes of this report terrorism is conduct calculated to instill a fear of physical injury or property destruction.<sup>6</sup>

## TERRORISM COMMITTED WITHIN THE UNITED STATES

### Constitutional Considerations

Federal law is a creature of the Constitution. Congress may enact only those laws that the Constitution authorizes and none that it prohibits. The authority to enact criminal laws ordinarily lies with the states, because the Constitution vests no general criminal power in the federal government. The Constitution, however, does grant Congress general powers over other areas, powers of sufficient breadth to accommodate a fairly wide range of implementing criminal laws.

### Commerce Clause

The Commerce Clause, *U.S. Const. Art. I, §8, cl.3*,<sup>7</sup> provides the foundation for much of contemporary federal criminal law, terrorism and otherwise. Until fairly recently its bequest was considered virtually boundless. Its outer limits, defined in *United States v. Lopez*, 514 U.S. 549 (1995) and confirmed in *United States v. Morrison*, 529 U.S. 598 (2000), although not beyond reach, remain fairly remote. While Congress may not “regulate noneconomic, violent criminal conduct based solely on that conduct’s aggregate effect on interstate commerce,”<sup>8</sup> it may pass laws

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preferable to continued chaos.” Collins, *Transnational Terrorism and Counteractions: A Primer*, CRS REP.NO. 93-328S (March 18, 1993).

<sup>6</sup> Consequently, commercial terrorism, cyberterrorism, and other variants as they are most expansively understood are beyond the scope of this report. For a discussion of the federal law proscribing various form of computer-related crime see, Doyle, *Computer Fraud and Abuse: An Overview of 18 U.S.C. 1030 and Related Federal Criminal Laws*, CRS REP.NO. 97-1025 (Feb. 22, 2001).

<sup>7</sup> “The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

<sup>8</sup> *United States v. Morrison*, 529 U.S. at 516, citing, *United States v. Lopez*, 514 U.S. at 568. So, it may not outlaw schoolyard possession of a firearm in the name of regulating interstate commerce simply because such possession may result in violent crime which may have an economic impact, which may feed an unwillingness to travel interstate, and which may produce an adverse education environment with substantial future economic costs, *United States v. Lopez*, 514 U.S. at 563-69. Nor may it proscribe gender motivated violence simply because such violence may have some attenuated impact interstate commerce “by deterring potential victims from traveling interstate, form engaging in employment in interstate business,

to protect the channels of interstate commerce, or the instrumentalities of interstate commerce, or the activities which affect interstate commerce.<sup>9</sup> Criminal statutes which either touch upon some economic activity or contain a jurisdiction element anchored to interstate commerce tend to exemplify the valid regulation of activities which affect interstate commerce.<sup>10</sup> Of course, where a statute has such a jurisdictional element, it must be satisfied. The federal statute which proscribes bombing buildings “used in an activity affecting interstate commerce” covers a building used as commercial property, *Russell v. United States*, 471 U.S. 858, 862 (1985), but not one used by its owner as a private residence rather than for commercial purposes, *Jones v. United States*, 529 U.S. 848, 856-59 (2000).

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and from transacting with business, and in places involved in interstate commerce, by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products,” *United States v. Morrison*, 529 U.S. at 615.

<sup>9</sup> “First, Congress may regulate the use of the channels of interstate commerce. *See, e.g., . . . Heart of Atlanta [Inc. v. United States*, 379 U.S. 241, 256 (1964)](“The authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question”). . . . Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. *See e.g., Shreveport Rate Cases*, 234 U.S. 342 (1914)(upholding amendments to Safety Appliance Act as applied to vehicles used in intrastate commerce); *Perez [v. United States*, 402 U.S. 146, 150 (1971)](“For example, the destruction of an aircraft (18 U.S.C. §32), or . . . thefts from interstate shipments (18 U.S.C. §659)”). Finally, Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce . . . *i.e.*, those activities that substantially affect interstate commerce,” *United States v. Lopez*, 514 U.S. at 558-59 (some internal citations omitted); *accord, United States v. Morrison*, 529 U.S. at 609.

<sup>10</sup> “[W]e have upheld a wide variety of congressional Acts regulating intrastate economic activity where we have concluded that the activity substantially affected interstate commerce. Examples include the regulation of intrastate coal mining; intrastate extortionate credit transactions, restaurants utilizing substantial interstate supplies, inns and hotels catering to interstate guests, and production and consumption of homegrown wheat. . . .” *United States v. Lopez*, 514 U.S. at 559-60 (some internal citations omitted); *accord, United States v. Morrison*, 529 U.S. at 609. The presence of a “jurisdictional element which [ensures], through case-by-case inquiry, that the [activity] in question affects interstate commerce,” also greatly enhances the claim that a criminal statute lies within Congress’ power under the commerce clause, *United States v. Lopez*, 514 U.S. at 561; *United States v. Morrison*, 529 U.S. at 611-12.

## First Amendment

Prosecution of terrorists occasionally implicates the right to free speech,<sup>11</sup> but the First Amendment does not protect the use of violence as a form of expression.<sup>12</sup> Threats, incitement, or instruction to violence pose only a slightly more serious question. Historically, the Supreme Court's treatment of the Smith Act, which proscribes incitement to overthrow the government,<sup>13</sup> and of the Presidential assassination statute,<sup>14</sup> together with lower court approval of the federal law which prohibits instruction in explosives with an eye to furthering civil unrest,<sup>15</sup> supply the basic concepts vital to understanding the permissible reach of anti-terrorist legislation.

Although *R.A.V. v. St. Paul*, 505 U.S. 377 (1992), teaches that even anti-terrorist legislation, there a city ordinance against cross-burning, must nevertheless be content neutral to survive a higher level of scrutiny which only the most compelling governmental interest may overcome, *Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

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<sup>11</sup> For instance, one of the defendants in the 1993 World Trade Center bombing claimed unsuccessfully that seizure of sundry printed material including his "terrorist kit;" documents entitled, "Rapid Destruction and Demolition" and "Facing the Enemies of God;" as well as material which "bristled with strong anti-American sentiment and advocated violence against targets in the United States," *United States v. Salameh*, 152 F.3d 88, 111 (2d Cir. 1998). Another unsuccessful argued that prosecution under the statute which outlawed advocacy of violent overthrow of the government violated his free speech rights, *United States v. Rahman*, 189 F.3d 88, 114-16 (2d Cir. 1999) .

<sup>12</sup> "[A] physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment. '[V]iolence or other types of potentially expressive activities that produce special harms distinct from their communicative impact . . . are entitled to no constitutional protection.'" *Wisconsin v. Mitchell*, 508 U.S. 476, 484 (1993), citing, *Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984), and quoting, *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982).

<sup>13</sup> *Dennis v. United States*, 341 U.S. 494 (1951); *Yates v. United States*, 354 U.S. 298 (1957); *Noto v. United States*; *cf.*, *Brandenburg v. Ohio*, 395 U.S. 444 (1969). The thrust of these cases is that the federal and state government, consistent with the demands of the First Amendment, may outlaw speech which urges the violent overthrow of the government in an environment where there is a reasonable expectation that seed will bloom. *See also*, *United States v. Rahman*, 189 F.3d at 116-17 (2d Cir. 1999)("freedom of speech and of religion do not extend so far as to bar prosecution of one who uses a public speech or a religious ministry to commit crimes").

<sup>14</sup> *Watts v. United States*, 394 U.S. 705 (1969) overturned the conviction of a teenager who in the midst of a speech at a protest rally on the Washington Monument grounds said "if they ever make me carry a rifle the first man I want to get in my sights is [then President] L.B.J." While it found the statement protected as rough political hyperbole, it upheld the general constitutionality of the Presidential assassination statute. Contemporary lower courts cases have upheld application of the statute frequently distinguishing the "public rally" context of *Watts*, *see e.g.*, *United States v. Barris*, 46 F.3d 33, 35 (8th Cir. 1995); *cf.*, *United States v. Daughenbaugh*, 49 F.3d 171, 173-74 (5th Cir. 1995)(distinguishing *Watts* in context of threats against various state and federal judges in violation of 18 U.S.C. 876).

<sup>15</sup> *United States v. Featherston*, 461 F.2d 1119, 1122-123 (5th Cir. 1972); *United States v. Mechanic*, 454 F.2d 849, 852-54 (5th Cir. 1991).

And the lower federal appellate courts attest to the continued vitality of the traditional tests: for “time, place or manner restrictions;”<sup>16</sup> for over breadth and vagueness;<sup>17</sup> and the *O’Brien* test for the validity of statutes which regulate conduct with both speech and nonspeech components.<sup>18</sup>

## Statutory Provisions

### Specific Crimes

More than a few federal criminal laws reach the politically motivated acts of physical violence and property destruction that are the part and parcel of international terrorism.<sup>19</sup> Ted Kaczynski, the Unabomber, was charged with and pled guilty to

<sup>16</sup> *Van Bergen v. Minnesota*, 59 F.3d 1541, 1553 (8th Cir. 1995) (“[e]xpression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information, *Ward [v. Rock Against Racism]*, 491 U.S. 781 U.S. 781 (1989); *Turner Broadcasting [Sys., Inc. v. F.C.C.]*, 512 U.S. 622 (1994)”).

<sup>17</sup> *Melugin v. Hames*, 38 F.3d 1478, 1483 (9th Cir. 1994), quoting *Village of Hoffman Estates v. Flipside*, 445 U.S. 489, 494-95 (1982) (“[i]n a facial challenge to the over breadth and vagueness of a law, a court’s first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct. If it does not, then the over breadth challenge must fail. The court should then examine the facial vagueness challenge and, assuming the enactment implicates no constitutionally protected conduct, should uphold the challenge only if the enactment is impermissible vague in all of its applications. A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others”); *United States v. Wunsch*, 54 F.3d 579, 586 (9th Cir. 1995) (“[a] statute is void for vagueness when it does not sufficiently identify the conduct that is prohibited. When the statute has a potentially inhibiting effect on speech, this standard is ore strictly applied. *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 499 (1982). . . . Laws that are insufficiently clear are void for three reasons: (1) To avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on arbitrary or discriminatory interpretations by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms, *Grayned v. City of Rockford*, 408 U.S. 104, 108-9 (1972)”).

<sup>18</sup> *American Life League, Inc. v. Reno*, 47 F.3d 642, 651 (4th Cir. 1995), quoting *United States v. O’Brien*, 391 U.S. 367, 377 (1968) (“a statute passes constitutional muster ‘if it [1] furthers an important or substantial governmental interest; if [2] the governmental interest is unrelated to the suppression of free expression; and if [3] the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest’”).

The law may condemn threats which promise to inflict physical injuries upon another communicated under circumstances which would place a reasonable person in apprehension that the threat will be carried out.

<sup>19</sup> Bombings and fire bombings, armed assaults, assassinations, sabotage and property destruction, product contamination, kidnapping, hostage taking, and hijacking have been trademarks of international terrorism. SIMON, *THE TERRORIST TRAP: AMERICA’S EXPERIENCE WITH TERRORISM* 348 (1994); U.S. DEPARTMENT OF STATE, *PATTERNS OF GLOBAL TERRORISM*, 1993 (1994), reprinted in, *INTERNATIONAL TERRORISM: A*

violations of federal explosives laws.<sup>20</sup> As a result of bombing the Murrah Federal Building in Oklahoma City, Timothy McVeigh and Terry Nichols were indicted and convicted under federal laws outlawing the murder of federal law enforcement officers, bombing federal buildings, and the use of weapons of mass destruction.<sup>21</sup> Charges against the terrorists involved in the 1993 bombing of the World Trade Center included violations of federal laws outlawing the interstate transportation of explosives for unlawful use; bombing motor vehicles used in interstate commerce, property used in an activity affecting interstate commerce, and federal property; possession of a bomb during the commission of a federal crime of violence; assault on federal officers; foreign travel in furtherance of a crime of violence; and conspiracy.<sup>22</sup>

At the state level, terrorism has traditionally been thought of as akin to state crimes of harassment or menacing, a low grade form of assault. The law in some states continues to reflect this view,<sup>23</sup> but it has been recently augmented by scattered

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COMPILATION OF MAJOR LAWS, TREATIES, AGREEMENTS, AND EXECUTIVE DOCUMENTS: REPORT OF THE HOUSE COMM. ON FOREIGN AFFAIRS, 103d Cong., 2d Sess. 553, 615 (Comm. Print)(1994).

<sup>20</sup> Kaczynski was indicted for and pled guilty to violations of 18 U.S.C. 844(d)(interstate transportation of an explosive device), 1716 (mailing an explosive device), and 924(c) using an explosive device in relation to a federal crime of violence, *United States v. Kaczynski*, 239 F.3d 1108, 1110, 1113 (9th Cir. 2001).

<sup>21</sup> 18 U.S.C. 1114, 844(f), 2332a, *United States v. McVeigh*, 153 F.3d 1166, 1176, 1179 (10th Cir. 1998).

<sup>22</sup> 18 U.S.C. 844(d), 33, 844(i), 844(f), 924(c), 111, 1952, and 371, *United States v. Salameh*, 152 F.3d 88, 152 (2d Cir. 1998). There were also charges and convictions for seditious conspiracy, 18 U.S.C. 2384, possession of forged passports, 18 U.S.C. 1546, conspiracy to assassinate and solicitation to assassinate Egyptian President Mubarak during his visit to this country, 18 U.S.C. 1116, 1117, murder of Meir Kahane in order to maintain a position in a racketeering enterprise, 18 U.S.C. 1959, *United States v. Rahman*, 189 F.3d 88, 111, 118, 125, 126 (2d Cir. 1999).

<sup>23</sup> *Ala. Code* §13A-10-15 (terrorist threat); *Alaska Stat.* §11.56.810 (terroristic threatening, i.e., false report of a dangerous condition that causes fear in another, evacuation of a building or public inconvenience); *Ariz. Rev. Stat. Ann.* §§13-3110 (use of a simulated explosive device to terrify, intimidate or threaten), 13-2308.01(terrorism: as any unlawful act including any completed or preparatory offense involving the use of a deadly weapon or dangerous instrument, or the intentional or knowing infliction of physical injury or criminal damage to property, and involving extortion, kidnapping or riot committed for political or financial gain); *Ark. Code Ann.* §§5-13-301 (terroristic threatening: threat of physical injury or property damage in order to terrorize), 5-13-310 (terroristic act is sniping); *Cal. Penal Code* §422 (terrorist threat to injure resulting in reasonable fear), 11413 (use of explosives against designated public buildings to cause fear), 11411 (using signs or symbols to terrorize a property owner); *Colo. Rev. Stat.* §18-9-120 (terrorist training); *Conn. Gen. Stat. Ann.* §53a-62 (threat of physical injury); *Del. Code Ann.* tit.11 §621 (terroristic threat: threat to inflict injury or damage or false alarm causing an evacuation, serious inconvenience or terror); *Ga. Code Ann.* §16-11-37 (terroristic threats to injure or damage property in order to terrorize, cause evacuation, or cause serious public inconvenience); *Hawaii Rev. Stat.* §§707-715 to 707-717 (threaten to cause physical injury or property damage with the intent terrorize); *Idaho Code* §§18-6710, 18-6711 (telephone threats or terrorizing); *Iowa Code Ann.* §708.6 (terrorism: threats to fire, launch, or discharge a dangerous weapon in order to provoke fear);

provisions directed against paramilitary groups or street gangs and other more severe

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*Kan.Stat.Ann.* §21-3419 (threat to commit violence with intent to terrorize); *Ky.Rev.Stat.* §508.080 (terroristic threatening includes both threats to inflict injury or damage and false alarms causing evacuation); *La.Rev.Stat.Ann.* §14:40.1 (terrorizing: false alarm to cause fear of injury, evacuation, or serious public disruption); *Me.Rev.Stat.Ann.* tit.17-A §210 (terrorizing: threaten to cause fear or evacuation of a building or facility); *Mich.Comp.Laws Ann.* §§750.205a, (placement of explosive or incendiary to terrorize), 750.209 (possession of a bomb in public with intent to terrorize); *Minn.Stat.Ann.* §609.713 (terroristic threats: threaten to violently injury or damage in order to terrorize); *Miss.Code Ann.* §97-3-85 (threat with intent to terrorize); *Mo.Ann.Stat.* 574.115 (terroristic threats); *Mont.Code Ann.* §45-5-221 (civil rights related terrorist threats); *N.H.Rev.Stat.Ann.* §631:4 (threat with intent to terrorize); *N.J.Stat.Ann.* §2C:12-3 (terroristic threats: threat of violence to terrorize, cause evacuation of a building or facility or otherwise cause serious public inconvenience); *N.D.Cent.Code* §12.1-17-04 (terrorizing: threat of violence in order to frighten, to cause the evacuation of a building or to cause serious public inconvenience); *Pa.Stat.Ann.* tit.18 §2706 (terroristic threats: threat to commit a crime of violence to terrorize or cause evacuation of a building or facility or cause serious public inconvenience); *S.D.Cod.Laws* §22-14A-6 (possession of explosives with the intent to terrify or intimidate another); *Tex.Penal Code* §22.07 (terroristic threat made with intent to create fear of injury, or cause evacuation of the a build or facility); *Wyo.Stat.* §6-2-505 (terrorist threats: threaten to commit a violent felony in order to cause evacuation of a building or facility or cause serious public inconvenience); *but see, Ariz.Rev.Stat.Ann.* §13-2308.01 (outlawing as terrorism the unlawful use of a dangerous weapon or the infliction of property damage or personal injury, committed for political reasons with the intent to coerce a governmental entity or disturb public service); *Ind.Code Ann.* §35-47-12-1 (outlawing as terrorism disseminating or detonating a weapon of mass destruction).

brands of terrorism.<sup>24</sup> Of course, state law outlaws murder, assault, bombings, kidnappings, and threats whether politically motivated or otherwise.

## Bombings

No comprehensive federal explosive statute exists, but the weave of federal law covering bombing is so extensive that most terrorist use of explosives will fall under at least one and sometimes more than one federal law; many of which carrying escalated penalties if death or serious bodily injury results. The proscriptions come in three stripes: those that deal with the interstate transportation of explosives;<sup>25</sup> those

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<sup>24</sup> *Ala.Code* §31-2-125 (unlawful military congregation); *Alaska Stat.* §§12.55.155(29), 12.55.137 (crimes committed in connection with a criminal street gang are more severely punished); *Ariz.Rev.Stat.Ann.* §13-2308 (street gang participation); *Ark.Code Ann.* §§5-71-301, 5-71-302 (instruction in firearms, explosives, or incendiaries); *Cal.Penal Code* §§11460 (same), 186.20-186.28 (street terrorism); *Colo.Rev.Stat.* §18-9-120 (terrorist training); *Conn.Gen.Stat.Ann.* §53-206b (unlawful training in firearms, explosives, or incendiaries); *Fla.Stat.Ann.* §§874.01 to 874.09 (street terrorism), 790.29 (training in explosives, firearms or incendiaries); *Ga.Code Ann.* §§16-11-150 to 16-11-152 (antiterrorists training), 16-15-1 to 16-15-8 (street gang terrorism); *Idaho Code* §§18-8101 to 8104 (terrorist control); *Ill.Comp.Stat.Ann.* ch. 720, §570/405.2 (street gang criminal drug conspiracies), ch.20, §1805/94a; *Ind.Code Ann.* §§35-45-9-1 to 35-45-9-4 (criminal gangs); *Iowa Code Ann.* §§723A.1 - 723A.2 (criminal street gang with terrorism as one of predicate offenses); *La.Rev.Stat.Ann.* §§14:117.1 (paramilitary organizations), 15:1401 to 15:1407 (criminal street gangs); *Mich.Comp.Laws Ann.* §750.528a (training in explosives, firearms or incendiaries); *Minn.Stat.Ann.* §609.229 (crime committed for benefit of a gang); *Miss.Code Ann.* §§97-43-15 to 97-43-17 (street gangs); *Mo.Ann.Code* §§45-8-401 to 45-8-408 (criminal street gang), 45-8-109 (training in firearms, explosives or incendiaries); *Neb.Rev.Stat.* §§28-1480 to 28-1402 (paramilitary training); *N.J.Stat.Ann.* §2C:39-14 (training in firearms, explosives, or incendiaries); *N.M.Stat.Ann.* §§30-20A-1 to 30-20A-4 (antiterrorism: training others in use explosives); *N.C.Gen.Stat.* §14-288.20 (training explosives, firearms, or incendiaries); *N.D.Cent.Code* §§12.1-06.2-01 to 12.1-06.2-04 (criminal street gangs); *Okla.Stat.Ann.* tit.21, §1320.10 (training in explosives, firearms, or incendiaries); *Ore.Rev.Stat.* §166.660 (paramilitary training); *Pa.Stat.Ann.* tit.18 §5515 (same); *R.I.Gen.Laws* §§11-55-1 to 11-55-3 (same); *S.C.Code* §16-8-20 (training in unlawful use of explosives or incendiaries); *S.D.Cod.Laws* §§22-10-14 to 22-10-16 (street gang); *Tenn.Code Ann.* §39-17-314 (training in explosives, firearms, or incendiaries); *Tex.Penal Code* §§71.01 to 71.022 (criminal street gang); *Va.Code* §§18.2-46.1 to 18.2-46.3 (street gang), 18.2-433.1 to 18.2-433.3 (paramilitary activity); *Wis.Stat.Ann.* §§939.625 (penalty increases for street gang offenses), 939.648 (penalty increases for terrorist offenses).

<sup>25</sup> The transportation offenses include: (1) transportation of stolen explosives, 18 U.S.C. 842(h); (2) shipment of explosives to juveniles, indicted or convicted felons, drug abusers, or mental defectives, 18 U.S.C. 842 (i); (3) interstate transportation or receipt of explosives with the knowledge of an intent to use them to kill, injure, intimidate or to damage property, 18 U.S.C. 844(d); (4) interstate shipment to or possess by – a juvenile, an indicted or convicted felon, drug abuser, a mental defective, an individual under a domestic relations restraining order or dishonorably discharged from the armed forces, an alien, or a former American who has renounced his citizenship – of a destructive device, 18 U.S.C. 922(g); (5) interstate transportation of a stolen destructive device, 18 U.S.C. 922(i); (6) interstate transportation of a destructive device with the intent to commit a felony, 18 U.S.C. 924(b); (7) interstate transportation of a destructive device to be used to commit a crime of violence, 18 U.S.C.

that outlaw the use of explosives for purposes of intimidation,<sup>26</sup> and those that proscribe bombing certain types of property – federal property,<sup>27</sup> commercial motor vehicles and their facilities,<sup>28</sup> railroad property,<sup>29</sup> aircraft or aircraft facilities,<sup>30</sup>

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924(h); (8) smuggling a destructive device to facilitate a crime of violence, 18 U.S.C. 924(j); (9) transportation of an explosive or incendiary device in furtherance of a civil disorder, 18 U.S.C. 231(2); (10) the transportation (or use) of a biological weapon, 18 U.S.C. 175; (11) transfer (or use) of a chemical weapon, 18 U.S.C. 229; (12) transfer (or use) of nuclear material, 18 U.S.C. 831.

<sup>26</sup> 18 U.S.C. 242 (“Whoever, under color of any law . . . willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . shall be fined under this title or imprisoned not more than one year, or both; and . . . if such acts include the use, attempted use, or threatened use of . . . explosives . . . shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include . . . an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death”); *see also*, 18 U.S.C. 245 (use of explosives to interfere with federally protected rights).

<sup>27</sup> “Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property in whole or in part owned or possessed, or leased to, the United States, or any department or agency thereof shall be imprisoned not less than 5 years and not more than 20 years, fined under this title, or both.” 18 U.S.C. 844(f)(1); *see also*, 18 U.S.C. 1864 (booby traps on federal lands); 18 U.S.C. 81 (property destruction by fire (presumably including incendiary devices like molotov cocktails) in the special maritime and territorial jurisdiction of the United States); 18 U.S.C. 2332a (use of weapons of mass destruction (including bombs) against an individual which affects interstate or foreign commerce).

<sup>28</sup> “Whoever willfully, with intent to endanger the safety of any person on board or anyone who he believes will board the same, or with a reckless disregard for the safety of human life, damages, disables, destroys, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to, any motor vehicle which is used, operated, or employed in interstate or foreign commerce, or its cargo or material used or intended to be used in connection with its operation; or

“Whoever willfully, with like intent, damages, disables, destroys, sets fire to, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to any garage, terminal, structure, supply, or facility used in operation of, or in support of the operation of, motor vehicles engaged in interstate or foreign commerce or otherwise makes or causes such property to be made unworkable, unusable, or hazardous to work or use; or . . .

“Whoever willfully attempts to do any of the aforesaid acts – shall be fined under this title or imprisoned not more than twenty years, or both.” 18 U.S.C. 33; if death results the offense is a capital one,” 18 U.S.C. 34.

<sup>29</sup> “Whoever willfully derails, disables, or wrecks any train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad; or Whoever willfully sets fire to or places any explosive substance on or near, or undermines any tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of any such railroad in interstate or foreign commerce or otherwise makes any such tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or

property being exported,<sup>31</sup> and particularly, property used in, or used in activities affecting, interstate or foreign commerce.<sup>32</sup>

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appurtenance unworkable or unusable or hazardous to work or use, with the intent to derail, disable, or wreck a train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce, or Whoever willful attempts to do any of the aforementioned acts or things – Shall be fined under this title or imprisoned not more than twenty years, or both. Whoever is convicted of any such crime, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life. 18 U.S.C. 1992; *see also*, 18 U.S.C. 2275 (relating to placing a bomb aboard a vessel in U.S. waters) and 18 U.S.C. 2277 (relating to unlawful possession of explosives aboard a ship of U.S. registry).

<sup>30</sup> “Whoever willfully – (1) sets fire to, damages, destroys, disables, or wrecks any aircraft in the special aircraft jurisdiction of the United States (i.e. in flight over the United States, 49 U.S.C. 46501(2)) or any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce;

“(2) places or causes to be placed a destructive device or substance in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any such aircraft, or any part or other materials used or intended to be used in connection with the operation of such aircraft, if such placing or cause to be placed or such mailing or causing to be made is likely to endanger the safety of any such aircraft;

“(3) sets fire to, damages, destroys, or disables any air navigation facility, or interferes by force or violence with the operation of such facility, if such fire, damaging, destroying, disabling, or interfering is likely to endanger the safety of such aircraft in flight; or

“(4) with intent to damage, destroy, or disable any such aircraft, sets fire to, damages, destroys, disables, or places a destructive device or substance in, upon, or in proximity to any appliance or structure, ramp,, landing area, property, machine, or apparatus, any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading or storage of any such aircraft or any cargo carried or intended to be carried on any such aircraft; . . . or

“(7) attempts to do anything prohibited under paragraphs (1) through (6) of this subsection shall be fined under this title or imprisoned for not more than twenty years or both.” 18 U.S.C. 32. If death results, violations are capital offenses, 18 U.S.C. 34; 18 U.S.C. 37 outlaws acts of violence at international airports.

<sup>31</sup> “Whoever, with intent to prevent, interfere with, or obstruct, or attempt to prevent, interfere with, or obstruct the exportation to foreign countries of articles from the United States, injures or destroys, by fire or explosives, such articles or the places where they may be while in such foreign commerce, shall be fined . . . imprisoned not more than twenty years or both,” 18 U.S.C. 1364.

<sup>32</sup> “Whoever maliciously damages or destroys, or attempts to damage or destroy, but means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both; and if personal injury results in any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years . . . and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.” 18 U.S.C. 844(i); *see also*, 18 U.S.C. 2332a (use of a weapon of mass destruction (including a bomb) against an individual in the United States which affects interstate or foreign commerce).

A terrorist bombing may also breach federal laws that condemn property destruction without regard the destructive means employed, for instance:

- causing more than \$10,000 in damage to an animal enterprise, 18 U.S.C. 43
- destruction of certain religious property, 18 U.S.C. 247
- damaging abortion clinic property, 18 U.S.C. 248
- damaging federal property or property constructed or manufactured under federal contract, 18 U.S.C. 1361
- damaging communications lines or systems operated or controlled by the United States, 18 U.S.C. 1362
- destruction of property within the special maritime and territorial jurisdiction of the United States, 18 U.S.C. 1363
- causing more than \$5000 in damage to energy facility property, 18 U.S.C. 1366
- injury to a federal police dog or horse, 18 U.S.C. 1368
- commit an act of violence against the building or grounds of one under Secret Service protection, 18 U.S.C. 1752
- destruction of harbor defenses, 18 U.S.C. 2152
- destruction of war material, 18 U.S.C. 2153
- destruction of defense material, 18 U.S.C. 2155
- destruction of maritime navigation facilities, 18 U.S.C. 2280
- destruction of maritime fixed platforms, 18 U.S.C. 2281
- use of weapons of mass destruction against an individual with an impact on interstate commerce or against federal property, 18 U.S.C. 2332a
- destruction of property during the course of acts of terrorism transcending national boundaries, 18 U.S.C. 2332b.

Bombings and fire bombings are crimes under the laws of every state in the Union, usually under the state's arson statutes. At common law setting fire to someone else's house constituted arson.<sup>33</sup>

Although a few states still limit their arson statutes to destruction by fire<sup>34</sup> and punish explosives offenses separately,<sup>35</sup> most – in order to accommodate destruction

<sup>33</sup> IV BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 220 (1769) (“Arson . . . is the malicious and wilful burning of the house or outhouses of another man”); PERKINS & BOYCE, CRIMINAL LAW 273-88 (1982).

<sup>34</sup> “A person is guilty of arson when he or she willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of, any structure, forest land, or property. . . .” *Cal.Penal Code* §§450-457.1; see also, *Md.Ann.Code* art.27 §6-11; *Mass.Gen.Laws Ann.* ch.266 §§1-13A; *Mich.Comp.Laws Ann.* §§750.71 to 750.80; *Miss.Code Ann.* §§97-17-1 to 97-17-13; *Nev.Rev.Stat.* §§205.005-205.055; *N.C.Gen. Stat.* §§14-58 to 14-69.2; *S.D.Cod.Laws* §§22-33-1 to 22-33-10; *Vt.Stat.Ann.* tit.13 §§501-509; *W.Va.Code* §§61-3-1 to 61-3-6.

<sup>35</sup> “Whoever wilfully, intentionally and without right, by the explosion of gunpowder or of any other explosive, unlawfully damages or destroys property or injures a person, shall be punished by imprisonment . . . .” *Mass.Gen.Laws Ann.* ch.266, §101; see also, *Cal.Penal Code* §§12301 -12312 (unlawful possession, possession of ingredients, use of destructive devices; arson does not include destruction by explosives generally), 453 (possession of

by devices that are both explosive and incendiary – have redrawn their arson laws to reach property destruction accomplished by either fire or explosives.<sup>36</sup>

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explosives or firebomb); *Md. Ann. Code* art.27 §§139A to 139D (make or possess a Molotov cocktail, destructive or incendiary devices), 11 (attempt to bomb); *Mass. Gen. Laws Ann.* ch. 266 §§101 (maliciously causing injury or damage by explosion), 102(wilful throwing or placing of explosives or possession with such intent), 102B (possession of Molotov cocktail), 5A (placing flammable or explosive material, substance or device proximate to property in order damage); *Mich. Comp. Laws Ann.* §§750.77 (wilfully and maliciously place or distributing inflammable or explosive material near to a building), 750.200 - 750.212 (making, possessing or transporting explosives); *Miss. Code Ann.* §§97-37-21 to 97-37-25; *Nev. Rev. Stat.* §§202.750 - 202.830 (unlawful possession, transportation, or use), 202.260-270 (same); *N.C. Gen. Stat.* §§14-49 to 14-50.1; *S.D. Cod. Laws* §§22-14A-4 to 22-14A-22 (unlawful possession or use of explosives); *Vt. Stat. Ann.* tit.13 §§1601-1612 (unlawful possession or use of explosives); *W.Va. Code* §§61-3E-1 & 61-3E-13 (unlawful possession and use of explosives).

<sup>36</sup> “Any person who willfully and unlawfully, by fire or explosion, damages: (1) any dwelling, whether occupied or not; or (2) any structure, whether occupied or not, in which persons are normally present, including without limitation: jails, prisons or detention centers; hospitals, nursing homes or other health care facilities; department stores, office buildings, business establishments, churches or educational institutions, or other similar structures; or (3) any other structure which the actor has reasonable grounds to believe is occupied by a human being; or (4) any other real or personal property, whether the property of the actor or another, with the intent to deceive or harm any insurer or any person with a legal or financial interest in the property, or obtain any financial gain for the actor or another; is guilty of arson in the first degree . . . .” *Idaho Code* §18-802. Many jurisdictions also have explosive specific laws: *Ala. Code* §§13A-7-40 to 13A-7-43 (arson), 13A-7-44 (criminal possession of explosives with the intent to use to commit a violent crime); *Alaska Stat.* §§11.46.400 to 11.46.430 (arson), 11.61.240 (possession of explosives for a criminal purpose), 11.61.250 (knowing furnishing explosives for a criminal purpose); *Ariz. Rev. Stat. Ann.* §§13-3103 (improper storage of explosives), 13-3104 (placing explosives on, in or near a vehicle, building or humanly frequented place), 13-1701 to 13-1705 (arson); *Ark. Code Ann.* §§5-73-104 (commission of a crime using a bomb or other implement for inflicting serious physical injury), 5-73-108 (possession of explosives for commission of a crime), 5-38-301, 5-38-302 (arson), 5-71-211 (threatening a fire or bombing), 5-71-302 (teaching or demonstrating construction or use of explosives in furtherance of a civil disorder); *Colo. Rev. Stat.* §§18-4-101 to 18-4-105 (arson); *Conn. Gen. Stat. Ann.* §§53a-111 to 53a-114 (arson); *Del. Code Ann.* tit.11 §§1338 (possession or transportation of explosives with intent to injure or damage), 801-804 (arson); *Fla. Stat. Ann.* §§790.161 (making, possessing, throwing, placing or discharging a destructive device), 806.01-806.111 (arson); *Ga. Code Ann.* §§16-7-60 to 16-7-62 (arson), 16-7-80 & 16-7-88 (possession of explosives for criminal purposes); *Hawaii Rev. Stat.* §§708-820 to 824 (property destruction statutes apply regardless of the agent of destruction); *Idaho Code* §§18-801 to 18-805 (arson); *Ill. Comp. Stat. Ann.* ch.720 §§5/20-1, 5/20-1.1 (arson), 5/20-2 (possession of explosives or incendiary devices for criminal use); *Ind. Stats. Ann.* §35-47-5-8, 35-47-5-9 (possession of or hurling a bomb), 35-43-1-1 (arson); *Iowa Code Ann.* §§712.1-712.5 (arson), 712.6 (possession of explosives for criminal use); *Kan. Stat. Ann.* §§21-3718 to 21-3720 (arson), 21-3731 (possession of explosives for criminal purposes); *Ky. Rev. Stat.* §§513.010-513.040 (arson); *La. Rev. Stat. Ann.* §§14:51-14:54 (arson), 14:54.2 (manufacture and possession of delayed action incendiary devices), 14:54.3 (manufacture and possession of a bomb); *Me. Rev. Stat. Ann.* tit.17-A §§1001 (criminal use or possession of explosives), 1002 (criminal use or possession of disabling chemicals), 802 (arson); *Minn. Stat. Ann.* §§609.561-609.564 (arson); *Mo. Ann. Stat.* §§569.040-569.065

In addition, at least sixteen states have supplemented their explosives provisions with laws that address catastrophic use of fire, explosives or other destructive forces.<sup>37</sup>

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(arson); *Mont. Code Ann.* §§45-6-102 & 45-6-103 (arson), 45-8-332 to 45-8-335 (unlawful use or possession of destructive devices); *Neb. Rev. Stat.* §§28-1213 to 28-1239 (explosive regulation, unlawful making, possession, transportation, and use), 28-501 to 28-504 (arson); *N.H. Rev. Stat. Ann.* §§634:1 (arson), 158:34 (malicious explosions), 158:35 (possession of destructive devices (“infernal machines”)), 158:36 (throwing or placing explosives), 158:37 (use of Molotov cocktails); *N.J. Stat. Ann.* §§2C:17-1 & 2C:17-2 (arson), 2C:39-4 (unlawful possession of explosives or destructive devices); *N.M. Stat. Ann.* §§30-7-5 (dangerous use of explosives), 30-7-7 (unlawful possession of explosives), 30-5-16 (unlawful possession of destructive devices), 30-5-18 to 30-7-19.1 (possession of explosives for unlawful purposes), 30-17-5 & 30-17-6 (arson); *N.Y. Penal Law* §§150.00-150.20 (arson), 145.12 (property damage by explosive); *N.D. Cent. Code* §§12.1-21-01 to 12.1-21-04 (arson); *Ohio Rev. Code Ann.* §§2909.01 - 2909.11 (arson); *Okla. Stat. Ann.* tit.21 §§1401-1405 (arson); *Ore. Rev. Stat.* §§164.315 to 164.335 (arson), 166.382 & 166.384 (making or possessing a destructive device); *Pa. Stat. Ann.* tit.18 §3301 (arson); *R.I. Gen. Laws* §§11-4-2 to 11-4-6 (arson); *S.C. Code* §§16-11-110 (arson), 16-11-200 (placement of explosives or combustibles on the property of another), 16-11-540 (property damage by explosive or incendiary); *Tenn. Code Ann.* §§39-14-301 to 39-14-303 (arson), 39-14-702 (unlawful possession of explosive); *Tex. Penal Code* §28.02 (arson); *Utah Code Ann.* §§76-6-101 to 76-6-104 (arson); *Va. Code* §§18.2-77 to 18.2-82 (arson), 18.2-83 to 18.2-87.1 (unlawful possession or use of explosives); *Wash. Rev. Code Ann.* §§9A.48.010 to 9A.48.060 (arson), 70.74.272 to 70.74.285 (malicious use of explosives); *Wis. Stat. Ann.* §§943.02 to 943.07 (arson), 941.31 (possession of explosives in furtherance of a crime); *Wyo. Stat.* §§6-3-101 to 6-3-104 (arson), 6-3-111 (possession, transportation or sale of explosive or incendiary device).

<sup>37</sup> *Ark. Code Ann.* §5-38-202 (causing a catastrophe by explosion, fire, flood, avalanche, building collapse, distribution of poison, radioactive material, bacteria, virus, or other dangerous and difficult to confine force or substance); *Alaska Stat.* §§11.46.480, 11.46.490 (criminal mischief in the first degree: causing property damage in excess of \$100,000 by use of widely dangerous means); *Cal. Penal Code* §§11418 possession, transfer or use of weapons of mass destruction), 11419 (possession of restricted biological weapons); *Conn. Gen. Stat. Ann.* §53-117 (causing property damage by fire, explosives, flood, avalanche, collapse of a building, poison gas or radioactive material); *Fla. Stat. Ann.* §790.116 (manufacture, sale, possession or use of weapons of mass destruction); *Ill. Comp. Stat. Ann.* ch.720 §5/20.5-5 (causing a catastrophe by explosion; fire; flood; collapse of a building; or release of poison, radioactive material, bacteria, virus or other dangerous substance); *Ind. Stats. Ann.* §35047-12-1 (dissemination or detonation of a weapon of mass destruction); *Me. Rev. Stat. Ann.* tit.17-A §803 (recklessly causing catastrophe by explosion, fire, flood, avalanche, collapse of a structure, release of poison, radioactive material, bacteria, virus or other dangerous and difficult to confine force or substance); *Mo. Ann. Stat.* §569.070 (causing a catastrophe by explosion, fire, flood, collapse of a building, release of poison, radioactive material, bacteria, virus or other dangerous or difficult to confine force or substance); *N.J. Stat. Ann.* §2C:17-2 (causing or risking widespread injury or damage by explosion, flood, avalanche, collapse of a building, release of poison gas, radioactive material or other harmful or destructive substance); *N.C. Gen. Stat.* §14-288.8 (manufacture, assembly, possession, storage, transportation, sale, purchase, delivery or acquisition of a weapon of mass destruction); *N.D. Cent. Code* §12.1-21-04 (release of destructive forces); *Ohio Rev. Code Ann.* §2909.06 (create a substantial risk of injure or damage by fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material or other inherently dangerous agency or substance); *Pa. Stat. Ann.* tit.18 §§3302 & 3303 (causing a catastrophe by

## Murder and Armed Assaults

Although many federal bombing statutes carrying increased penalties when the bombs are used to commit a murder or assault, many others condemn homicide or the infliction of physical injury regardless of the means used. The assassination of a visiting foreign dignitary violates federal law whether it is accomplished with a car bomb or a rifle. A list of some of the federal homicide and assault statutes which, under the proper conditions, would reach a terrorist bombing or other terrorist attack appears below:

- death or injury resulting from the destruction of aircraft or aircraft facilities within the special aircraft jurisdiction of the U.S., 18 U.S.C. 32, 34
- death or injury resulting from destruction of interstate motor carriers or their facilities, 18 U.S.C. 33, 34
- death or injury resulting from violence at an international airport, 18 U.S.C. 37
- death or injury result from animal enterprise terrorism involving interstate or foreign travel or use of the mail or the facilities of interstate or foreign commerce, 18 U.S.C. 43
- assault upon a federal officer, employee, or member of the U.S. armed forces during or because of the performance of their duties, 18 U.S.C. 111
- assault upon foreign dignitaries, 18 U.S.C. 112
- assault within the special maritime or territorial jurisdiction of the U.S. 18 U.S.C. 113, 114
- murder or assault committed to influence, impede or retaliate against a federal official, 18 U.S.C. 115
- death or injury resulting from chemical weapons offenses, 18 U.S.C. 229, 229A
- death or injury resulting from conspiracies to violate civil rights, 18 U.S.C. 241
- death or injury resulting from interference with federally protected civil rights, 18 U.S.C. 245
- death or injury resulting from certain obstruction of the free exercise of religion by others, 18 U.S.C. 247
- death or injury resulting from interference with access to abortion clinics, 18 U.S.C. 248
- murder or assault upon a Member of Congress, the Supreme Court or the Cabinet, 18 U.S.C. 351
- death resulting from nuclear material offenses, 18 U.S.C. 831
- death or injury resulting from the interstate transportation of explosives for criminal use, 18 U.S.C. 844(d)
- death or injury resulting from the bombing of federal property, 18 U.S.C. 844(f)
- death or injury resulting from bombing property used in, or used in an activity affecting, interstate or foreign commerce, 18 U.S.C. 844(i)

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explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance); *S.C. Code* §§16-23-710,16-23-720 (possession of weapons of mass destruction); *Utah Code Ann.* §76-6-105 (causing widespread injury or damage by explosion, fire, flood, avalanche, collapse of a building, release of poison gas, radioactive material, or other harmful or destructive force or substance).

- homicide committed while in possession of a firearm or dangerous weapon within a federal building, 18 U.S.C. 930
- murder within U.S. special maritime and territorial jurisdiction, 18 U.S.C. 1111
- manslaughter within U.S. special maritime and territorial jurisdiction, 18 U.S.C. 1112
- killing a federal officer, employee, or member of the U.S. armed forces during or because of the performance of their duties, 18 U.S.C. 1114
- killing foreign dignitaries, 18 U.S.C. 1116
- death resulting from a kidnapping in which the victim is transported in interstate commerce; is a foreign dignitary; is a federal official, employee or member of the U.S. armed forces; or which occurs in U.S. special maritime, special aircraft, or territorial jurisdiction, 18 U.S.C. 1201
- death resulting from a hostage taking committed to compel federal governmental action or abstention or in which the victim or offender is a foreign national, 18 U.S.C. 1203
- death or injury resulting from tampering with consumer products, 18 U.S.C. 1365
- murder or assault committed against witness in federal proceedings, 18 U.S.C. 1512, 1513
- death or injury resulting from mailing letter bombs or other injurious articles, 18 U.S.C. 1716
- murder or assault upon the President, one in the line of Presidential succession, or a senior White House official, 18 U.S.C. 1751
- death resulting from wrecking a train used in interstate or foreign commerce, 18 U.S.C. 1992
- death or injury resulting from stalking which occurs within the U.S. special maritime or territorial jurisdiction or which involves travel in interstate or foreign commerce, 18 U.S.C. 2261A
- death resulting from acts of violence committed against maritime navigation facilities, 18 U.S.C. 2280
- death resulting from acts of violence committed against fixed maritime platforms, 18 U.S.C. 2281
- death resulting from the use of weapons of mass destruction against federal property or which affects interstate or foreign commerce, 18 U.S.C. 2332a
- death or injury resulting from acts of international terrorism transcending national boundaries which involves the use of the mails or facilities in interstate or foreign commerce; which affects interstate or foreign commerce; which is committed against a federal officer or employer or member of the U.S. armed forces; which is committed against federal property or within U.S. special maritime or territorial jurisdiction, 18 U.S.C. 2332b
- death or injury resulting from air piracy or attempted air piracy committed within U.S. special aircraft jurisdiction, 49 U.S.C. 46502

Federal statutes describing explosives and firearms offenses overlap somewhat because for purposes of the general restrictions of 18 U.S.C. 921 to 930, “destructive devices” are defined as firearms.<sup>38</sup> Consequently, the laws such as those which ban

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<sup>38</sup> “As used in this chapter . . . (3) The term ‘firearm’ means . . . (D) any destructive device. . . (4) The term ‘destructive device’ means—(A) any explosive, incendiary, or poison

possession of a firearm in a federal building, 18 U.S.C. 930, or carrying a firearm during the commission of a federal crime of violence, 18 U.S.C. 924(c), apply with equal force to both bombs and other “firearms.” In fact, both the Unabomber and the terrorists convicted of the 1993 bombing of the World Trade Center were convicted under 18 U.S.C. 924(c) of carrying a firearm (*i.e.* a bomb) during the commission of a federal crime of violence.<sup>39</sup>

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gas – (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses . . . .” 18 U.S.C. 921(a).

<sup>39</sup> *United States v. Kaczynski*, 239 F.3d 1108, 1110, 1113 (9th Cir. 2001); *United States v. Salameh*, 152 F.3d 88, 152 (2d Cir. 1998).

A bombing, assassination or attempted assassination that results in death may be prosecuted as homicide in the state in which it occurs,<sup>40</sup> and one that results in injury will ordinarily violate the assault laws of the state in which it occurs.<sup>41</sup>

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<sup>40</sup> Homicide is ordinarily subdivided into several offenses distinguished by the offender's intent; *e.g.*, "A person commits first degree murder if: 1. intending or knowing that his conduct will cause death, such person causes the death of another with premeditation. 2. Acting either alone or with one or more other persons such person commits or attempts to commit . . . kidnapping, . . . arson . . . and in furtherance of such offense or immediate flight from such offense, such person or another person causes the death of any person. 3. Intending or knowing that the person's conduct will cause the death of a law enforcement officer, the person causes the death of a law enforcement officer who is in the line of duty." *Ariz.Rev.Stat. Ann.* §13-1105.A.

"A person commits second degree murder if without premeditation: 1. Such person intentionally causes the death of another person; or 2. knowing that his conduct will cause death or serious physical injury, such person causes the death of another person." *Ariz.Rev.Stat. Ann.* §13-1104.A.

"A person commits manslaughter by 1. recklessly causing the death of another person; or . . . 4. committing second degree murder . . . while being coerced to do so by the use or threatened immediate use of unlawful deadly force upon such person or a third person which a reasonable person in his situation would have been unable to resist. . . ." *Ariz.Rev.Stat. Ann.* §13-1103.A.

"A person commits negligent homicide if with criminal negligence such person causes the death of another person." *Ariz.Rev.Stat. Ann.* §13-1102.A. See also, *Ala. Code* §§13A-6-1 to 13A-6-4; *Alaska Stat.* §§11.41.100 to 11.41.140; *Ark. Code Ann.* §§5-10-101 to 5-10-105; *Cal. Penal Code* §§187 to 199; *Colo. Rev. Stat.* §§18-3-101 to 18-3-107; *Conn. Gen. Stat. Ann.* §§53a-54a to 53a-58; *Del. Code Ann.* tit.11 §§631 to 636; *Fla. Stat. Ann.* §§782.04 to 782.072; *Ga. Code Ann.* §§16-5-1 to 16-5-4; *Hawaii Rev. Stat.* §§707-701 to 707-706; *Idaho Code* §§18-4001 to 18-4015; *Ill. Comp. Stat. Ann.* ch.720 §§5/9-1 to 5/9-3; *Ind. Code Ann.* §§35-42-1-1 to 35-42-1-5; *Iowa Code Ann.* §§707.1 to 707.11; *Kan. Stat. Ann.* §§21-3401 to 21-3405; *Ky. Rev. Stat.* §§507.010 to 507.050; *La. Rev. Stat. Ann.* §§14:29 to 14:32.1; *Me. Rev. Stat. Ann.* tit.17-A §§201 to 203; *Md. Ann. Code art.27* §§387(manslaughter), 407 to 414 (murder); *Mass. Gen. Laws Ann.* ch.265 §§1 & 2 (murder), 13 (manslaughter); *Mich. Comp. Laws Ann.* §§750.316 to 750.329; *Minn. Stat. Ann.* §§609.18 to 609.21; *Miss. Code Ann.* §§97-3-15 to 97-3-47; *Mo. Ann. Stat.* §§565.020 to 565.040; *Mont. Code Ann.* §§45-5-102 to 45-5-104; *Neb. Rev. Stat.* §§28-302 to 28-306; *Nev. Rev. Stat.* §§200.010 to 200.260, 200.390; *N.H. Rev. Stat. Ann.* §§630:1 to 630:3; *N.J. Stat. Ann.* §§2C:11-1 to 2C:11-5; *N.M. Stat. Ann.* §§30-2-1 to 30-2-9; *N.Y. Penal Law* §§125.00 to 125.27; *N.C. Gen. Stat.* §§14-17, 14-18; *N.D. Cent. Code* §§12.1-16-01 to 12.1-16-03; *Ohio Rev. Code Ann.* §§2903.01 to 2903.08; *Okla. Stat. Ann.* tit.21 §§691 to 722 (murder and manslaughter), 651 to 653 (attempt to kill); *Ore. Rev. Stat.* §§163.005 to 163.150; *Pa. Stat. Ann.* tit.18 §§2501 to 2504; *R.I. Gen. Laws* 11-23-1 to 1123-3; *S.C. Code* §§16-3-10 to 16-3-70; *S.D. Cod. Laws* §§22-16-1 to 22-16-41; *Tenn. Code Ann.* §§39-13-201 to 39-13-218; *Tex. Penal Code* §§19.01 to 19.05; *Utah Code Ann.* §§76-5-201 to 76-5-207; *Vt. Stat. Ann.* tit.13 §§2301 to 2311; *Va. Code* §§18.2-30 to 18.2-37; *Wash. Rev. Code Ann.* §§9A.32.010-9A.32.070; *W.Va. Code* §§61-2-1 to 61-2-7; *Wis. Stat. Ann.* §§940.01 to 940.10; *Wyo. Stat.* §§6-2-101 to 6-2-107.

<sup>41</sup> Penalties for assault are usually calibrated according to the extent of the injury caused, the intent of the offender, the nature of any instrumentality used to accomplish the assault, *e.g.*:

"A person commits the crime of assault in the first degree if (1) that person recklessly causes serious physical injury to another by means of a dangerous instrument; (2) with intent

## Firearms used by terrorists may also run afoul of state restrictions on carrying

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to cause serious physical injury to another, the person causes serious physical injury to any person; [or] the person knowingly engages in conduct that results in serious physical injury to another under circumstances manifesting extreme indifference to the value of human life . . . .” *Alaska Stat.* §11.41.200.

“A person commits the crime of assault in the second degree if (1) with intent to cause physical injury to another person, that person causes physical injury to another person by means of a dangerous instrument; [or] (2) that person recklessly causes serious physical injury to another . . . .” *Alaska Stat.* §11.41.210.

“A person commits the crime of assault in the third degree if that person (1) recklessly (A) places another person in fear of imminent serious physical injury by means of a dangerous instrument; (B) causes physical injury to another person . . . ; or (2) with intent to place another person in fear of death or serious physical injury to the person or the person’s family member makes repeated threats to cause death or serious physical injury to another person,” *Alaska Stat.* §11.41.220(a).

“A person commits the crime of assault in the fourth degree if (1) that person recklessly causes physical injury to another person; (2) with criminal negligence that person causes physical injury to another person by means of a dangerous instrument; or (3) by words or other conduct that person recklessly places another person in fear of imminent physical injury,” *Alaska Stat.* §11.41.230(a). *See also, Ala. Code* §§13A-6-20 to 13A-6-22; *Alaska Stat.* §11.61.190 (drive by shooting) *Ariz.Rev.Stat. Ann.* §§13-1203 (assault), 13-1204 (aggravated assault), 13-1209 (drive by shooting); *Ark. Code Ann.* §§5-13-201 to 5-13-207; *Cal. Penal Code* §§203 to 206.1 (mayhem); 217.1 to 219.3 (assault with intent to kill), 220 (assault with intent to commit mayhem), 240 to 247.5 (assaults and batteries), 12022.55 (drive by shooting); *Colo.Rev.Stat.* §§18-3-201 to 18-3-207; *Conn.Gen.Stat. Ann.* §§53a-59 to 53a-61a; *Del.Code Ann.* tit.11 §§, 611 to 614; *Fla.Stat. Ann.* §§784.011 to 784.08; *Ga.Code Ann.* §§16-5-20 to 16-5-24; *Hawaii Rev.Stat.* §§707-710 to 707-712.5; *Idaho Code* §§18-901 to 18-915; *Ill.Comp.Stat. Ann.* ch.720 §§5/12-1 to 5/12-4.6; *Ind.Code Ann.* §§35-42-2-1, 35-42-2-1.5; *Iowa Code Ann.* §§708.1 to 708.5; *Kan.Stat. Ann.* §§21-3408 to 21-3416; *Ky.Rev.Stat.* §§508.010 to 508.040; *La.Rev.Stat. Ann.* §§14:33 to 14:39.2; *Me.Rev.Stat. Ann.* tit.17-A §§207 to 208-B; *Md. Ann.Code* art.27, §§12 to 12A-6; *Mass.Gen.Laws Ann.* ch.265 §§13A-16 (assault and battery), 18 to 18B (armed assault and battery), 20 (simple assault), 29 (assault with intent to commit a felony), 39 (assault and battery for purposes of intimidation); *Mich.Comp.Laws Ann.* §§750.81 to 750.89 (assault), 750.397 (mayhem); *Minn.Stat. Ann.* §§609.221 to 609.224 (assault), 609.66[1e] (drive by shooting); *Miss.Code Ann.* §§97-3-7 (assault), 97-3-59 (mayhem); 97-3-61 & 97-3-63 (poisoning), 97-3-109 (drive by shooting); *Mo. Ann.Stat.* §§565.050 to 565.083; *Mont. Code Ann.* §§45-5-201 to 45-5-205, 45-5-210, 45-5-213; *Neb.Rev.Stat.* §§28-308 to 28-310; *Nev.Rev.Stat.* §§200.280 to 200.300 (mayhem), 200.400 & 200.471 to 200.490 (assault and battery); *N.H.Rev.Stat. Ann.* §631:1 to 631:2-a; *N.J.Stat. Ann.* §2C:12-1; *N.M.Stat. Ann.* §§30-3-1 to 30-3-9; *N.Y. Penal Law* §§120.00 to 120.11; *N.C.Gen.Stat.* §§14-28 to 14-34.2, 14-34.5 to 14-34.8; *N.D.Cent.Code* §§12.1-17-01 to 12.1-17-02, 12.1-17-12; *Ohio Rev. Code Ann.* §§2903.11 to 2903.14; *Okla.Stat. Ann.* tit.21 §§641 to 653 (assault and battery), 751 to 759 (maiming); *Ore.Rev.Stat.* §§163.160 to 163.213; *Pa.Stat. Ann.* tit.18 §§2701 to 2704; *R.I.Gen.Laws* §§11-5-1 to 11-5-11 (assault), 11-29-1 (mayhem), 11-47-61 (drive by shooting); *S.C.Code* §§16-3-610 to 16-3-625; *S.D.Cod.Laws* §§22-18-1 to 22-18-6; *Tenn.Code Ann.* §§39-13-101 to 39-13-106; *Tex.Penal Code* §§22.01 to 22.02; *Utah Code Ann.* §§76-5-101 to 76-5-105; *Vt.Stat. Ann.* tit.13 §§1021 to 1024; *Va.Code* §§18.2-51 to 18.2-57; *Wash.Rev.Code Ann.* §§9A.36.010 to 9A.36.045; *W.Va.Code* §§61-2-7 to 61-2-11; *Wis.Stat. Ann.* §§940.19 to 940.21; *Wyo.Stat.* §§6-2-501, 6-2-502.

concealed weapons,<sup>42</sup> on possession of firearms by various convicted felons,<sup>43</sup> and on possession of machineguns, silencers, armor piercing ammunition and the like.<sup>44</sup>

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<sup>42</sup> *E.g.*, *Ala. Code* §13A-11-50; *Ariz. Rev. Stat. Ann.* §13-3102; *Cal. Penal Code* §12026.2; *Colo. Rev. Stat.* §18-12-105; *Del. Code Ann.* tit.11 §§1442 & 1443; *Fla. Stat. Ann.* §790.01; *Ga. Code Ann.* §16-11-126; *Hawaii Rev. Stat.* §134-51; *Ill. Comp. Stat. Ann.* ch.720 §5/24-1/6; *Iowa Code Ann.* §724.4; *Kan. Stat. Ann.* §§21-4201, 21-4202; *Ky. Rev. Stat.* §527.020; *La. Rev. Stat. Ann.* §§14:95 & 14:95.2; *Mich. Comp. Laws Ann.* §750.227; *Miss. Code Ann.* §97-37-1; *Mo. Ann. Stat.* §571.030; *Mont. Code Ann.* §45-5-316; *Neb. Rev. Stat.* §28-1202; *N.H. Rev. Stat. Ann.* §159:4; *N.M. Stat. Ann.* §30-7-2; *N.D. Cent. Code* §§62.1-04-01 to 62.1-04-05; *Ohio Rev. Code Ann.* §2923.12; *Okla. Stat. Ann.* tit.21 §§1289.8 & 1290.4; *Ore. Rev. Stat.* §166.240; *S.C. Code* §16-23-460; *S.D. Comp. Laws* §22-14-8; *Utah Code Ann.* §76-10-504; *Va. Code* §18.2-308; *Wash. Rev. Code Ann.* §§9.41.050 to 9.41.075; *Wyo. Stat.* §6-8-104.

<sup>43</sup> *E.g.*, *Ala. Code* §13A-11-72 (possession of a pistol by one convicted of a crime of violence, a drug addict, habitual drunkard); *Alaska Stat.* §11.61.200; *Cal. Penal Code* §12021; *Colo. Rev. Stat.* §18-12-108; *Conn. Gen. Stat. Ann.* §§53a-217 (firearm possession by a convicted felon), 53a-217d (possession of body armor by a convicted felon); *Del. Code Ann.* tit.11 §1448; *Fla. Stat. Ann.* §790.23; *Ga. Code Ann.* §16-11-131; *Hawaii Rev. Stat.* §134-7; *Ill. Comp. Stat. Ann.* ch.720 §5/24-1.1; *Iowa Code Ann.* §724.26; *Kan. Stat. Ann.* §21-4204; *Ky. Rev. Stat.* §527.040; *Mich. Comp. Laws Ann.* §750.224f; *Miss. Code Ann.* §97-37-1; *Mont. Code Ann.* §45-5-313; *Nev. Rev. Stat.* §202.36; *N.H. Rev. Stat. Ann.* §159:3; *N.M. Stat. Ann.* §30-7-16; *N.Y. Penal Law* §265.01; *N.D. Cent. Code* §62.1-02-01; *Ore. Rev. Stat.* §166.250; *Pa. Stat. Ann.* tit.18 §6105; *S.D. Comp. Laws* §22-14-15; *Tex. Penal Code* §46.04; *Va. Code* §18.2-308.2; *Wash. Rev. Code Ann.* §9.41.040; *Wis. Stat. Ann.* §941.291. Of course, possession of a firearm by a fugitive, convicted felon, or illegal alien is also a federal crime, 18 U.S.C. 924(g).

<sup>44</sup> *E.g.*, *Ala. Code* §§13A-11-60 (possession of steel teflon-coated handgun ammunition), 13-11-61 (discharging a firearm into a building or conveyance), 13A-11-71 (commission of a crime of violence while armed with a pistol); *Ariz. Rev. Stat. Ann.* §§13-3102 (possession of silencer or a short barreled shotgun/rifle), 13-3116 (wearing body armor during the commission of a felony); *Ark. Code Ann.* §§5-73-104 (possession of a machinegun, sawed-off shotgun/rifle or silencer), 5-74-107 (unlawful discharge of a firearm from a vehicle), 5-74-101 (criminal possession of body armor); *Cal. Penal Code* §§12020 (possession of a short barreled shotgun/rifle), 12022, 12022.3, 12022.5 (use of firearm to commit a felony), 12022.2 (possession of armor piercing ammunition or body armor during the commission of a felony), 12320 (possession of armor piercing ammunition), 12220 (possession of a machinegun), 12280 (possession of an assault weapons), 12520 (possession of a silencer); *Colo. Rev. Stat.* §§18-12-102 (possession of a silencer, machinegun, short barreled shotgun/rifle), 18-12-107.5 (unlawfully discharging a firearm); *Conn. Gen. Stat. Ann.* §53a-211 (possession of a sawed-off shotgun or silencer); *Del. Code Ann.* tit.11 §§1444 (possession of a silencer, sawed-off shotgun, or machinegun), 1447 & 1447A (possession of deadly weapon during the commission of a felony); *Fla. Stat. Ann.* §§790.221 (machine gun possession), 790.07 (use of a firearm to commit a felony), 790.166 (possession of weapon of mass destruction), 790.31 (possession of armor piercing or exploding ammunition); *Ga. Code Ann.* §§16-11-122 & 16-11-123 (possession of a machinegun, silencer, or sawed-off shotgun/rifle); *Hawaii Rev. Stat.* §134-8 (possession of an assault pistol, short barreled shotgun/rifle, silencer or teflon coated ammunition); *Idaho Code* §§18-3305, 18-3306, 18-3317 (unlawfully discharging a firearm); *Ill. Comp. Stat. Ann.* ch.720 §5/24-1 (possession of a machinegun or short barreled shotgun/rifle), 5/24-1.2 to 5/24-1.5 (unlawful discharge of a firearm), 5/24-2.1 (possession of armor piercing ammunition); *Ind. Code Ann.* §§35-47-5-8 (possession of a machine gun), 35-47-5-11 (use of armor piercing ammunition), 35-47-5-13 (unlawful use of body armor);

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*Iowa Code Ann.* §§724.1 to 724.3 (unlawful possession of a machinegun, short barreled shotgun/rifle, or silencer); *Kan.Stat.Ann.* §§21-4201, 21-4202 (possession of a silencer and armor piercing bullets), 21-4219 (criminal discharge of a firearm); *Ky.Rev.Stat.* §527.080 (use of armor piercing ammunition); *La.Rev.Stat.Ann.* §§14:94 (Unlawfully discharging a firearm), 14-95.3 (unlawful use of body armor); *Me.Rev.Stat.Ann.* tit.17-A §§1051-1054 (machinegun offenses), 1056 (possession of armor piercing ammunition); *Md.Ann. Code art.27* §§372 to 383 (machinegun offenses); *Mass.Gen.Laws Ann.* ch.269 §10 (possession of a machinegun); *Mich.Comp.Laws Ann.* §§750.224 (possession of a machinegun or silencer), 750.224b (possession of a short barreled shotgun/rifle), 750.224c (use of armor piercing ammunition), 750.27b (possession of a firearm during the course of a felony), 750.227f & 750.227g (body armor offenses), 750.234a to 750.234c (unlawful discharge of firearm); *Minn.Stat.Ann.* §§609.66[1a] (possession of a silencer), 609.67 (possession of machineguns or short barreled shotguns); *Miss.Code Ann.* §97-37-31 (possession of a silencer); *Mo.Ann.Stat.* §§571.015 (use of a weapon during the commission of a crime), 571.020 (possession of a silencer, machinegun, or short barreled shotgun/rifle), 571.150 (possession of armor piercing ammunition); *Mont.Code Ann.* §§45-8-303 & 45-8-304 (possession of a machine gun for an offensive or criminal purpose), 45-5-336 (possession of silencer), 45-5-340 (possession of a sawed-off firearm); *Neb.Rev.Stat.* §28-1203 (possession of a machine gun); *Nev.Rev.Stat.* §§202.275 (possession of short barreled shotgun/rifle), 202.280 to 202.287 (unlawful discharge a firearm), 202.441 to 202.446 (unlawful possession of biological weapons); *N.H.Rev.Stat.Ann.* §§650-A:1 (carrying a firearm during the commission of a crime), 650-B:1 & 650-B:2 (use of body armor during the commission of a felony), 159:18 (possession of armor piercing ammunition); *N.J.Stat.Ann.* §§2C:39-3 (possession of a silencer, sawed-off shotgun, or armor piercing bullets), 2C:39-5 (possession of an assault weapon); *N.Y.Penal Law* §§ 265.02 & 265.03 (possession of a machinegun), 265.08 & 265.09 (possession of a firearm during the commission of a violent felony); *N.C.Gen.Stat.* §14-34.3 (possession of armor piercing bullets); *N.D.Cent.Code* §§62.1-05-01 (possession of a machinegun or silencers), 62.1-02-03 (possession of a short barreled shotgun/rifle); *Okla.Stat.Ann.* tit.21 §§1287 (use of firearm during the commission of a felony), 1289.18 (possession of sawed-off shotgun/rifle), 1289.26 (use of body armor), 1289.19 to 1289.22 (possession of armor piercing ammunition), 1289.17A & 1364 (unlawfully discharging a firearm); *Ore.Rev.Stat.* §§166.272 (possession of a machinegun, silencer, or short barreled shotgun/rifle), 166.350 (possession of armor piercing ammunition), 166.630 to 166.638 (unlawful discharge of a firearm); *Pa.Stat.Ann.* tit.18 §; 6121 (possession of armor piercing ammunition); *R.I.Gen.Laws* §§11-47-3 to 11-47-5 (armed crimes of violence), 11-47-20 (possession of silencers), 11-47-20.1 to 11-47-20.3 (possession of armor piercing bullets); *S.C.Code* §§16-23-210 to 16-23-250 (possession of a machine gun or sawed off shotgun/rifle); *S.D.Comp.Laws* §§22-14-6, 22-1-2(8) (possession of a silencer, machinegun, or short barreled shotgun), 22-14-12 to 22-14-14 (commission of a felony armed with a firearm or stun gun), 22-14-20 (discharge of a firearm from a moving motor vehicle); *Tenn.Code Ann.* §39-17-1302 (possession of a machinegun, silencer, or short barreled shotgun/rifle); *Utah Code Ann.* §76-10-508 (unlawful discharge of a firearm); *Vt.Stat.Ann.* tit.13 §1040 (possession of a silencer); *Va.Code* §§18.2-279, 18.2-280, 18.2-286, 18.2-286.1 (unlawful discharge of firearms), 18.2-287.2 (wearing body armor during the commission of a crime), 18.2-288 to 18.2-298 (machinegun offenses), 18.2-299 to 18.2-301 (sawed-off shotgun/rifle offenses); *Wash.Rev. Code Ann.* §§9.41.190 (possession of short barreled shotgun/rifle or machine gun), 9.41.230 (discharging a firearm in a public place); *W.Va.Code* §§61-7-9 (possession a machinegun), 61-7-12 (wantonly endangering another through use of a firearm); *Wis.Stat.Ann.* §§941.26, 941.27 (possession of a machine gun or fully automatic firearm), 941.28 (short barreled shotgun/rifle offenses), 941.296 (possession of armor-piercing bullet during the commission of a crime).

## ***Kidnapping***

Federal kidnapping and hostage taking laws are far less sweeping than the federal explosives or assault provisions laws. They extend only to kidnappings where the victim is transported in interstate or foreign commerce or taken in an aircraft hijacking; where the kidnapping occurs within a federal enclave or “Indian country;” where the victim is a foreign dignitary, federal officer or employee, or member of the armed forces; where the offender is a foreign national or flees the United States; or where the hostage is taken with an eye to influencing federal governmental action.<sup>45</sup>

In contrast, state kidnapping laws apply whenever a kidnapping occurs within a given state, and often reserve their most severe penalties for the kinds of abductions most likely implicated when terrorists are involved, *i.e.*, kidnapping for hostage purposes, to terrorize, or to compel some form of governmental action or inaction.<sup>46</sup>

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<sup>45</sup> “Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person when (1) the person is willfully transported in interstate or foreign commerce; (2) any such act against the person is done within the . . . territorial jurisdiction of the United States; (3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49; (4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title; or (5) the person is among those officers and employees designated in section 1114 of this title [relating to federal law enforcement officers] and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties shall be punished by imprisonment for any term of years or for life, and if death of any person results, shall be punished by death or life imprisonment,” 18 U.S.C. 1201(a).

“(a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts to do so, shall be punished by imprisonment for any term of years or for life, and, if the death of any person results, shall be punished by death or life imprisonment.

“(b) . . . (2) It is not an offense under this section if the conduct required for the offense occurred inside the United States, each alleged offender and each person seized or detained are nationals of the United States, and each alleged offender is found in the United States, unless the governmental organization sought to be compelled is the Government of the United States.” 18 U.S.C. 1203(a), (b).

See also, 18 U.S.C. 115 (kidnapping or attempted kidnapping of a member of the family of a federal law enforcement official); 18 U.S.C. 351 (kidnapping a Member of Congress, the Cabinet or the Supreme Court); 18 U.S.C. 1153 (kidnapping in “Indian country”); 18 U.S.C. 1751 (kidnapping of the President or one in line of presidential succession). Federal statutes which outlaw the use of force or violence in any form in a particular context may also be violated by kidnapping, *e.g.*, 18 U.S.C. 241-248 (civil rights violations); 18 U.S.C. 1501-1516 (obstruction of justice); 18 U.S.C. 1951 (interference with interstate commerce by force or violence).

<sup>46</sup> “A person is guilty of kidnapping in the first degree when he abducts another person and: (1) his intent is to compel a third person (A) to pay or deliver money or property as ransom or (B) to engage in other particular conduct or to refrain from engaging in particular conduct; or (2) he restrains the person abducted with intent to . . . (C) terrorize him or a third person; or (D) interfere with the performance of a government function.” *Conn. Gen. Stat. Ann.*

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§53a-92. See also, *Ala. Code* §13A-6-43 (includes kidnapping for ransom, as a hostage, to in order to terrorize the victim or a third person, facilitate another felony, or to interfere with a governmental function); *Alaska Stat.* §11.41.300 (restrain with intent to ransom, use as a hostage, cause fear in the victim or a third person, or interfere with a government or political function); *Ariz.Rev.Stat. Ann.* §13-1304 (restraint of another for ransom, as a hostage, to instill fear in victim or third person, to interfere with governmental or political function, or as part of an aircraft, train, bus, ship or vehicle hijacking); *Ark.Code Ann.* §5-11-102 (restraint for ransom, as a hostage, to terrorize the victim or a third person, or to interfere with a governmental or political function); *Cal.Penal Code* §§207 to 210.5; *Colo.Rev.Stat.* §§18-3-301, 18-3-302; *Del.Code Ann.* tit.11 §§783 to 786 (restraint for ransom, as a hostage, to facilitate flight, or to terrorize the victim or a third person); *Fla.Stat. Ann.* §787.01 (restraint for ransom, as a hostage, to terrorize the victim or a third person, or to interfere with a governmental or political function); *Ga.Code Ann.* §§16-5-40 to 16-5-44; *Hawaii Rev.Stat.* §§707-720 (restraint for ransom, as a hostage, to facilitate flight from a crime, to terrorize the victim or a third person, or to interfere with the performance of a governmental or political function); *Idaho Code* §§18-2901, 18-2902, 18-4501 to 18-4505; *Ill.Comp.Stat. Ann.* ch.720 §§5/10-1 to 5/10-4; *Ind.Code Ann.* §35-42-3-2 (confine with the intent to ransom, facilitate flight, as part of a hijacking, or as a hostage); *Iowa Code Ann.* §§710.1 to 710.4 (confinement for ransom, as a hostage, or to interfere with a governmental function); *Kan.Stat. Ann.* §21-3420 (confinement for ransom, as a hostage, to facilitate flight, to terrorize the victim or a third person, or to interfere with a governmental or political function); *Ky.Rev.Stat.* 509.010 - 509.040 (restraint for ransom, to terrorize the victim or a third party, to interfere with a governmental or political function, or as a hostage); *La.Rev.Stat. Ann.* §§14:44 to 14:45; *Me.Rev.Stat. Ann.* tit.17-A §301 (confine for ransom, as a hostage, to terrorize the victim or a third person, to facilitate flight, or to interfere with a governmental or political function); *Md. Ann.Code* art.27 §§337, 338; *Mass.Gen.Laws Ann.* ch.265 §§26 to 27A; *Mich.Comp.Laws Ann.* §§750.349 to 750.350; *Minn.Stat. Ann.* §§609.25 (confine for ransom, as a hostage, to facilitate flight, or to terrorize the victim or a third person); *Miss.Code Ann.* §97-3-53; *Mo. Ann.Stat.* §§565.110 (confinement for ransom, as a hostage, to interfere with a governmental or political function, to facilitate flight, or to terrorize the victim or a third person); *Mont.Code Ann.* §§45-5-301 to 45-5-303 (restrain for ransom, as a hostage, to facilitate flight, to terrorize the victim or another, or to interfere with the performance of a governmental or political function); *Neb.Rev.Stat.* §§28-313 (restraint for ransom, as a hostage, to terrorize the victim or a third party, or to interfere with a governmental or political function); *Nev.Rev.Stat.* §§200.310 to 200.350; *N.H.Rev.Stat. Ann.* §633:1 (confine for ransom, as a hostage, or to terrorize the victim or a third person); *N.J.Stat. Ann.* §2C:13-1 (confinement for ransom, as a hostage, to facilitate flight, to terrorize the victim or a third person, or to interfere with a governmental or political function); *N.M.Stat. Ann.* §§30-4-1 (confinement for ransom or as a hostage); *N.Y.Penal Law* §135.25 (abduct another for ransom, to terrorize the victim or a third person, or to interfere with a governmental or political function); *N.C.Gen.Stat.* §14-39 (confinement for ransom, as a hostage, to facilitate flight, or to terrorize the victim or a third person); *N.D.Cent.Code* §§12.1-18-02 (abduct another for ransom, as a hostage, to terrorize the victim or another, or to interfere with the performance of any governmental or political function); *Ohio Rev.Code Ann.* §§2905.01 (restraint of another for ransom, as a hostage, to facilitate flight, to terrorize the victim or another, or to impede a governmental function); *Okla.Stat. Ann.* tit.21 §§741 to 747; *Ore.Rev.Stat.* §163.235 (confinement for ransom, as a hostage, or to terrorize the victim or another); *Pa.Stat. Ann.* tit.18 §2901 (confining another for ransom, as a hostage, to facilitate flight, to terrorize the victim or another, or to interfere with a governmental or political function); *R.I.Gen.Laws* §11-26-1 to 11-26-3; *S.C.Code* §§16-3-901 (kidnapping), 16-3-920 (conspiracy to kidnap); *S.D.Cod.Laws* §§22-19-1 to 22-19-6 (confinement for ransom, as a hostage, to facilitate flight, to terrorize the victim or another, or to interfere with a

## Poison

Congress has enacted broad legislation forbidding product contamination,<sup>47</sup> and has passed laws covering biological weapons,<sup>48</sup> chemical weapons<sup>49</sup> nuclear materials,<sup>50</sup> as well as poison gas and other weapons of mass destruction.<sup>51</sup>

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governmental or political function); *Tenn. Code Ann.* §§39-13-304 (confinement to facilitate flight, to interfere with a governmental or political function, or to terrorize the victim or another); *Tex. Penal Code* §20.04 (confinement of another for ransom, as a hostage, to facilitate flight, to terrorize the victim or another, or to interfere with a governmental or public function); *Utah Code Ann.* §76-5-302 (restraint of another for ransom, as a hostage, to facilitate flight, to terrorize the victim or another, or to interfere with a governmental or political function); *Vt. Stat. Ann.* tit. 13 §2405 (restraint of another for ransom, as a hostage, to terrorize the victim or another, or to facilitate flight); *Va. Code* §§18.2-47 to 18.2-49; *Wash. Rev. Code Ann.* §9A.40.020 (abduct another for ransom, as a hostage, to facilitate flight, to terrorize victim or another, or to interfere with a governmental function); *W. Va. Code* §61-2-14a to 612-14e; *Wis. Stat. Ann.* §§940.30 - 940.32; *Wyo. Stat.* §6-2-201 (confinement for ransom, as a hostage, or to terrorize the victim of another).

<sup>47</sup> “Whoever, with reckless disregard for the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk, tampers with any consumer product that affects interstate or foreign commerce, or the labeling of, or container for, any such product, or attempts to do so, shall . . . be fined . . . or imprisoned. . . or both,” 18 U.S.C. 1365(a).

<sup>48</sup> “Whoever knowingly develops, produces, stockpiles, transfers, secures, retains, or possesses any biological agent, toxin, or delivers system for use as a weapon, or knowingly assists a foreign state or any organization to do so, shall be fined under this title or imprisoned for life or any term of years, or both. . . .” 18 U.S.C. 175(a)

“As used in this chapter – (1) the term ‘biological agent’ means any micro-organism, virus, or infectious substance, capable of causing – (A) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism; (B) deterioration of food, water, equipment, supplies, or material of any kind; or (C) deleterious alteration of the environment,” 18 U.S.C. 178(1).

<sup>49</sup> “(a) . . . Except as provided in subsection (b), it shall be unlawful for any person knowingly – (1) to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon; or (2) to assist or induce, in any way, any person to violate paragraph (1), or to attempt or conspire to violate paragraph (1).

“(b) Exempted agencies and persons . . .

“(c) Jurisdiction. Conduct prohibited by subsection (a) is within the jurisdiction of the United States if the prohibited conduct – (1) takes place in the United States . . . .” 18 U.S.C. 229.

“Any person who violates section 229 of this title shall be fined under this title, or imprisoned for any term of years, or both. . . . Any person who violates section 229 of this title and by whose action the death of another person is the result shall be punished by death or imprisoned for life. . . .” 18 U.S.C. 229A(a).

<sup>50</sup> “(a) Whoever, if one of the circumstances described in subsection (c) of this section occurs – (1) without lawful authority, intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material or nuclear byproduct material and – (A) thereby knowingly causes the death of or serious bodily injury to any person or substantial damage to property or to the environment; or (B) circumstances exist, or have been represented to the

As noted earlier, several of the states have statutes which outlaw causing catastrophes. A few have laws against product tampering<sup>52</sup> and more than a few have

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defendant to exist, that are likely to cause the death or serious bodily injury to any person, or substantial damage to property or to the environment; (2) with intent to deprive another of nuclear material or nuclear byproduct material, knowingly – (A) takes and carries away nuclear material or nuclear byproduct material of another without authority; (B) makes an unauthorized use, disposition, or transfer, of nuclear material or nuclear byproduct material belonging to another; or (C) uses fraud and thereby obtains nuclear material or nuclear byproduct material belonging to another; (3) knowingly – (A) uses force; or (B) threatens or places another in fear that any person other than the actor will imminently be subject to bodily injury; and thereby takes nuclear material or nuclear byproduct material belonging to another from the person or presence of any other; (4) intentionally intimidates any person and thereby obtains nuclear material or nuclear byproduct material belonging to another; (5) with intent to compel any person, international organization, or governmental entity to do or refrain from doing any act, knowingly threatens to engage in conduct described in paragraph (2)(A) or (3) of this subsection; (6) knowingly threatens to use nuclear material or nuclear byproduct material to cause death or serious bodily injury to any person or substantial damage to property or to the environment under circumstances in which the threat may reasonably be understood as an expression of serious purposes; (7) attempts to commit an offense under paragraph (1), (2), (3), or (4) of this subsection; or (8) is a party to a conspiracy of two or more persons to commit an offense under paragraph (1), (2), (3), or (4) of this subsection, if any of the parties intentionally engages in any conduct in furtherance of such offense; shall be punished as provided in subsection (b) of this section.

“(b) The punishment for an offense under – (1) paragraphs (1) through (7) of subsection (a) of this section is – (A) a fine under this title; and (B) imprisonment – (i) for any term of years or for life (I) if, while committing the offense, the offender knowingly causes the death of any person; or (II) if, while committing an offense under paragraph (1) or (3) of subsection (a) of this section, the offender, under circumstances manifesting extreme indifference to the life of an individual, knowingly engages in any conduct and thereby recklessly causes the death of or serious bodily injury to any person; and (ii) for not more than 20 years in any other case; and (2) paragraph (8) of subsection (a) of this section is – (A) a fine under this title; and (B) imprisonment – (i) for not more than 20 years if the offense which is the object of the conspiracy is punishable under paragraph (1) (B) (i); and (ii) for not more than 10 years in any other case.

“(c) The circumstances referred to in subsection (a) of this section are that –(1) the offense is committed in the United States or the special maritime and territorial jurisdiction of the United States, or the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49) . . . .” 18 U.S.C. 831.

<sup>51</sup> “A person who uses, or attempts or conspires to use, a weapon of mass destruction . . . (2) against any person in the United States; or (3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisonment for any term of years or for life.

“For purposes of this section . . . (2) the term ‘weapon of mass destruction’ means – (A) any destructive device as defined in section 921 of this title; (B) poison gas; (C) any weapon involving a disease organism; or (D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.” 18 U.S.C. 2332a.

<sup>52</sup> *Ill. Comp. Stat. Ann.* ch.720 §5/12-4.5; *Ohio Rev. Code Ann.* §2927.24; *N.Y. Penal Law* §§145.35 to 145.45; *Pa. Stat. Ann.* tit.18 §3304(a)(2); *R.I. Gen. Laws* §11-16-7; *S.C. Code* §16-

laws against adding poison to food, water or medicines.<sup>53</sup> In the remaining states, proscriptions against reckless endangerment,<sup>54</sup> and in the case of death, homicide provisions, *supra* are available to prosecute terrorists who engage in product tampering or releasing cataclysmic forces.

## Threats

### Federal Law.

Although there are a number of federal threat statutes including those that proscribe threats communicated by mail or telephone,<sup>55</sup> the prosecution of threats is

3-75; *Tenn.Code Ann.* §39-17-107; *Tex.Penal Code* §22.09; *Wis.Stat.Ann.* §941.327.

<sup>53</sup> *Ala.Code* §22-23-47; *Ariz.Rev.Stat.Ann.* §13-7304; *Ark.Code Ann.* §5-72-101; *Cal.Pen.Code* §347; *Fla.Stat.Ann.* §859.01; *Idaho Code* §18-5501; *Ind.Code Ann.* §35-45-3-1; *Iowa Code* §708.5; *Md.Ann.Code* art.27 §451; *Mass.Gen.Laws Ann.* ch. 265 §28; *Mich.Comp.Laws* §§750.397a, 750.436; *Mo.Ann.Stat.* §577.150; *Nev.Rev.Stat.* §202.170; *Okla.Stat.Ann.* tit.21 §832; *R.I.Gen.Laws* §§11-16-5; 11-16-6; *S.D.Cod.Laws* §34-20-23; *Vt.Stat.Ann.* tit.13 §2306; *Wash.Rev.Code Ann.* §69.40.030; *Wis.Stat.Ann.* §941.325.

<sup>54</sup> *Ala. Code* §13A-6-24 (reckless conduct which creates risk of a serious physical injury to another); *Alaska Stat.* §11.41.250 (reckless conduct creating a substantial risk of physical injury of another); *Ariz.Rev.Stat.Ann.* §13-1201; *Colo.Rev.Stat.* §§18-3-208 (recklessly creates a substantial risk of serious bodily injury), 18-9-115 (endangering public transportation); *Conn.Gen.Stat.Ann.* §§53a-63, 53a-64 (recklessly risking physical injury of another); *Del.Code Ann.* tit.11 §§603, 604 (recklessly creates a substantial risk of serious bodily injury); *Ga.Code Ann.* §16-5-60 (reckless conduct causing great bodily harm); *Hawaii Rev.Stat.* §§707-713, 707-714 (recklessly causes a risk of great bodily injury); *Ill.Comp.Stat.Ann.* ch.720 §5/12-5 (reckless conduct causing risk to bodily safety); *Ind.Code Ann.* §35-42-2-2 (recklessly creating a substantial risk of injury); *Ky.Rev.Stat.* §§508.060, 508.070 (wanton endangerment: create a risk of physical injury); *Me.Rev. Stat.Ann.* tit.17-A §211 (recklessly creating a risk of substantial injury); *Md.Ann.Code* art.27 §12A-2 (recklessly causing a risk of substantial injury); *Mont.Code Ann.* §§45-5-207 & 45-5-208 (creates a substantial risk of serious injury); *N.H.Rev. Stat.Ann.* §§631:3 (recklessly causes risk of serious injury); *N.Y.Penal Law* §§120.20 & 120.25 (recklessly causes risk of serious injury); *N.D.Cent.Code* §12.1-17-03 (creates a substantial risk of serious bodily injury); *Ohio Rev.Code Ann.* §2909.06 (create a substantial risk of injure or damage by fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material or other inherently dangerous agency or substance); *Ore.Rev.Stat.* §163.195 (recklessly causing a substantial risk of serious injury); *Pa.Stat.Ann.* tit.18 §2705 (recklessly causing risk of injury); *Tenn.Code Ann.* §39-13-103 (placing another in imminent risk of serious injury); *Tex.Penal Code* §22.05 (deadly conduct: placing another in imminent danger of serious injury); *Utah Code Ann.* §76-5-112 (reckless endangerment); *Vt.Stat.Ann.* tit.13 §1025 (recklessly placing another in danger of serious injury); *Wash.Rev.Code Ann.* §§9A.36.045 & 9A.36.050 (creating a substantial risk of injury); *Wis.Stat.Ann.* §§940.23 (recklessly injuring another), 941.30 (recklessly endangering the safety of another); *Wyo.Stat.* §6-2-504 (recklessly placing another in danger of serious injury).

<sup>55</sup> “. . . Whoever knowingly so deposits or causes to be delivered [by mail] as aforesaid, any communication without or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned

primarily a matter of state law. Federal law, however, does feature a number of threat statutes, even though they are relatively infrequently violated. Some cover false rumors;<sup>56</sup> others are extortionate threats;<sup>57</sup> several track provisions, like the civil rights laws or the obstruction of justice statutes, which outlaw physical violence or property damage as well,<sup>58</sup> and some simply outlaw threats.<sup>59</sup>

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not more than five years, or both. . . .” 18 U.S.C. 876.

“Whoever – (1) in the District of Columbia or in interstate or foreign communications by means of telephone . . . (B) makes a telephone call . . . without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number . . . shall be fined . . . or imprisoned . . . or both.” 47 U.S.C. 223. “For purposes of this chapter . . . (e) ‘interstate commerce’ . . . shall not, with respect to the provisions of subchapter II of this chapter (other than section 223 of this title), include wire or radio communication between points in the same State. . . .” 47 U.S.C. 153(e).

“Whoever, though the use of the mail, telephone, telegraph, or other instrument of commerce . . . willfully makes any threat . . . concerning an attempt . . . to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be imprisoned not more than 10 years or fined under this title, or both,” 18 U.S.C. 844(e).

<sup>56</sup> “(b) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts . . . false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter [relating to the destruction of aircraft and motor vehicles] or chapter 97 [relating to railroads] or chapter 111 of this title [relating to shipping] – shall be fined under this title or imprisoned for not more than five years, or both.” 18 U.S.C. 35(b); see also 18 U.S.C. 32(a)(6)(false threat concerning the destruction of aircraft or their facilities).

<sup>57</sup> The general mail threat provision, for example, is nestled among two “with intent to extort” offenses and a paragraph address to the use of the mails to convey ransom demands in kidnapping cases, 18 U.S.C. 876. The interstate commerce statute is similarly worded:

“(a) Whoever transmits in interstate or foreign commerce any communication containing any demand or request for a ransom or reward for the release of any kidnaped person, shall be fined under this title or imprisoned not more than twenty years, or both.

“(b) Whoever, with intent to extort from any person . . . any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than twenty years or both.

“(c) Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.

“(d) Whoever, with intent to extort from any person . . . any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the person of a crime, shall be fined under this title or imprisoned for not more than two years, or both.” 18 U.S.C. 875; see also 18 U.S.C. 878 (threats and extortion addressed to foreign dignitaries).

<sup>58</sup> *E.g.*, “Whoever – (1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any person or any class of persons from, obtaining or providing reproductive health services; (2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or

**State Law.**

The states have a complementary range of threat statutes. Most outlaw false alarms, particularly bomb scares,<sup>60</sup> as well as varying forms of conduct inducing

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seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or (3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worship, shall be subject to the penalties provided in subsection (b). . . .” 18 U.S.C. 248(a).

“Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b).” 18 U.S.C. 1503(a); see also 18 U.S.C. 112 (violence and threats against foreign dignitaries); 18 U.S.C. 115 (influencing or retaliating against a federal law enforcement officer by threatening or injuring the officer’s family); 18 U.S.C. 241 (conspiracy against civil rights); 18 U.S.C. 245 (use of force or threats to injure, intimidate or interfere with federally protected activities); 18 U.S.C. 247 (damage to religious property and obstruction of free exercise of religious beliefs); 18 U.S.C. 1512 (tampering a federal witness or informant); 18 U.S.C. 1951 (interference with commerce by threats or violence).

<sup>59</sup> “Whoever knowingly and willfully deposits for conveyance in the mail . . . any letter . . . containing any threat to take the life of, kidnap, or to inflict bodily harm upon the President of the United States . . . or other officer next in the order of succession to the office of President . . . or knowingly and willfully otherwise makes any such threat against the President . . . other officer next in the order of succession to the office of President . . . shall be fined under this title or imprisoned not more than five years, or both.” 18 U.S.C. 871(a); see also, 18 U.S.C. 879 (threats against former Presidents and others guarded by the Secret Service).

<sup>60</sup> *E.g.*, “It is unlawful for any person to make a false report, with intent to deceive mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or other deadly explosive. . . .” *Fla.Stat.Ann.* §790.163. See also, *Ala. Code* §13A-10-8 (false alarms); *Alaska Stat.* §11.56.810 (terroristic threatening, i.e., false report of a dangerous condition that causes fear in another, evacuation of a building or public inconvenience); *Ariz.Rev.Stat.Ann.* §13-3110 (placing a simulated explosive with intent to terrify); *Ark.Code Ann.* §5-71-210 (communicating a false alarm); *Cal. Penal Code* §148.1 (false report of explosive or facsimile bomb), *Colo.Rev.Stat.* §§18-8-110 (false report of explosives, chemical or biological agents, radioactive substance); *Conn.Gen.Stat.Ann.* §§53a-180 to 53a-180b (false bomb scare or report of like catastrophe); *Del.Code Ann.* tit.11 §621 (terroristic threat: threat to injure or damage or false alarm causing an evacuation, serious inconvenience or terror); *Fla.Stat.Ann.* §§790.166 (threatening to use weapon of mass destruction or a hoax weapon of mass destruction), 790.163 to 790.165 (bomb scares); *Ga.Code Ann.* §§16-11-37 (terroristic threats to injure or damage property in order to

another's fear of physical injury, property damage or both.<sup>61</sup> Many also have

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terrorize, cause evacuation, or cause serious public inconvenience – need not be false), 16-10-28 (false bomb scare); *Hawaii Rev.Stat.* §710-1014 (false report of an emergency); *Idaho Code* §18-3313 (false reports of explosives in public or private places); *Ill.Comp.Stat.Ann.* ch.720 §5/26-1 (bomb scares); *Ind.Stats.Ann.* §35-44-2-2 (false bomb scares or false reports of product contamination); *Iowa Code Ann.* §712.7 (false alarm concerning the placement of a bomb or incendiary device); *Kan.Stat.Ann.* §21-4110; *Ky.Rev.Stat.* §508.080 (terroristic threatening includes both threats to inflict injury or damage and false alarms causing evacuation); *La.Rev.Stat.Ann.* §§14:40.1 (terrorizing: false alarm to cause fear of injury, evacuation, or serious public disruption); 14:54.1 (false alarm concerning arson), 14:54.5 (possession of a fake explosive device); *Me.Rev.Stat.Ann.* tit.17-A §§210 (terrorizing: threaten to cause fear or evacuation of a building or facility – threat need not be false), 509 (false report or alarm); *Md.Ann.Code* art.27 §151A (false statement of rumor as to bomb); *Mass.Gen.Laws Ann.* ch.269 §14 (false report of explosives or other dangerous substances); *Mich.Comp.Laws Ann.* §§750.411a (bomb scares), 750.204a (sending or placing a fake bomb with intent to terrorize or threaten); *Minn.Stat.Ann.* §609.713 (bomb scares); *Miss.Code Ann.* §97-37-21 (false report of explosives); *Mo.Ann.Stat.* §§575.090 (false bomb report), 574.115 (terrorist threat: false report of a felony or catastrophe); *Mont.Code Ann.* §45-8-101 (false report of life endangering catastrophe); *Neb.Rev.Stat.* §28-907 (false bomb report); *Nev.Rev.Stat.* §202.840 (false bomb threat); *N.H.Rev.Stat. Ann.* §§644:3 (false alarm of fire, explosion or other catastrophe); *N.J.Stat.Ann.* §2C:33-3 (false warning of fire, explosion, bombing, crime, catastrophe or emergency); *N.M.Stat.Ann.* §§30-20-16 (bomb scares), 30-7-20 (mailing or sending a facsimile or hoax bomb), 30-7-21 (false report concerning fire or explosives); *N.Y.Penal Law* §§240.50 to 240.60 (false report, like to cause alarm, of crime, catastrophe or emergency); *N.C.Gen.Stat.* §§14-69.1 (false bomb report), 14-69.2 (preparing a false bomb); *N.D.Cent.Code* §12.1-11-03 (false report to law enforcement officers of situation requiring emergency action); *Ohio Rev.Code Ann.* §§2917.31 (causing evacuation or serious public inconvenience by false warning of fire, explosion, crime, or other catastrophe), 2917.32 (false warning of fire, explosion, crime, or other catastrophe); *Okla.Stat.Ann.* tit.21 §§1767.1, 1767.2 (false bomb scares); *Ore.Rev. Stat.* §162.375 (initiating false alarms to officials responsible for emergencies); *Pa.Stat.Ann.* tit.18 §4905 (false report of agencies responsible for public safety); *R.I.Gen.Laws* §11-35-18 (telephone bomb threats); *S.C.Code* §§16-17-725 (false report of agencies responsible for emergencies); 16-11-550 (false threat to injure or damage by explosive or incendiary), 16-11-555 (fake bombs); *S.D.Cod.Laws* §22-14A-22 (falsely reporting a bomb); *Tenn.Code Ann.* §39-16-502b (false bomb scare); *Tex.Penal Code* §§42.06 (false bomb scares), 46.08 (hoax bombs); *Utah Code Ann.* §76-9-105 (false alarms concerning fires, bombings, or catastrophes); *Vt.Stat.Ann.* tit.13 §§1751 to 1754; *Va.Code* §18.2-83 (false information concerning property damage by bomb or incendiary); *Wash.Rev.Code Ann.* §9A.84.040 (false reporting of fire, explosion, crime, catastrophe, or emergency likely to result in evacuation of a building or facility or to cause public inconvenience); *W.Va.Code* §§61-6-17 (false reports concerning bombs and other explosives), 61-6-20 (false report of an emergency due to explosion, crime, catastrophe, accident, illness or other emergency); *Wis.Stat.Ann.* §941.13 (false alarms made to public officials), 947.015 (bomb scares); *Wyo.Stat.* §6-5-210 (false alarms made to public officials).

<sup>61</sup> *E.g.*, “A person commits the offense of harassment if, with intent to harass, annoy, or alarm another person, that person: (a) strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact; (b) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or which would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another, or damage to the property of the

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recipient or another; (c) makes a telephone call or a facsimile transmission without purpose of legitimate communication which would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another, or damage to the property of the recipient or another, or (d) makes a communication anonymously, or at an extremely inconvenient hour, or in offensively coarse language which would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another, or damage to the property of the recipient or another; [or] (e) makes repeated communications, after being advised by the person to whom the communication is directed that further communication is unwelcome.” *Hawaii Rev.Stat.* §711-1106. See also, *Ala. Code* §§13A-6-23 (menacing: by physical conduct causing another to reasonably fear imminent serious physical injury); *Alaska Stat.* §§11.61.120 (threatening telephone call); *Ariz.Rev.Stat.Ann.* §§13-2916 (telephone threats to injure person or property), 13-2921 & 13-2921.01 (harassment, i.e., continuous following or repeated threatening communications or actions); *Ark.Code Ann.* §§5-71-208 (harassment: threaten to subject another to offensive physical contact), 5-71-209 (harassing communications are those calculated to annoy or alarm); *Cal.Penal Code* §§422 (threat to commit a crime resulting in great bodily harm), 11418.5 (threat to use weapons of mass destruction); *Colo.Rev.Stat.* §18-3-206 (menacing: placing another in fear of bodily injury); *Conn.Gen.Stat.Ann.* §§53a-182b & 53a-183 (harassment: threat of physical injury in order to terrorize); *Del.Code Ann.* tit.11 §§602 (menacing: causing fear of imminent injury by physical action), 1311 & 1312 (harassment: communicating in a manner likely to alarm); *Ga.Code Ann.* §§16-11-39.1 (telephone threats of bodily harm); *Fla.Stat.Ann.* §§790.162 (threatening to bomb), 784.011 (assault: threatening to commit violence against another); *Hawaii Rev.Stat.* §§711-1106 (harassment: telephone threat of bodily injury or damage); *Idaho Code* §§18-7901 to 18-7904 (malicious harassment: threat to cause injury or damage); *Ill.Comp.Stat.Ann.* ch.720 §§5/12-9 (threaten a public official), 135/1-1 (threatening phone calls); *Ind.Stats.Ann.* §§35-45-2-2 (harassment: communication made with the intent to alarm); *Iowa Code Ann.* §§708.7 (harassment: communicating a threat or false alarm), 712.8 (threaten or attempt to place an explosive); *Kan.Stat.Ann.* §21-4113 (harassment by telephone: phone threats); *Ky.Rev.Stat.* §§508.050 (menacing: placing another in fear of imminent injury) 525.070 (harassment: subjects another conduct causing alarm), 525.080 (harassing communication: communicates in a manner designed to cause alarm); *La.Rev. Stat.Ann.* §14:285 (threatening telephone communications); *Me.Rev.Stat.Ann.* tit.17-A §§506 (harassment by telephone includes making threatening calls), 506-A (harassment: threatening conduct after being warned by law enforcement officer); *Mass.Gen.Laws Ann.* ch.265 §43A (harassment: pattern of misconduct likely to cause emotional distress); *Mich.Comp.Laws Ann.* §§750.540e (telephone threats of injury or damage), 750.207 (placing a bomb with intent to terrorize or threaten); *Minn.Stat.Ann.* §609.713 (terroristic threats: threats of violence in order to terrorize); *Miss.Code Ann.* §97-29-45 (telephone threats of injury or damage); *Mo.Ann.Stat.* §§565.090 (harassment: written or telephone threat), 574.115 (terroristic threat: threat to commit a felony); *Mont.Code Ann.* §45-5-203 (intimidation: threat to inflict injury); *Neb.Rev.Stat.* §28-311.01 (terroristic threat) *Nev.Rev.Stat.* §§200.571 (harassment: threaten injury or damage), 199.300 (threatening public officials); *N.H.Rev.Stat. Ann.* §644:4 (harassment: threat of injury); *N.J.Stat.Ann.* §2C:33-4 (harassment: repeated or alarming conduct committed to cause alarm); *N.M.Stat.Ann.* §§30-3A-2 (harassment: pattern conduct intended to terrorize), 30-20-12 (use of the telephone to terrorize); *N.Y.Penal Law* §§240.25 to 240.31 (harassment: repeated acts causing fear of injury), 120.15 (menacing: cause fear of imminent serious injury); *N.C.Gen.Stat.* §14-277.1 (communicating threats of physical injury); *N.D.Cent.Code* §§12.1-17-05 (menacing: threat of imminent serious injury), 12.1-17-07 (harassment: threatening telephone call); *Ohio Rev.Code Ann.* §§2903.21 (aggravated menacing: cause another to fear of serious injury), 2903.22 (menacing: cause fear of injury), 2917.21 (telephone threats of injury or damage); *Okla.Stat.Ann.* tit.21 §§1767.2 (threatening to use an explosive during the

provisions forbidding intimidation based on racial, religious or ethnic grounds.<sup>62</sup> Of all of the threat statutes, those proscribing stalking, the newest strain, are perhaps the most prevalent.<sup>63</sup>

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commission of a felony), 1172 (threatening telephone calls); *Ore.Rev.Stat.* §§163.190 (menacing: place another in fear of imminent serious physical injury), 166.065 (harassment: conveying threats of serious injury); *Pa.Stat.Ann.* tit.18 §2709 (harassment: threatening physical conduct or conduct design to alarm with no legitimate purpose); *R.I.Gen.Laws* §11-42-4 (threatening public officials with injury); *S.C.Code* §16-17-430 (threatening telephone calls); *S.D.Cod.Laws* §49-31-31 (threaten telephone calls); *Tenn.Code Ann.* §39-17-308 (harassment: telephone or written threats); *Tex.Penal Code* §42.07 (harassment: telephone threats, false alarms); *Utah Code Ann.* §§76-5-107 (threats against life or property), 76-5-106 (harassment: written threat to commit a violent crime); *Vt.Stat.Ann.* tit.13 §1027 (threatening telephone calls); *Va.Code* §§18.2-60 (written threat to injure), 18.2-427 (telephone threats); *Wash.Rev.Code Ann.* §§9A.46.020-9A.46.060 (harassment: threats of injury or damage), 9.61.230 (telephone threats); *Wis.Stat.Ann.* §§947.013 (harassment: threatening physical contact), 947.012 (telephone threats); *Wyo.Stat.* §6-2-505 (threat to commit a violent felony with intent to cause a building evacuation).

<sup>62</sup> *E.g.*, “Whoever, verbally or by a written or printed communication, maliciously threatens any injury to the person, reputation, or property of another with the intent to terrorize that person by reason of their race, religion, or national origin, shall be punished by imprisonment. . . .” *R.I.Gen.Laws* §11-42-3. See also, *Alaska Stat.* §11.76.110; *Cal.Penal Code* §§422.6 to 422.95; *Colo.Rev.Stat.* §18-9-121; *Conn.Gen.Stat.Ann.* §§53a-181j to 53a-181l; *Idaho Code* §18-7902; *Ill.Comp.Stat.Ann.* ch.720 §5/12-7.1); *Ind.Stats.Ann.* §35-36-2-1; *Iowa Code Ann.* §729.5; *Kan.Stat.Ann.* §21-4003; *Me.Rev.Stat.Ann.* tit.17 §§2931, 2932; *Md.Ann.Code art.*27 §470A; *Mass.Gen.Laws Ann.* ch.265 §§37, 39; *Mich.Comp.Laws Ann.* §750.147b; *Minn.Stat.Ann.* §609.28; *Mo.Ann.Stat.* §§574.090, 574.093; *Mont.Code Ann.* §§45-5-221 & 45-5-222; *N.J.Stat.Ann.* §2C:33-4[d]; *N.Y. Penal Law* §§240.30, 240.311; *N.D.Cent.Code* §12.1-14-05; *Ohio Rev.Code Ann.* §2927.12; *Okla.Stat. Ann.* tit.21 §850; *Ore.Rev.Stat.* §§166.155 & 166.165; *Pa.Stat.Ann.* tit.18 §2710; *S.C.Code* §16-5-10; *S.D.Cod.Laws* §§22-19B-1 to 22-19B-3; *Tenn.Code Ann.* §39-17-309; *Vt.Stat.Ann.* tit.13 §§1455 to 1457; *Va.Code* §§18.2-423 & 18.2-423.1; *Wash.Rev.Code Ann.* §9A.36.080; *W.Va.Code* §61-6-21; *Wis.Stat.Ann.* §§943.012, 939.645; *Wyo.Stat.* §6-9-102.

<sup>63</sup> *E.g.*, “A person commits stalking when the person, on more than one occasion, willfully follows, pursues, or harasses another person and, while doing so and without legitimate purpose, makes a credible threat against the other person. A person may commit stalking by harassing another person without committing the offense of harassment pursuant to section 708.7.

“As used in this section, unless the context otherwise requires: (1) ‘credible threat’ means a threat made with the intent to place a reasonable person in like circumstances in fear of death or bodily injury, coupled with the apparent ability to carry out the threat. (2) ‘Harasses’ means repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person, regardless of the relationship between the offender and the intended victim. . . .” *Iowa Code* §708.11. See also, *Ala.Code* §13A-6-90 to 13A-6-94; *Alaska Stat.* §§11.41.260, 11.41.270; *Ariz.Rev.Stat.Ann.* §13-2923; *Ark.Code Ann.* §5-71-229; *Cal.Penal Code* §646.9; *Colo.Rev.Stat.* §18-9-111; *Conn.Gen.Stat.Ann.* §53a-181c to 53a-181e; *Del.Code Ann.* tit.11 §1312A; *Fla.Stat.Ann.* §784.048; *Ga.Code Ann.* §§16-5-90 & 16-5-91; *Hawaii Rev.Stat.* §711-1106.5; *Idaho Code* §18-7905; *Ill.Comp.Stat.Ann.* ch.720 §§5/12-7.3, 5/12-7.4; *Ind.Stats.Ann.* §§35-45-10-1 to 35-45-10-5; *Iowa Code Ann.* §708.11; *Kan.Stat.Ann.* §21-3438; *Ky.Rev.Stat.* §508.130 to 508.150; *La.Rev.Stat.Ann.* §14:40.2; *Me.Rev.Stat.Ann.* tit.17-A §210-A; *Md.Code Ann.*

## General Crimes

Under federal law and the laws of most states there is a distinct class of crimes like conspiracy which builds or rests upon other crimes. Sometimes, these “piggyback” crimes, like solicitation or attempt, are embryonic forms of other crimes. Other times, as in the case of money laundering, they are the byproducts of other crimes. In some instances they establish criminal liability where it would not otherwise exist; in others they enlarge the penalties imposed.

Among their common threads is the idea that under some circumstances the law ought to punish an individual for a crime actually committed by someone else; murder and arson ought to be crimes, but so should hiring an assassin, or planning a terrorist bombing. And this should be so in some cases even if the procurement or planning efforts fall short of success.

Thus, schemers may become liable for each other’s misdeeds, committed in the name of the common project. In this arrangement, the individual who commits the underlying substantive crime is known as a principal. Those who contribute to the principal’s criminal enterprise are called accomplices or accessories before the fact. Once the underlying crime is committed each is liable as if he himself the committed the offense.

In addition to the prospect of liability for the crimes of a joint venture, preparation to commit a crime or an agreement to commit a crime is generally a separate offense. The separate general crimes include attempt, conspiracy, solicitation, facilitation, racketeering, and various forms of money laundering.

The mix of general principles of liability and general crimes varies from jurisdiction to jurisdiction. At federal law, an accessory before the fact is treated the same as a principal.<sup>64</sup>

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art.27 §121B; *Mass. Gen.Laws Ann.* ch.265 §43; *Mich.Comp.Laws Ann.* §§750.411h & 750.411i; *Minn.Stat.Ann.* §609.749; *Miss.Code Ann.* §95-3-107; *Mo.Ann.Stat.* §565.225; *Mont.Code Ann.* §45-5-220; *Neb.Rev.Stat.* §§28-311.02 to 28-311.05; *Nev.Rev.Stat.* §§200.575-200.601; *N.H.Rev.Stat.Ann.* §633:3-a; *N.J.Stat.Ann.* §2C:12-10; *N.M.Stat.Ann.* §§30-3A-3, 30-3A-3.1; *N.C.Gen.Stat.* §14-277.3; *N.D.Cent.Code* §12.1-17-07.1; *Ohio Rev.Code Ann.* §2903.211; *Okla.Stat.Ann.* tit.21 §1173; *Ore.Rev.Stat.* §§163.730 to 163.755; *Pa.Stat.Ann.* tit.18 §2709; *R.I.Gen.Laws* §§11-59-1 to 11-59-3; *S.C.Code* §§16-3-1700, 16-3-1720 & 16-3-1730; *S.D.Cod.Laws* §§22-19A-1 to 22-19A-7; *Tenn.Code Ann.* §39-17-315; *Tex.Penal Code* §42.072; *Utah Code Ann.* §76-5-106.5; *Vt.Stat.Ann.* tit.13 §§1061 to 1063; *Va.Code* §18.2-60.3; *Wash.Rev.Code Ann.* §9A.46.110; *W.Va.Code* §61-2-9a; *Wis.Stat.Ann.* §940.32; *Wyo.Stat.* §6-2-506.

<sup>64</sup> “Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal,” 18 U.S.C. 2(a).

It is fairly easy to understand when an individual can be said to have commanded or procured a crime, but elements of aiding and abetting may not be as obvious. As a general rule, an individual “aids or abets” the crime of another when he embraces the crime of another as his own and contributes to its commission. “While a conspirator is almost always also an aider and abettor, an aider and abettor is often not a conspirator. . . . The canonical definition of aiding and abetting a federal offense, stated by Judge Learned Hand in *United States v.*

An accessory after the fact is not held liable for the underlying crime,<sup>65</sup> but instead his assistance is treated as a separate crime.<sup>66</sup> It is a separate federal offense to conspire to commit a federal crime, any federal crime.<sup>67</sup> Moreover, conspirators are punishable for any of the crimes committed by their co-conspirators in foreseeable furtherance of their common criminal design.<sup>68</sup>

Unlike most state criminal codes, federal law features no general attempt provision, although sundry attempts or “endeavors” to commit several federal crimes have been outlawed as part of the definition of the specific offenses. There is likewise

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*Peoni*, 100 F.2d 401, 402 (2d Cir. 1938) . . . requires not only that the defendant have aided his principal to commit a crime but also that he have wanted the principal to succeed in committing it . . . . Obviously this . . . rules out cases in which the defendant was a mere accomplice after the fact, who did not assist the principal to commit the crime and therefore could not have been supposed to be acting out of a desire that the crime be committed.” *United States v. Ortega*, 44 F.3d 505, 506 (7th Cir. 1995); *see also*, *United States v. Ray*, 250 F.3d 596, 601 (8th Cir. 2001)(“[t]o support a conviction for aiding and abetting, the government must show: 1) that the defendant associated with an unlawful venture, 2) that he participated in it with the goal of bringing it about, and 3) that he sought by his actions to make it succeed”). For a general discussion, see 1 WORKING PAPERS OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS 153-61 (1970).

<sup>65</sup> *United States v. Brown*, 33 F.3d 1002, 1004 (8th Cir. 1994) *United States v. Graves*, 143 F.3d 1185, 1190 (9th Cir. 1998).

<sup>66</sup> “Whoever knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hind or prevent his apprehension, trial or punishment,” and is punishable by imprisonment for not more half the maximum term to which his principal might be sentenced, 18 U.S.C. 3. Misprision of a felony which punishes the affirmative concealment of a felon resembles the accessory after the fact proscription, 18 U.S.C. 4, but is only rarely prosecuted, perhaps because of the greater flexibility of the accessory provisions.

<sup>67</sup> 18 U.S.C. 371 (“[i]f two or more persons conspire either to commit any offense against the United States, or . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. . . .”); in order to avoid the overt act requirement (“do any act to effect”) or to punish conspiracy as severely as the underlying offense, Congress has occasionally established individual conspiracy provisions for specific crimes, *see e.g.*, 18 U.S.C. 351(d)(conspiracy to assassinate a Member of Congress, the cabinet, or the Supreme Court), 18 U.S.C. 1951(a)(conspiracy to interfere with commerce by threats or violence).

For a more extended discussion *see*, *Sixteenth Survey of White Collar Crime: Federal Criminal Conspiracy*, 38 AMERICAN CRIMINAL LAW REVIEW 777 (2001); *Developments in the Law – Criminal Conspiracy*, 72 HARVARD LAW REVIEW 920 (1959).

<sup>68</sup> *Pinkerton v. United States*, 328 U.S. 640, 646-48 (1946); *United States v. Barnes*, 244 F.3d 172, 176 (1st Cir. 2001)(“Once a participant knowingly helps to initiate the agreement and set it in motion, he assumes conspirator’s responsibility for the foreseeable actions of his confederates within the conspiratorial agreement, whether or not he is aware of precisely what steps they plan to take to accomplish the agreed goals”); *United States v. Smith*, 240 F.3d 732, 737 (8th Cir. 2001).

no general federal solicitation – attempted conspiracy – statute, but Congress has passed a fairly sweeping solicitation to violence provision.<sup>69</sup>

The federal racketeering provisions are less universal. The racketeering provisions, which condemn the patterned use of violent crimes to conduct the affairs of an enterprise whose activities affect interstate commerce,<sup>70</sup> however, seem particularly relevant to a discussion of a subject centered in violence and the threat of violence. The list of racketeering or RICO predicates includes many of the crimes which characterize terrorism – “any act or threat involving murder, kidnapping, . . . arson,” as well as obstruction of justice and violent interference with commerce, 18 U.S.C. 1961, and nexus of the enterprise to commerce need only be slight.<sup>71</sup>

Early case law suggested that RICO could not reach terrorism or any other criminal enterprise that was not commercially motivated,<sup>72</sup> a view the Supreme Court subsequently rejected.<sup>73</sup> The applicability of RICO necessarily raises also the possible implication of the prohibition against the commission of violent crimes in aid of racketeering.<sup>74</sup>

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<sup>69</sup> “Whoever, with the intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against property or against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned not more than one-half the maximum term of imprisonment . . . prescribed for the punishment of the crime solicited . . . if the crime solicited is punishable by life imprisonment or death, shall be imprisoned for not more than twenty years,” 18 U.S.C. 373(a)

<sup>70</sup> “It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity. . . .” 18 U.S.C. 1962(c).

<sup>71</sup> *United States v. Farmer*, 924 F.2d 647, 651 (7th Cir. 1991); *R.A.G.S. Couture, Inc. v. Hyatt*, 774 F.2d 1350, 1353 (5th Cir. 1985).

<sup>72</sup> *United States v. Ivic*, 700 F.2d 51, 59 (2d Cir. 1983)(conspiracy of Croatian terrorists convicted of transportation, receipt and attempted use of explosives and conspiracy to violate civil rights did not constitute a RICO violation because the group had no “mercenary motive”).

<sup>73</sup> *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 261 (1994)(“Congress has not, either in the definition section or in the operative language required that an ‘enterprise’ in §1961(c) have an economic motive”).

<sup>74</sup> “Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity [as defined in 18 U.S.C. 1961 with respect to RICO], or for the purpose of gaining entrance in or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of the any State or the United States, or attempts or conspires so to do, shall be punished . . . .” 18 U.S.C. 1959(a).

Particularly if terrorism is defined to include economic terrorism or narcoterrorism or activities in support of the more traditionally defined form of terrorism, then the list of general crimes must include money laundering and tax evasion. The money laundering provisions are diverse, covering not only the transactions themselves,<sup>75</sup> but numerous reporting requirements<sup>76</sup> including one for those carrying currency into or out of the United States, 31 U.S.C. 5316 (reports on exporting and importing monetary instruments).

Consistent with the federal approach, most states impose criminal liability upon accessories before the fact and many treat conduct involving accessories after the fact as a separate crime.<sup>77</sup> Similarly, general conspiracy statutes are common,<sup>78</sup> but in

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<sup>75</sup> 18 U.S.C. 1956 (laundering of monetary instruments), 1957 (engaging in monetary transactions in property derived from specified unlawful activity) The predicate offenses for sections 1956 and 1957 include the RICO predicates; violations of foreign law involving controlled substances, kidnapping, robbery or extortion; counterfeiting, smuggling, theft of federal property, espionage, kidnapping and hostage taking, and various violations of American foreign trade law, 18 U.S.C. 1956(c)(7), 1957(f)(3).

<sup>76</sup> 26 U.S.C. 6050I (IRS information return required from any trade or business concerning any transaction or related transactions involving \$10,000 or more in cash); 31 U.S.C. 5313 (financial institution reports on individual or related coin and currency transactions involving \$10,000 or more); 31 U.S.C. 5315 (Americans must report foreign currency transactions involving \$10,000 or more); 31 U.S.C. 5322 (criminal penalties for reporting requirements of the chapter); 31 U.S.C. 5324 (structuring transactions to evade reporting requirements); 31 U.S.C. 5325 (financial institution reports concerning bank checks, cashiers checks, traveler's checks, or money orders in amounts of \$3000 or more).

<sup>77</sup> "Whoever aids in the commission of a felony, or is accessory thereto before the fact by counselling, hiring or otherwise procuring such felony to be committed, shall be punished in the manner provided for the punishment of the principal felon," *Mass.Gen.Laws Ann.* ch. 274 §2. See also, *Ala.Code* §13A-2-23; *Alaska Stat.* §11.16.110; *Ariz.Rev.Stat. Ann.* §13-303; *Ark.Code Ann.* §5-2-403; *Cal.Penal Code* §31; *Colo.Rev.Stat.* §18-8-105; *Conn.Gen.Stat. Ann.* §53a-8; *Del.Code Ann.* tit.11 §271; *Fla.Stat. Ann.* §777.011; *Ga.Code Ann.* §16-2-20; *Hawaii Rev.Stat.* §702-222; *Idaho Code* §18-204; *Ill.Comp.Stat. Ann.* ch.720 §5/5-2; *Ind.Stat. Ann.* §35-41-2-4; *Iowa Code Ann.* §703.1; *Kan.Stat. Ann.* §21-3205; *Ky.Rev.Stat.* §502.020; *La.Rev.Stat. Ann.* §14:24; *Me.Rev.Stat. Ann.* tit.17-A §57; *Md. Ann.Code art.27* §592A; *Minn.Stat. Ann.* §609.05; *Miss.Code Ann.* §97-1-3; *Mo. Ann. Stat.* §562.041; *Mont. Code Ann.* §45-2-302; *Neb.Rev.Stat.* §28-206; *Nev.Rev.Stat.* §195.020; *N.H.Rev.Stat. Ann.* §626.8; *N.J.Stat. Ann.* §2C:2-6; *N.M.Stat. Ann.* §30-1-13; *N.Y.Penal Law* §20.00; *N.C.Gen.Stat.* §14-5.2; *N.D.Cent. Code* §12.1-03-01; *Okla.Stat. Ann.* tit.21 §172; *Ohio Rev.Code Ann.* §2923.03; *Ore.Rev.Stat.* §161.155; *Pa.Stat. Ann.* tit.18 §306; *R.I.Gen.Laws.* §11-1-3; *S.C.Code* §16-1-40; *S.D.Cod.Laws* §22-3-3; *Tenn.Code Ann.* §39-11-402; *Tex.Penal Code* §17.02; *Utah Code Ann.* §76-2-202; *Vt.Stat. Ann.* tit.13 §3; *Va.Code* §18.2-18; *Wash.Rev.Code Ann.* §9A.80.020; *W.Va.Code* §61-11-6; *Wis.Stat. Ann.* §939.05; *Wyo.Stat.* §6-1-201. For a general discussion see, AMERICAN LAW INSTITUTE, MODEL PENAL CODE: PART I §§1.01 TO 2.13, 295-329 (1985); 2 LAFAYE & SCOTT, SUBSTANTIVE CRIMINAL LAW, 125-78 (1986 & 1995 Supp.).

<sup>78</sup> "(a) A person is guilty of criminal conspiracy if, with the intent that conduct constituting an offense be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one or more of such persons does an overt act to effect an objective of the agreement.

contrast to federal law, the majority of states have enacted generally applicable attempt provisions<sup>79</sup> and many have passed a general solicitation statute as well.<sup>80</sup>

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“(b) If a person knows or should know that one with whom he agrees has in turn agreed or will agree with another to effect the same criminal objective, he shall be deemed to have agreed with such other person, whether or not he knows the other’s identity.

“(c) A person is not liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he gave a timely and adequate warning to law enforcement authorities or made a substantial effort to prevent the enforcement of the criminal conduct contemplated by the conspiracy. Renunciation by one conspirator, however, does not affect the liability of another conspirator who does not join in the abandonment of the conspiratorial objective. . . .

“(d) It is no defense to a prosecution for criminal conspiracy that: (1) the person, or persons, with whom defendant is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or is immune from prosecution, or (2) the person, or persons, with whom defendant conspired could not be guilty of the conspiracy or the object crime because of lack of mental responsibility or culpability, or other legal incapacity or defense, or (3) the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the offense that is the object of the conspiracy. . . .” *Ala. Code* §13A-4-3; to similar effect, *Alaska Stat.* §11.31.120; *Ariz. Rev. Stat. Ann.* §13-1003; *Ark. Code Ann.* §§5-3-401 to 5-3-407; *Cal. Penal Code* §§182 to 184; *Colo. Rev. Stat.* §§18-2-201 to 18-2-206; *Conn. Gen. Stat. Ann.* §53a-48; *Del. Code Ann.* tit.11 §§511 to 523; *Fla. Stat. Ann.* §777.04; *Ga. Code Ann.* §§16-4-8 & 16-4-9; *Hawaii Rev. Stat.* §§705-520 to 705-526; *Idaho Code* §18-1701; *Ill. Comp. Stat. Ann.* ch.720 §5/8-2; *Ind. Stat. Ann.* §35-41-5-2; *Iowa Code Ann.* §§706.1 to 706.4; *Kan. Stat. Ann.* §§21-3302, 21-3302a; *Ky. Rev. Stat.* §506.040; *La. Rev. Stat. Ann.* §14:26; *Me. Rev. Stat. Ann.* tit.17-A §151; *Md. Ann. Code* art.27 §38; *Mass. Gen. Laws Ann.* ch.274 §7; *Mich. Comp. Laws Ann.* §§750.151 to 750.157a; *Minn. Stat. Ann.* §609.175; *Miss. Code Ann.* §97-1-1; *Mo. Ann. Stat.* §564.016; *Mont. Code Ann.* §45-4-102; *Neb. Rev. Stat.* §§28-202 & 28-203; *Nev. Rev. Stat.* §§199.480-199.500; *N.H. Rev. Stat. Ann.* §629:3; *N.J. Stat. Ann.* §2C:5-2; *N.M. Stat. Ann.* §30-28-2; *N.Y. Penal Law* §§105.00-105.35; *N.C. Gen. Stat.* §14-2.4; *N.D. Cent. Code* §12.1-06-04; *Ohio Rev. Code Ann.* §2923.01; *Okla. Stat. Ann.* tit.21 §§421 to 424; *Ore. Rev. Stat.* §§161.450 to 161.485; *Pa. Stat. Ann.* tit.18 §903; *R.I. Gen. Laws* §11-1-6; *S.C. Code* §16-17-410; *S.D. Cod. Laws* §22-3-8; *Tenn. Code Ann.* §39-12-103; *Tex. Penal Code* §15.02; *Utah Code Ann.* §§76-4-201 & 76-4-202; *Vt. Stat. Ann.* tit.13, §§1404-1409; *Va. Code* §§18.2-22 to 18.2-23.1; *Wash. Rev. Code Ann.* §9A.28.040; *W. Va. Code* §61-10-31; *Wis. Stat. Ann.* §939.31; *Wyo. Stat.* §6-1-303.

For an examination of the intricacies of the law of conspiracy, see, *Developments in the Law – Criminal Conspiracy*, 72 *HARVARD LAW REVIEW* 920 (1959); 2 *LAFAVE & SCOTT*, *supra* at 60-124; I *WORKING PAPERS*, *supra* at 381-401.

<sup>79</sup> “(a) A person attempts to commit an offense if he: (1) purposely engages in conduct that would constitute an offense if the attendant circumstances were as he believes them to be; or (2) purposely engages in conduct that constitutes a substantial step in a course of conduct intended to culminate in the commission of an offense whether or not the attendant circumstances are as he believes them to be.

“(b) When causing a particular result is an element of the offense, a person commits the offense of criminal attempt if, acting with the kind of culpability otherwise required for the commission of the offense, he purposely engages in conduct that constitutes a substantial step in a course of conduct intended or known to cause such a result.

“(c) Conduct is not a substantial step under this section unless it is strongly corroborative of the person’s criminal purpose.” *Ark. Code Ann.* §5-3-201. See also, *Ala. Code* §13A-4-2; *Alaska Stat.* §§11.31.100 *Ariz. Rev. Stat. Ann.* §13-1001; *Cal. Penal Code*

§§663 to 664; *Colo.Rev.Stat.* §§18-2-101; *Conn.Gen.Stat.Ann.* §53a-49; *Del.Code Ann.* tit.11 §§531 to 533; *Fla.Stat.Ann.* §777.04; *Ga.Code Ann.* §§16-4-1 to 16-4-6; *Hawaii Rev.Stat.* §§705-500 to 705-502; *Idaho Code* §§18-305 to 18-307; *Ill.Comp.Stat.Ann.* ch.720 §5/8-4; *Ind.Stats.Ann.* §35-41-5-1; *Kan.Stat.Ann.* §21-3301; *Ky.Rev.Stat.* §506.010; *La.Rev.Stat.Ann.* §14:27; *Me.Rev.Stat.Ann.* tit.17-A §152; *Mass.Gen.Laws Ann.* ch.274 §6; *Mich.Comp.Laws Ann.* §750.92; *Minn.Stat.Ann.* §609.17; *Miss.Code Ann.* §§97-1-7 to 97-1-9; *Mo.Ann.Stat.* §564.011; *Mont.Code Ann.* §§45-4-103, 45-4-101; *Neb.Rev.Stat.* §28-201; *Nev.Rev.Stat.* §193.330; *N.H.Rev.Stat.Ann.* §629:1; *N.J.Stat.Ann.* §2C:5-1; *N.M.Stat.Ann.* §30-28-1; *N.Y.Penal Law* §§110.00 to 110.10; *N.C.Gen.Stat.* §14-2.5; *N.D.Cent.Code* §12.1-06-01; *Ohio Rev.Code Ann.* §2923.02; *Okla.Stat.Ann.* tit.21 §41-44; *Ore.Rev.Stat.* §§161.405 to 161.430; *Pa.Stat.Ann.* tit.18 §901; *S.C.Code* §16-1-80; *S.D.Cod.Laws* §§22-4-1, 22-4-2; *Tenn.Code Ann.* §39-12-101; *Tex.Penal Code* §15.01; *Utah Code Ann.* §§76-4-101, 76-4-102; *Vt.Stat.Ann.* tit.13, §9; *Va.Code* §§81.2-25 to 18.2-28; *Wash.Rev.Code Ann.* §9A.28.020; *W.Va.Code* §61-11-8; *Wis.Stat.Ann.* §939.32; *Wyo.Stat.* §6-1-301.

See generally, AMERICAN LAW INSTITUTE, MODEL PENAL CODE AND COMMENTARIES PART I, §§3.01 TO 5.07 293-382 (1985); 2 LAFAYETTE & SCOTT, *supra* at 3-60; I WORKING PAPERS, *supra* at 351-79.

<sup>80</sup> “(a) A person solicits the commission of an offense if, with the purpose of promoting or facilitating the commission of a specific offense, he commands, urges, or requests another person to engage in specific conduct which would (1) constitute that offense; (2) constitute an attempt to commit that offense; (3) cause the result specified by the definition of that offense; or (4) establish the other person’s complicity in the commission or attempted commission of that offense.” *Ark.Code Ann.* §5-3-301; see also: *Ala. Code* §13A-4-1 (request, command or importune); *Alaska Stat.* §§11.31.110, 11.81.900(59) (solicit or command another to commit a crime); *Ariz.Rev.Stat.Ann.* §13-1002 (commands, encourages, requests or solicits); *Colo.Rev.Stat.* §18-2-301 (commanding, inducing, entreating or otherwise attempting to persuade); *Del.Code Ann.* tit.11 §§501 to 503 (commands, request, importunes or otherwise attempts to cause); *Fla.Stat. Ann.* §777.04 (commands, encourages, hires or requests)); *Ga.Code Ann.* §16-4-7 (request, command, importune, or otherwise attempt to cause); *Hawaii Rev.Stat.* §§705-510 to 705-510 (command, encourage or request); *Idaho Code* §§18-2001 to 18-2004 (importune, command, encourages or requests); *Ill.Comp.Stat.Ann.* ch.720 §5/8-1 (commands, encourages or requests); *Iowa Code Ann.* §705.1 (command, entreat or otherwise attempt to persuade); *Kan.Stat.Ann.* §21-3303 (command, encourage or request another to commit a felony); *Ky.Rev.Stat.* §506.030 (commands or encourages); *La.Rev.Stat.Ann.* §14:28 (inciting a felony); *Me.Rev.Stat.Ann.* tit.17-A §153 (commands or attempts to induce); *Mich. Comp.Laws Ann.* §750.157b (solicitation of murder or other felony: hires another to commit a felony); *Mont.Code Ann.* §45-4-101 (command, encourage or facilitate the commission of a crime by another); *Nev.Rev.Stat.* §199.500 (counsels, hires, commands or otherwise solicits); *N.H.Rev.Stat.Ann.* §629:2 (command, solicit or request); *N.M.Stat.Ann.* §30-28-3 (solicit, command, request, induce, employ or otherwise attempt to promote or facilitate); *N.Y.Penal Law* §§100.00 to 100.20 (solicit, request, command importune or otherwise attempt to cause); *N.C.Gen.Stat.* §14-2.6 (solicitation); *N.D.Cent.Code* §12.1-06-03 (commanding, inducing, entreating or otherwise attempting to persuade another to commit a crime); *Ore.Rev.Stat.* §161.435 (commands or solicits); *Pa.Stat.Ann.* tit.18 §902 (solicitation: command, encourage, or request); *R.I.Gen.Laws* §11-1-9 (solicitation); *Tenn.Code Ann.* §39-12-102 (command, request, or hire); *Tex.Penal Code* §15.03 (requesting, commanding or attempting to induce); *Utah Code Ann.* §§76-4-203, 76-4-204 (solicit, request, command, offer to hire, or importune another to commit a felony); *Vt.Stat.Ann.* tit.13, §7 (inciting a felony: endeavor to incite, procure or hire); *Va.Code* §18.2-29 (commands, entreats, attempts to persuade); *Wash.Rev.Code Ann.* §9A.28.030 (offer of payment); *Wis.Stat.Ann.* §939.30 (advising another); *Wyo.Stat.* §6-1-302 (commands,

## TERRORISM COMMITTED IN OTHER COUNTRIES

### Constitutional Considerations

For reasons of both national sovereignty and practicality, terrorism and most other crimes are usually outlawed, tried and punished according to the laws of the place in which they occur.<sup>81</sup> Under a limited number of circumstances, a country's laws will apply beyond the confines of its own territory.

The Constitution governs when the Congress may pass laws applicable overseas. It neither explicitly permits nor forbids the passage of terrorism laws with extraterritorial reach. Yet it does give Congress broad general authority over other matters under which such laws may be enacted. In fact, Congress enjoys greater legislative latitude with respect to foreign affairs. Terrorism in this country will almost always offend state law; terrorism committed overseas is more likely to be a matter of federal law. Yet the threshold remains the same, Congress may only act within the powers the Constitution furnishes it.

The Constitution grants Congress the power to regulate commerce between and among the states and with foreign countries, *U.S. Const.* Art.I, §8, cl.3.<sup>82</sup> It empowers Congress to “define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations,” *U.S. Const.* Art.I, §8, cl.10,<sup>83</sup> and to enact laws

encourages or facilitates). A few have complementary facilitation statutes *e.g.*, *Ariz.Rev.Stat. Ann.* §13-1004 (providing the means for commission of a crime by another); *Ky.Rev.Stat.* §§506.080 to 506.100 (knowingly provides another with the means or opportunity of commit a crime); *N.Y.Penal Law* §§115.00 to 115.15 (facilitation: provide the means or opportunity for the crime of another); *N.D.Cent.Code* §12.1-06-02 (providing substantial assistance for the commission of a crime by another).

*See generally*, AMERICAN LAW INSTITUTE, MODEL PENAL CODE AND COMMENTARIES PART I, §§3.01 TO 5.07 293-382 (1985); 2 LAFAVE & SCOTT, *supra* at 3-60; I WORKING PAPERS, *supra* at 351-79.

<sup>81</sup> “The general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done,” *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 356 (1909).

<sup>82</sup> The commerce power includes the authority “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” It is a power of exceptional breadth domestically, *see e.g.*, *Perez v. United States*, 402 U.S. 146 (1971)(the clause permits Congress to outlaw extortionate credit transactions (loansharking)); *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964)(it permits Congress to ban discrimination in places of public accommodation), and perhaps even more far ranging in an international context. *California Bankers Ass’n v. Shultz*, 416 U.S. 21 (1974)(it permits Congress to require Americans to report foreign financial transactions to the federal government); *United States v. 12,200-Ft. Reels of Film*, 413 U.S. 123 (1973)(it permits Congress to bar importation of obscene material even if importation is sought exclusively for noncommercial use).

<sup>83</sup> Although the “offense clause” might seem a logical to ban overseas terrorism and similar crimes, Congress has relied on the clause relatively infrequently. It has more often

“necessary and proper” to carry into execution the powers which the Constitution vest in it or in any other branch of the federal government, *U.S. Const.* Art.I, §8, cl.18.<sup>84</sup>

In the case of terrorism, Congress has often invoked this last authority, particular to activate the powers deposited with the President and the Congress in the fields of foreign affairs and military activities,<sup>85</sup> powers which the courts have described in particularly sweeping terms.<sup>86</sup>

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called upon the “high seas” component of the clause which, when coupled with its authority to define the admiralty and maritime jurisdictions of the federal courts, accepts the application of federal criminal law even to an American vessel at anchor well within the territory of another nation. *United States v. Flores*, 289 U.S. 137 (1933).

<sup>84</sup> “The Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

<sup>85</sup> *E.g.*, “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States . . . . He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors . . . . He . . . shall receive Ambassadors and other public Ministers; [and] he shall take Care that the Laws be faithfully executed . . . .” *U.S. Const. Art.II, §2, 3.*

“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . . ; To establish an uniform Rule of Naturalization’ . . . To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water; To raise and support Armies . . . ; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval Forces; . . . [and] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” *U.S. Const. Art.I, §8, cls.1, 4, 11-14, 18.*

<sup>86</sup> *United States v. Curtiss-Wright Corp.*, 299 U.S. 304 (1936); *Ex parte Quirin*, 317 U.S. 1 (1942); *Parker v. Levy*, 417 U.S. 733 (1974).

Some judicial authorities have suggested that in the area of foreign affairs the Constitution’s establishment of the federal government as a sovereign entity vested it with authority, defined by standards recognized by the law of nations, beyond its constitutionally enumerated powers. *United States v. Rodriguez*, 182 F.Supp. 479, 490-91 (S.D.Cal. 1960), *aff’d sub nom., Rocha v. United States*, 288 F.2d 545 (9th Cir. 1961): “The powers of the government and the Congress in regard to sovereignty are broader than the powers possessed in relation to internal matters, *United States v. Curtiss-Wright Export Corp.*, 1936, 299 U.S. 304 . . . .

“The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect to our internal affairs. *Id.*, 299 U.S. at page 315.

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“It results that the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution. *Id.* 299 U.S. at page 318.

“ . . . To put it in more general terms, the concept of essential sovereignty of a free nation clearly requires the existence and recognition of an inherent power in the state to protect itself from destruction. This power exists in the United States government absent

## Limits on Legislative Authority: Generally

The powers granted by the Constitution are not without limit. The clauses enumerating Congress's powers may carry specific or implicit limitations. The authority to punish offenses against the law of nations, for example, appears to be limited by what constitutes an offense under the law of nations.<sup>87</sup>

The need to harmonize potentially conflicting constitutional grants of authority impose other constraints on Congress' legislative authority. For instance, although the Constitution reserves to the people and the states the residue of governmental powers which it does not vest elsewhere, *U.S. Const.* Amends. IX, X, the predominance of the federal government in the area of foreign affairs conditions state activity principally to those areas where they are acting with federal authority or acquiescence.<sup>88</sup>

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express provision in the Constitution and arises from the very nature of the government which was created by the Constitution.”

<sup>87</sup> “It would seem, although there are no clear decisions of the Supreme Court upon this point, that, although Congress is given a general authority to define as well as to punish, it may not relay upon this grant for authority to include within the Federal criminal jurisdiction offences which cannot be fairly said to be within the purview of what is commonly known as international law or the law of nations.” 2 WILLOUGHBY, *THE CONSTITUTIONAL LAW OF THE UNITED STATES* 1122-23 (2d ed. 1929); *Defining and Punishing Abroad: Constitutional Limits on the Extraterritorial Reach of the Offenses Clause*, 48 *DUKE LAW JOURNAL* 1305, 1331 (1999) (“The history, constitutional structure, and case law all indicate that the Constitution requires that the reach of the Offenses Clause be limited by the jurisdictional principles of customary international law”); Lowenfeld, *U.S. Law Enforcement Abroad: The Constitution and International Law*, 83 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 880, 891-92 (1989) (asserting that the creation of subject matter and personal jurisdiction over an alien defendant for an offense committed overseas and not otherwise connected to the United States by forcibly bringing him into the United States is “not clearly within any constitutional grant of power to Congress, and in particular, . . . does not, as written, come within the power to define and punish offenses against the law of nations”). This question was apparently not raised when the Supreme Court rejected a contention that a federal district court lacked jurisdiction to try a Mexican national brought before it for trial, not pursuant to the extradition treaty between Mexico and the United States, but after being forcibly kidnaped in Mexico, *United States v. Alvarez-Machain*, 504 U.S. 655 (1992) (Dr. Alvarez-Machain had been indicted for complicity in the murder of a federal DEA agent in Mexico).

The Supreme Court provided another example when it held that authority to regulate the armed forces did not carry with the power to allow military tribunal to try civilians, *Toth v. Quarles*, 350 U.S. 11 (1955) (court martial trial of a civilian for crimes he allegedly committed in Korea while in the military exceeded the authority granted Congress by art.I, §8, cl.14 and art.III, §2); *Kinsella v. Singleton*, 361 U.S. 234 (1960) (holding that Congressional authority under art.I, §8, cl.14 to make rules and regulations governing the land and naval forces did not include authority for the court martial trial of civilian dependents for offenses committed overseas).

<sup>88</sup> *Cf.*, *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 381 (2000) (acknowledge the advantage of a uniform voice and practice in our relations with other countries) (“[W]e need not get into any general consideration of limits of state action affecting foreign affairs to realize that the President’s maximum power to persuade rests on his capacity

Finally, free standing prohibitions within the Constitution also confine Congress's legislative authority. In the area of extraterritorial jurisdiction, the most often cited limitation resides in the due process clauses of the Fifth and Fourteenth Amendments.<sup>89</sup> Extraterritorial jurisdiction over terrorism may raise First Amendment,<sup>90</sup> bill of attainder and ex post facto issues as well.<sup>91</sup>

## Due Process

Unfortunately, most of the cases do little more than note that due process restrictions mark the frontier of the authority to enact and enforce American law abroad.<sup>92</sup> Even the value of this scant illumination is dimmed by the realization that the circumstances most likely to warrant such due process analysis are the very ones – those involving nonresident, foreign nationals – in which the least process is due. Although American courts that try aliens for overseas violations of American law must operate within the confines of due process,<sup>93</sup> the Supreme Court has observed that the Constitution's due process commands do not protect aliens who lack any "significant voluntary connection[s] with the United States."<sup>94</sup> Moreover, the Court's

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to bargain for the benefits of access to the entire national economy without exception for enclaves fenced off willy-nilly by inconsistent political tactics").

<sup>89</sup> "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ." U.S.Const. Amend.V. ". . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ." U.S.Const. Amend.XIV, §1. For a more extensive discussion see, Brilmayer & Norchi, *Federal Extraterritoriality and Fifth Amendment Due Process*, 105 HARVARD LAW REVIEW 1217 (1992).

<sup>90</sup> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S.Const. Amend. I; the due process clause of the Fourteenth Amendment requires the states to honor the same embargo, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958)("It is beyond debate that freedom of to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the liberty assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech").

<sup>91</sup> Article I of the Constitution expressly commands that [n]o [s]tate shall . . . pass any Bill of Attainder [or] ex post facto Law . . ." and that with respect to Congress "[n]o Bill of Attainder or ex post facto Law shall be passed" U.S.Const. Art.I, §§9, 10.

<sup>92</sup> E.g., *United States v. Thomas*, 893 F.2d 1066, 1068 (9th Cir. 1990); *United States v. Quemener*, 789 F.2d 145, 156 (2d Cir. 1986); *United States v. Henriquez*, 731 F.2d 131, 134-35 n.4, 5 (2d Cir. 1984); *United States v. Pinto-Mejia*, 720 F.2d 248, 259 (2d Cir. 1983); *United States v. Howard-Arias*, 679 F.2d 363, 371 (4th Cir. 1982).

<sup>93</sup> *United States v. Verdugo-Urquidez*, 494 U.S. at 278 (Kennedy, J., concurring)("I do not mean to imply, and the Court has not decided, that persons in the position of the respondent have no constitutional protection. The United States is prosecuting a foreign national in a court established under Article III, and all of the trial proceedings are governed by the Constitution. All would agree, for instance that the dictates of the Due Process Clause of the Fifth Amendment protect the defendant").

<sup>94</sup> "The global view . . . of the Constitution is also contrary to this Court's decisions in the *Insular Cases*, which held that not every constitutional provision applies to governmental

decisions often begin with the assumption that the issues of extraterritorial jurisdictions come without constitutional implications.<sup>95</sup>

The handful of cases to consider due process issues take one of two tracks. Most describe a due process requirement that demands some nexus between the United States and the circumstances of the offense.<sup>96</sup> In some instances they look to international law principles to provide a useful measure to determine whether the nexus requirement has been met;<sup>97</sup> in others they consider principles at work in the minimum contacts test for personal jurisdiction.<sup>98</sup> At the heart of these cases is the

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activity even where the United States has sovereign power. . . . [I]t is not open to us in light of the *Insular Cases* to endorse the view that every constitutional provision applies wherever the United States Government exercises its power.

“Indeed, we have rejected the claim that aliens are entitled to Fifth Amendment rights outside the sovereign territory of the United States.” *United States v. Verdugo-Urquidez*, 494 U.S. 259, 268-71 (1990).

<sup>95</sup> *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991) (“Both parties concede, as they must that Congress has the authority to enforce its laws beyond the territorial boundaries of the United States. Whether Congress has in fact exercised that authority in this case is a matter of statutory construction”).

<sup>96</sup> *United States v. Medjuck*, 156 F.3d 916, 918 (9th Cir. 1998) (“to satisfy the strictures of due process, the Government [must] demonstrate that there exists a sufficient nexus between the conduct condemned and the United States such that the application of the statute [to the overseas conduct of an alien defendant] would not be arbitrary or fundamentally unfair to the defendant”), citing, *United States v. Davis*, 905 F.2d 245, 248-49 (9th Cir. 1990); *see also*, *United States v. Klimavicius-Viloria*, 144 F.3d 1249, 1256 (9th Cir. 1998); *United States v. Cardales*, 168 F.3d 548, 552-53 (1st Cir. 1999); *United States v. Greer*, 956 F.Supp. 531, 534-36 (D.Vt. 1997); *United States v. Aikens*, 946 F.2d 608, 613-14 (9th Cir. 1990); *United States v. Robinson*, 843 F.2d 1, 5-6 (1st Cir. 1988); *United States v. Peterson*, 812 F.2d 486, 493 (9th Cir. 1987); *United States v. Gonzalez*, 776 F.2d 931, 938-41 (11th Cir. 1985), *but see*, *United States v. Martinez-Hidalgo*, 993 F.2d 1052, 1056 (3d Cir. 1993) (explicitly rejecting the *Davis* nexus test in a case involving extraterritorial misconduct aboard a stateless vessel (a ship without nationality)). Note the Ninth Circuit considers the *Davis* nexus test inapplicable in stateless vessel cases, *United States v. Caicedo*, 47 F.3d 370, 372-73 (9th Cir. 1995).

State constitutional provisions on venue may also impose a nexus requirement, *see e.g.*, *Sykes v. State*, 578 N.W.2d 807, 811 (Minn. 1998) (“[t]o withstand constitution attack . . . some part of the crime charged must be ‘committed’ within the jurisdiction”).

<sup>97</sup> *United States v. Davis*, 905 F.2d 245, 249 n.2 (9th Cir. 1990) (“International law principles may be useful as a rough guide of whether a sufficient nexus exists between the defendant and the United States so that application of the statute in question would not violate due process. However, danger exists that emphasis on international law principles will cause us to lose sight of the ultimate question: would application of the statute to the defendant be arbitrary or fundamentally unfair?”); *United States v. Cardales*, 168 F.3d at 553; *cf.*, *United States v. Caicedo*, 47 F.3d 370, 372-73 (9th Cir. 1995).

<sup>98</sup> *United States v. Klimavicius-Viloria*, 144 F.3d at 1257 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *United States v. Aikens*, 946 F.2d 608, 613-14 (9th Cir. 1990); *United States v. Robinson*, 843 F.2d 1, 5-6 (1st Cir. 1988); *United States v. Peterson*, 812 F.2d 486, 493 (9th Cir. 1987); *United States v. Gonzalez*, 776 F.2d 931, 938-41 (11th Cir. 1985), *but see*, *United States v. Martinez-Hidalgo*, 993 F.2d

notion that due process expects that a defendant's conduct must have some past, present, or anticipated locus or impact within the United States before he can fairly be held criminal liable for it in an American court. The commentators have greeted this analysis with hesitancy at best.<sup>99</sup>

The second, less traveled track sees the due process component at issue as one of notice. It is kin to the proscriptions against secret laws and vague statutes, the exception to the maxim that ignorance of the law is no defense.<sup>100</sup> Under this view indicia of knowledge, of reason to know, of an obligation to know, or of reasonable ignorance of the law's requirements — some of which are reflected in international standards — seem to be the most relevant factors. Citizens, for instance, might be expected to know the laws of their own nation; seafarers to know the law of the sea and consequently the laws of the nation under which they sail; everyone should be aware of the laws of the land in which they find themselves and of the wrongs condemned by the laws of all nations. On the other hand, the application of American law to an alien in a foreign country where the conduct is lawful — such as computer hacking in some countries for instance — would seem to evidence a lack of notice sufficient to raise due process concerns.<sup>101</sup> Terrorists would presumably be hard

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1052, 1056 (3d Cir. 1993)(holding with respect extraterritorial misconduct aboard a stateless vessel (a ship without nationality) the government need prove no nexus).

<sup>99</sup> Brilmayer & Norchi, *Federal Extraterritoriality and Fifth Amendment Due Process*, 105 HARVARD LAW REVIEW 1217 (1992); Weisburd, *Due Process Limits on Federal Extraterritorial Legislation?*, 35 COLUMBIA JOURNAL OF TRANSNATIONAL LAW 379 (1997); *Due Process and True Conflicts: The Constitutional Limits on Extraterritorial Federal Legislation and the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996*, 46 CATHOLIC UNIVERSITY LAW REVIEW 907 (1997).

<sup>100</sup> “The rule that ignorance of the law will not excuse is deep in our law, as is the principle that of all the powers of local government, the police power is one of the least limitable. On the other hand, due process places some limits on its exercise. Ingrained in our concept of due process is the requirement of notice. . . . As Holmes wrote in the Common Law, ‘A law which punished conduct which would not be blameworthy in the average member of the community would be too severe for that community to bear.’ It severity lies in the absence of an opportunity either to avoid the consequences of the law or to defend any prosecution brought under it. Where [as here] a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process. Were it otherwise, the evil would be as great as it is when the law is written in print too fine to read or *in a language foreign to the community.*” *Lambert v. California*, 355 U.S. 225, 228-30(1957)(emphasis added)(citations omitted); *accord, United States v. Vasarajs*, 908 F.2d 443, 448-49 (9th Cir. 1990); *Griffin v. Wisconsin*, 483 U.S. 868, 875 n.3 (1987).

<sup>101</sup> Consider e.g., *United States v. Henriquez*, 731 F.2d 131, 134 n.5 (2d Cir. 1984) (“It is also argued that 21 U.S.C. §955a(a) as applied [possession of marijuana with intent to distribute by Colombian nationals aboard a non-American vessel in international waters] violates the notice requirement of the due process clause of the Fifth Amendment. See *Lambert v. California* . . . . The argument is based not only on the claim that the statute is unprecedented in international law and the proposition that marijuana trafficking itself is not universally condemned, but also on the alleged vagueness of the definition of “vessel without nationality” in 21 U.S.C. §955b(d) [upon which federal jurisdiction was based]. On this point, however, we agree with the Eleventh Circuit . . . that the term “vessel without

pressed to argue that they were unaware that threats or acts of violence might subject them to criminal prosecution.

## First Amendment

Beyond due process, the power to enact criminal laws which restrain conduct related to political activities, affiliations with particular groups – some of them religious – or sundry other forms of expression may stir First Amendment questions, and both the language and judicial interpretation of the Amendment leave little doubt that it imposes a limitation on the legislative power of Congress.<sup>102</sup>

Yet in spite of the absolute tone of the Amendment, the objects of its protection are not beyond legislative regulation. Within the United States the extent of permissible regulation calls up three questions. May the activity in question claim First Amendment protection? How compelling must the governmental interest be to permit regulation? And how closely must any regulation of protected activity trace the requirements of the governmental interest? Never easy queries, when raised in an

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nationality” clearly encompasses vessels not operating under the authority of any sovereign nation”); *United States v. Alvarez-Mena*, 765 F.2d 1259, 1267 n.11 (5th Cir. 1985) (“[n]evertheless, we observe that we are not faced with a situation where the interests of the United States are not even arguably potentially implicated. The present case is not remotely comparable to, for example, the case of an unregistered small ship owned and manned by Tanzanians sailing from that nation to Kenya on which a crew member carries a pound of marihuana to give to a relative for his personal consumption in the latter country”)(example offered in discussion of presumption of Congressional intent).

Some may find further support for this view in the Supreme Court’s reading of various statutory scienter requirements, *e.g.*, *Staples v. United States*, 511 U.S. 600 (1994) (conviction under statute outlawing possession of an automatic firearm requires proof that the accused was aware of the characteristics of the firearm which made its possession unlawful); *Posters ‘N’ Things, Ltd. v. United States*, 511 U.S. 513, 524 (1994) (conviction under a statute proscribing use of an interstate conveyance to sell drug paraphernalia required proof “the defendant knowingly made use of an interstate conveyance as part of a scheme to sell items that he knew were likely to be used with illegal drugs”); *Ratzlaf v. United States*, 510 U.S. 135, 149 (1994)(conviction under a statute which outlaws structuring financial transactions to avoid a bank’s anti-money laundering reporting requirements (“smurfing”) demands proof that of the defendant’s knowledge that the structure was illegal); *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1995) (although grammatical construction of the statute suggested that “knowingly” only referred to the jurisdictional element in child pornography statute, the Court found it equally applicable to the age and nature of the material elements as well). And the arguments on behalf of a cultural defense for misconduct committed within the United States would seem of even greater weight when the conduct occurs in a country where the culture originates and in which the conduct is lawful, *e.g.*, *The Cultural Defense in Criminal Law*, 99 HARVARD LAW REVIEW 1291 (1986).

<sup>102</sup> “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” *U.S. Const.* Amend. I.

overseas environment these questions are made more difficult by the want of case law on point.<sup>103</sup>

The scant authority at hand suggests that aliens abroad ordinarily may not claim First Amendment protection against American governmental action there.<sup>104</sup> While

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<sup>103</sup> The control of press access during the Grenada and the Desert Storm military operations stimulated a rash of academic commentary on First Amendment questions that might easily be relevant in an international terrorism context, Smith, *From the Front Lines to the Front Page: Media Access to War in the Persian Gulf and Beyond*, 26 COLUMBIA JOURNAL OF LAW & SOCIAL PROBLEMS 291 (1993); Frenznick, *The First Amendment on the Battlefield: A Constitutional Analysis of Press Access to Military Operations in Grenada, Panama and the Persian Gulf*, 23 PACIFIC LAW JOURNAL 315 (1992); Rahdert, *The First Amendment and Media Rights During Wartime: Some Thoughts After Operation Desert Storm*, 36 VILLANOVA LAW REVIEW 1513 (1991); Cross & Griffin, *A Right to Press Access to United States Military Operations*, 21 SUFFOLK UNIVERSITY LAW REVIEW 989 (1987); Cassell, *Restrictions on Press Coverage of Military Operations; The Right of Access, Grenada and Off-the-Record Wars*, 73 GEORGETOWN LAW JOURNAL 931 (1985); Subsequent legal challenges, however, were dismissed as moot, *Flynt v. Weinberger*, 588 F.Supp. 57 (D.D.C. 1984), *aff'd*, 762 F.2d 134 (D.C. Cir. 1985); *Nation Magazine v. U.S. Dept. of Defense*, 762 F. Supp. 1558 (S.D.N.Y. 1991).

A similar, if less intensive academic response, followed Congressional enactment of legislation prohibiting the disclosure of the identity of American intelligence operatives, 50 U.S.C. 420-424; *The Constitutionality of the Intelligence Identities Protection Act*, 83 COLUMBIA LAW REVIEW 727 (1983); *The Intelligence Identities Protection Act of 1982: An Assessment of the Constitutionality of Section 601(c)*, 49 BROOKLYN LAW REVIEW 479 (1983); the legislation was the result of disclosures of a former CIA agent published overseas, but never produced the type of case law that would be instructive here, although alternative measures of protecting intelligence sources were upheld by the Supreme Court, *Snepp v. United States*, 444 U.S. 507 (1980)(upholding the enforceability of contractual agreements giving intelligence agencies of the right of prepublication approval of their employee's writings); *Haig v. Agee*, 453 U.S. 280 (1981)(upholding the authority of the Secretary of State to cancel the passport of an American and former intelligence agent in order to avoid serious damage to national security or foreign policy).

<sup>104</sup> *Cuban American Bar Ass'n, Inc. v. Christopher*, 43 F.3d 1413, 1428 (11th Cir. 1995), noting that "[o]ur decision that the Cuban and Haitian migrants [at Guantanamo Bay naval base in Cuba] have no First Amendment rights which they can assert is supported by the Supreme Court's decisions declining to apply extraterritorially either the Fourth Amendment, *United States v. Berdugo-Urquidez*, 494 U.S. 259 (1990) (rejecting Fourth Amendment limits to search and seizure of property owned by a non-resident alien conducted in Mexico by United States agents), or the Fifth Amendment, *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950)(rejecting claim that aliens outside the sovereign territory of the United States are entitled to Fifth Amendment rights)." *See also*, *People's Mojahedin Organization of Iran v. U.S. Dept. of State*, 182 F.3d 17, 22 (D.C.Cir. 1999)("A foreign entity without property or presence in this country has no constitutional rights, under the due process clause or otherwise. Aliens receive constitutional protections only when they have come within the territory of the United States and developed substantial connections with this country. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990)"); *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1134 n.1 (9th Cir. 2000)("What is at issue here is the right of Americans to express their association with foreign political groups through donations. The political advocacy of the PKK and LTTE [two organizations designated as foreign terrorist organizations and therefore not entitled to material support] directed toward their own

American citizens and probably resident aliens do enjoy First Amendment protection while abroad, national security considerations become more prevalent in an extraterritorial setting. The restrictions, however, will be more apparent in cases involving American authority to investigate, prosecute or punish terrorism overseas than in those involving the American legislative power to proscribe terrorism overseas.

Any list of the constitutional limitations upon American legislative power to outlaw terrorism should probably include, in addition to the First Amendment, the due process clause of the Fifth Amendment, the ex post facto and bill of attainder clauses.

## Bill of Attainder & Ex Post Facto

Article I of the Constitution expressly commands that [n]o [s]tate shall . . . pass any Bill of Attainder [or] ex post facto Law . . .” and that with respect to Congress “[n]o Bill of Attainder or ex post facto Law shall be passed” *U.S. Const.* Art.I, §§9, 10. “The prohibitions on ‘Bills of Attainder’ prohibit legislatures from singling out disfavored persons and meting out summary punishment for past conduct,” *Landgraf v. USI Film Products*, 511 U.S. 244, 266 (1994) (footnotes and citations omitted).

The ex post facto clause, on the other hand, aimed “at laws that ‘retroactively alter the definition of crimes or increase the punishment for criminal acts.’”<sup>105</sup>

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governments is not protected by our First Amendment. *Cf.*, *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990)(refusing to extend constitutional protection to Mexican citizen”). *But see*, *Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1326, 1343 (2d Cir. 1992), vac’d as moot sub nom., *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 159 (1993), citing *United States v. Tiede*, 86 F.R.D. 227 (U.S.Ct.Berlin 1979) and suggesting that the Constitution limits American governmental authority, presumably including Congressional legislative authority, overseas even with respect to aliens in any area over which the United States exercises exclusive governmental authority; *Berlin Democratic Club v. Rumsfeld*, 410 F.Supp. 144, 152 (D.D.C. 1976), citing *Balzac v. Porto Rico*, 258 U.S. 298, 312 (1921) “(the Constitution is in force where the *sovereign* power of the United States is asserted)” (emphasis of the court).

<sup>105</sup> *California Department of Corrections v. Morales*, 514 U.S. 499, 504 (1995), quoting *Collins v. Youngblood*, 497 U.S. 37, 43 (1990).

The two are sometimes interwoven as demonstrated by efforts to turn an Irishman, Peter McMullen, over to British authorities in connection with a bombing of a military barracks in Northern Ireland. McMullen used the “political offense” exception in the extradition treaty between the United States and Great Britain to defeat an early extradition attempt.

Britain and the United States subsequently negotiated a supplemental extradition treaty in which the political offense exception was retroactively abrogated in relevant part and under which efforts to extradite McMullen were renewed. A lower court rejected McMullen’s argument that the ex post facto clause barred retroactive application of elimination of the political offense exception since the supplemental treaty neither established a new crime nor increased the penalty for an old one, *In re Extradition of McMullen*, 769 F.Supp. 1278, 1293 (S.D.N.Y. 1991). McMullen’s successful invocation of the political offense exception figured so prominently in Senate consideration of the supplemental treaty, however, that the court concluded that its application to McMullen would render the supplemental treaty a bill of

## Statutory Construction

Given the broad grant of constitutional authority and limited constitutional restrictions, the question of the extent to which a particular statute applies outside the United States has generally been considered a matter of statutory, rather than constitutional, construction.<sup>106</sup>

General principles of statutory construction have emerged which can explain, if not presage, the result in a given case. The first of these holds that a statute will be construed to have only territorial application unless there is a clear indication of some broader intent.<sup>107</sup>

A second states that unless a contrary intent is clear, Congress is assumed to have acted so as not to invite action inconsistent with international law.<sup>108</sup>

attainder. The Court of Appeals for the Second Circuit reversed on the ground that the increased prospect of extradition did not constitute a punishment for bill of attainder purposes, *In re Extradition of McMullen*, 989 F.2d 603, 607 (2d Cir. 1993)(en banc):

In holding that the [Presidential Recordings and Materials Preservation] Act was a bill of attainder, the Court [in *Nixon v. Administrator of GSA*, 433 U.S. 425 (1977)] applied three tests to determine whether legislative punishment of the type contemplated by the Bill of Attainder Clauses was imposed: the ‘historical’ test, involving ‘punishment traditionally judged to be prohibited by the Bill of Attainder Clause’, including death, imprisonment, banishment, punitive confiscation of property by the sovereign and, in more recent times, laws ‘barring designated individuals or groups from participation in specified employments or vocations; the ‘functional’ test which ‘analyze[s] whether the law under challenge, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes’; and the ‘motivational’ test, which ‘inquire[s] whether the legislative record evinces a congressional intent to punish.’”

<sup>106</sup> *EEOC v. Arabian American Oil Co.*, 499 U.S. at 248 (1991); *Foley Brothers v. Filardo*, 336 U.S. 281, 284-85 (1949) (“The question before us is not the power of Congress to extend the eight hour law to work performed in foreign countries. Petitioners concede that such power exists. The question is rather whether Congress intended to make the law applicable to such work”); *United States v. Plummer*, 221 F.3d 1298, 1304 (11th Cir. 2000); *United States v. Gatlin*, 210 F.3d 207, 211 (2d Cir. 2000); *United States v. Bin Laden*, 92 F.Supp.2d 189, 193 (S.D.N.Y. 2000).

<sup>107</sup> “It is a long-standing principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.” *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991); *Argentine Republic v. Ameranda Hess Shipping*, 488 U.S. 428 (1989); *United States v. Corey*, 232 F.3d 1166, 1170 (9th Cir. 2000); *United States v. Kim*, 246 F.3d 186, 189-90 (2d Cir. 2001).

<sup>108</sup> “It has been a maxim of statutory construction since the decision in *Murray v. The Charming Betsy*, 2 Cranch [6 U.S.] 64, 118 (1804), that an act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains,” *Weinberger v. Rossi*, 456 U.S. 25, 32 (1982); *The Apollon*, 22 U.S. (9 Wheat.) 362, 370-71 (1824); *United States v. MacAllister*, 160 F.3d 1304, 1307 (11th Cir. 1998); *United States v. Vasquez-Velasco*, 15 F.3d 833, 839 (9th Cir. 1994).

A third principle of construction, used primarily in the case of criminal statutes, runs contrary to the first two. In simple terms, it states that the nature and purpose of a statute may provide an indication of whether Congress intended a statute to apply beyond the confines of the United States, if it offends no principles of international law. Although hints of it can be found earlier,<sup>109</sup> the principle was first clearly announced in *United States v. Bowman*, 260 U.S. 94, 97-98, 102 (1922).<sup>110</sup>

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<sup>109</sup> *American Banana Co. v. United Fruit Co.*, 213 U.S. at 355-56, “It is obvious that, however stated, the plaintiff’s case depends on several rather startling propositions. In the first place the acts causing the damage were done so far as appears, outside the jurisdiction of the United States and within that of other states. It is surprising to hear it argued that they were governed by the act of Congress.

“No doubt in regions subject to no sovereign, like the high seas, or to no law that civilized countries would recognize as adequate, such countries may treat some relations between their citizens as governed by their own law, and keep to some extent the old notion of personal sovereignty alive. They go further at times and declare that they will punish any one, subject or not, who shall do certain things, if they can catch him, as in the case of pirates on the high seas. In cases immediately affecting national interests they may go further still and may make, and, if they get the chance, execute similar threat as to acts done within another recognized jurisdiction. An illustration from our statutes is found with regard to criminal correspondence with foreign governments. . .”

<sup>110</sup> “We have in this case a question of statutory construction. The necessary *locus*, when not specifically defined, depends upon the purpose of Congress as evinced by the description and nature of the crime and upon the territorial limitations upon the power and jurisdiction of a government to punish crime under the law of nations. Crimes against private individuals or their property, like assaults, murder, burglary, larceny, robbery, arson, embezzlement and frauds of all kinds, which affect the peace and good order of the community, must of course be committed within the territorial jurisdiction of the government where it may properly exercise it. If punishment of them is to be extended to include those committed outside the strict territorial jurisdiction, it is natural for Congress to say so in the statute, and failure to do so will negative the purpose of Congress in this regard. We have an example of this in the attempted application of the prohibitions of the Anti-Trust Law to acts done by citizens of the United States against other such citizens in a foreign country. *American Banana Co. v. United Fruit Co.*, 213 U.S. 347. That was a civil case, but as the statute is criminal as well as civil, it presents an analogy.

“But the same rule of interpretation should not be applied to criminal statutes which are, as a class, not logically dependent on their locality for the government’s jurisdiction, but are enacted because of the right of the government to defend itself against obstruction, or fraud wherever perpetrated, especially if committed by its own citizens, officers or agents. Some such offenses can only be committed within the territorial jurisdiction of the Government because of the local acts required to constitute them. Others are such that to limit their *locus* to the strictly territorial jurisdiction would be greatly to curtail the scope and usefulness of the statute and leave open a large immunity for frauds as easily committed by citizens on the high seas and in foreign countries as at home. In such cases, Congress has not thought it necessary to make specific provision in the law that the *locus* shall include the high seas and foreign countries, but allows it to be inferred from the nature of the offense. . . . Clearly it is no offense to the dignity or right of sovereignty of Brazil [– where the fraud of which the United States government was the target occurred –] to hold [these American defendants] for this crime against the government to which they owe allegiance.”

The final principle encompasses misconduct overseas which has an impact within the United States.<sup>111</sup> The Supreme Court has painted this “external force” principle with a broad brush, “a man who outside of a country willfully puts in motion a force to take effect in it is answerable at the place where the evil is done,” *Ford v. United States*, 273 U.S. 593, 623 (1927). The principle reaches foreign conspirators and accomplices,<sup>112</sup> and it is by far the most frequently cited judicial response to attacks on the extraterritorial application of federal criminal law.<sup>113</sup>

These principles of construction come into play if Congress has not expressly called for extraterritorial application within the statute. And at one time the cases seemed to imply that, unless Congress declared that it intended a statute to apply overseas to both aliens and American nationals, it would be presumed to apply only to Americans.<sup>114</sup> Contemporary case law seems to make the argument less tenable.<sup>115</sup>

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<sup>111</sup> The classic example of the latter occurs where an assailant, standing in one jurisdiction, fires a gun across the border killing someone in another jurisdiction – in which case the murder is said to have been committed in the jurisdiction in which the victim was struck, LAFAVE & SCOTT, CRIMINAL LAW, 118 (1972).

<sup>112</sup> *Strassheim v. Daily*, 221 U.S. 280, 284-85 (1911); *United States v. Inco Bank & Trust Co.*, 845 F.2d 919, 920 (11th Cir. 1988); *United States v. Endicott*, 803 F.2d 506, 514 (9th Cir. 1986).

<sup>113</sup> It appears regularly in cases of alien drug smugglers who contend – unsuccessfully – that the explicit extraterritorial provisions of the Maritime Drug Law Enforcement Act, 46 U.S.C.App. 1903, should be construed to apply only to American nationals. It is probably the unfortunate volume of these cases which accounts for the principle’s popularity.

Some courts read the *Bowman* and the *Ford* principles in tandem, *United States v. Plummer*, 221 F.3d 1298, 1304-305 (11th Cir. 2000)(“On the authority of *Bowman*, courts in this Circuit and elsewhere have routinely inferred congressional intent to provide for extraterritorial jurisdiction over foreign offenses that cause domestic harm. See e.g., *United States v. MacAllister*, 160 F.3d 1304, 1307-308 (11th Cir. 1998); *United States v. Benitez*, 741 F.2d 1312, 1316-17 (11th Cir. 1984)(assaults on government agents abroad); *United States v. Perez-Herrera*, 610 F.2d 289, 290 (5th Cir. 1980)(attempt to import marijuana into the United States) *United States v. Baker*, 609 F.2d 134, 137-39 (5th Cir. 1980)(possession with intent to distribute and conspiracy to import marijuana); *United States v. Vasquez-Velasco*, 15 F.3d 833, 839 n.4 (9th Cir. 1994)(murder abroad to further a drug-trafficking enterprise); *United States v. Harvey*, 2 F.3d 1318, 1329 (3d Cir. 1993)(possession of child pornography made abroad); *United States v. Felix-Guiterrez*, 940 F.2d 1200, 1204 (9th Cir. 1991) (accessory after-the-fact to kidnapping and murder of government agent abroad”).

<sup>114</sup> *The Apollon*, 22 U.S. (9 Wheat.) at 370 (“The laws of no nation can justly extend beyond its own territories, *except so far as regards its own citizens*”)(emphasis added); *American Banana Co. v. United Fruit Co.*, 213 U.S. at 355-6 (“No doubt in regions subject to no sovereign, like the high seas, or to no law that civilized countries would recognize as adequate, such countries may treat some relations between their citizens as governed by their own law, and keep to some extent the old notion of personal sovereignty alive. . . . And the notion that English statutes bind British subjects everywhere has found expression in modern times and has had some startling applications”); *United States v. Bowman*, 260 U.S. at 102 (“Section 41 of the Judicial Code provides that ‘the trial of all offenses committed on the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought.’ The three defendants who were found in New York were citizens of the United States and were certainly subject to

## International Law

International law guides rather than directs decisions in the area of the overseas application of American law. Neither Congress nor the courts are bound to the dictates of international law when enacting or interpreting statutes with extraterritorial application.<sup>116</sup>

Yet Congress looks to international law when it evaluates the policy considerations associated with legislation that may have international consequences. For this reason, the courts interpret legislation with the presumption that Congress or the state legislature, unless it indicates otherwise, intends its laws to be applied within the bounds of international law.

To what extent does international law permit a nation to exercise extraterritorial jurisdiction? The question is essentially one of national interests. What national interest is served by extraterritorial application and what interests of other nations suffer by an extraterritorial application?

The most common classification of these interests dates to a 1935 Harvard Law School study which divided them into five categories involving: (1) the regulation of activities occurring within the territory of a country; (2) the regulation of the conduct of its nationals; (3) the protection of its nationals; (4) the regulation of activities

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such laws as it might pass to protect itself and its property. Clearly it is no offense to the dignity or right of sovereignty of Brazil to hold them for this crime against the government to which they owe allegiance. The other defendant is a subject of Great Britain. He has never been apprehended, and it will be time enough to consider what, if any, jurisdiction the District Court below has to punish him when he is brought to trial”); *Blackmer v. United States*, 284 U.S. 421, 437 (1932)(“With respect to such exercise of authority, there is no question of international law, but solely of the purport of municipal law which establishes the duties of the citizen in relation to his own government. While the legislation of the Congress, unless the contrary intent appears, is construed to apply only within the territorial jurisdiction of the United States, the question of its application so far as citizens of the United States in foreign countries are concerned is one of construction, not of legislative power”); *United States v. Columba-Colella*, 604 F.2d 356, 360 (5th Cir. 1979)(“Congress [is] not competent to attach criminal sanctions to the murder of an American by a foreign national in a foreign country”).

<sup>115</sup> *United States v. Yunis*, 924 F.2d 1086 (D.C.Cir. 1991); *cf.*, *United States v. Felix-Gutierrez*, 940 F.2d 1200 (9th Cir. 1991); *United States v. Benitez*, 741 F.2d 1312 (11th Cir. 1986); *United States v. Rezaq*, 134 F.3d 1121 (D.C.Cir. 1998); *United States v. Bin Laden*, 92 F.Supp.2d 189, 195 (S.D.N.Y. 2000)(“no court, to date, has refused to apply the *Bowman* rule on the ground that the defendant was a foreign national”).

<sup>116</sup> “Yunis seeks to portray international law as a self-executing code that trumps domestic law whenever the two conflict. That effort misconceives the role of judges as appliers of international law and as participants in the federal system. Our duty is to enforce the Constitution, laws, and treaties of the United States, not to conform the law of the land to norms of customary international law,” *United States v. Yunis*, 924 F.2d 1086, 1091 (D.C.Cir. 1991); *United States v. Martinez-Hidalgo*, 993 F.2d 1052, 1056 (3d Cir. 1993); *United States v. Felix-Gutierrez*, 940 F.2d 1200, 1203 (9th Cir. 1991); *United States v. Henriquez*, 731 F.2d 131, 134 (2d Cir. 1984).

outside a country which have an impact within it; and (5) the regulation of activities which are universally condemned.<sup>117</sup> Legislation may reflect more than one interest or principle and there is little consensus of the precise boundaries of the principles.<sup>118</sup>

The American Law Institute's Third Restatement of the Foreign Relations Law of the United States contains perhaps the most comprehensive, contemporary statement of international law in the area. It indicates that the latitude international law affords a country to enact, try and punish violations of its law extraterritorially is a matter of reasonableness, and its assessment of reasonableness mirrors a balancing of the interests represented in the principles.<sup>119</sup>

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<sup>117</sup> "An analysis . . . discloses five general principles on which a more or less extensive penal jurisdiction is claimed by States at the present time. These five general principles are: first, the *territorial principle*, determining jurisdiction by reference to the place where the offence is committed; second, the *nationality principle*, determining jurisdiction by reference to the nationality or national character of the person committing the offence; third, the *protective principle*, determining jurisdiction by reference to the national interest injured by the offence; fourth, the *universality principle*, determining jurisdiction by reference to the custody of the person committing the offence; and fifth, the *passive personality principle*, determining jurisdiction by reference to the nationality or national character of the person injured by the offence. Of these five principles, the first is everywhere regarded as of primary importance and of fundamental character. The second is universally accepted, though there are striking differences in the extent to which it is used in different national systems. The third is claimed by most States, regarded with misgivings in a few, and generally ranked as the basis for an auxiliary competence. The fourth is widely though by no means universally accepted as the basis of an auxiliary competence, except for the offence of piracy, with respect to which it is the generally recognized principle of jurisdiction. The fifth, asserted in some form by a considerable number of States and contested by others, is admittedly auxiliary in character and is probably not essential for any State if the ends served are adequately provided for on other principles." *Research in International Law Under the Auspices of the Faculty of the Harvard Law School: II. Jurisdiction with Respect to Crime*, 29 AMERICAN JOURNAL OF INTERNATIONAL LAW (SUPP.) 439, 445 (1935) (emphasis added).

<sup>118</sup> For example, several courts have identified an "objective territorial" principle which classifies within the territorial principle cases which would ordinarily be thought to exemplify the impact or protective principle, *Rivard v. United States*, 375 F.2d 882, 886(5th Cir. 1967); *United States v. Pizzarusso*, 388 F.2d 8, 10(2d Cir. 1968); *Chua Han Mow v. United States*, 730 F.2d 1308, 1312(9th Cir. 1984).

<sup>119</sup> "The rules in this Restatement governing jurisdiction to prescribe, as well as those governing jurisdiction to adjudicate and to enforce, reflect development in the law as given effect by United States courts. The courts appear to have considered these rules as a blend of international law and domestic law, including international 'comity' as part of that law. Increasing, however, these rules, notably the principle of reasonableness (§§403, 421, 431), have been followed by other states and their courts and by international tribunals, and have emerged as principles of customary law." American Law Institute, *RESTATEMENT OF THE LAW THIRD: THE FOREIGN RELATIONS LAW OF THE UNITED STATES* (1985).

Section 403 of the Restatement provides:

"(2) Whether exercise of jurisdiction over a person or activity is unreasonable is determined by evaluating all relevant factors, including, where appropriate:

(a) the link of the activity to the territory of the regulated state, i.e., the extent to which the activity takes place within the territory, or has substantial, direct, and foreseeable effect upon or in the territory;

While the Restatement's views are influential with both the Congress and the courts, the courts have traditionally ascertained the extent to which international law would allow extraterritorial application of a particular law by examining American case law, a source which historically has provided a more permissive view of extraterritorial jurisdiction than either the Restatement or the Harvard study.<sup>120</sup>

## Present Crimes

### Federal Law

Congress has enacted laws containing express provisions for extraterritorial jurisdiction in four groups of statutes: (1) those enacted to conform to our obligations under an international agreement to which the United States is a party; (2) those enacted to apply within the special maritime and territorial jurisdiction of the United States<sup>121</sup> or the special airspace jurisdiction of the United States;<sup>122</sup> (3) those passed

(b) the connections, such as nationality, residence, or economic activity, between the regulating state and the person principally responsible for the activity to be regulated, or between that state and those whom the regulation is designed to protect;

(c) the character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted;

(d) the existence of justified expectations that might be protected or hurt by the regulation;

(e) the importance of the regulation to the international political, legal, or economic system;

(f) the extent to which the regulation is consistent with the traditions of the international system;

(g) the extent to which another state may have an interest in regulating the activity; and

(h) the likelihood of conflict with regulation by another state.

“(3) When it would not be unreasonable for each of two states to exercise jurisdiction over a person or activity, but the prescriptions by the two states are in conflict, each state has an obligation to evaluate its own as well as the other state's interest in exercising jurisdiction, in light of all the relevant factors, Subsection (2); a state should defer to the other state if that state's interest is clearly greater.”

The remainder of section 403 and other portions of the Restatement are contained in Appendix III.

<sup>120</sup> Abramovsky, *Extraterritorial Jurisdiction: The United States Unwarranted Attempt to Alter International Law in United States v Yunis*, 15 YALE JOURNAL OF INTERNATIONAL LAW 121 (1990); *Exporting United States Drug Law: An Example of the International Legal Ramifications of the "War on Drugs,"* 1992 BRIGHAM YOUNG UNIVERSITY LAW REVIEW 165.

<sup>121</sup> 18 U.S.C. 7 (“The term ‘special maritime and territorial jurisdiction of the United States’, as used in this title, includes: (1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

pursuant to Congress's authority to regulate foreign commerce; (4) those involving offenses which Congress felt merited an unmistakable assertion of extraterritorial jurisdiction, the appendix contain lists of some of these statutes. Congress recently added another category when, in the exercise of its powers to regulate the armed forces, it extended – to those accompanying the armed forces of the United States – the felony proscriptions which apply within the special maritime and territorial jurisdiction of the United States 18 U.S.C. 3261-3267.<sup>123</sup>

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(2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line. (3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building. (4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States. (5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, District, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State. (6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard. (7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States. (8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States”).

<sup>122</sup> 49 U.S.C. 46501(2)(“special aircraft jurisdiction of the United States’ includes any of the following aircraft in flight: (A) a civil aircraft of the United States. (B) an aircraft of the armed forces of the United States. (C) another aircraft in the United States. (D) another aircraft outside the United States – (i) that has its next scheduled destination or last place of departure in the United States, if the aircraft next lands in the United States; (ii) on which an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) if the aircraft lands in the United States with the individual still on the aircraft; or (iii) against which an individual commits an offense (as defined in subsection (d) or (e) of article I, section I of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation) if the aircraft lands in the United States with the individual still on the aircraft. (E) any other aircraft leased without crew to a lessee whose principal place of business is in the United States or, if the lessee does not have a principal place of business, whose permanent residence is in the United States”).

<sup>123</sup> The text of 18 U.S.C. 3261-3267 is appended along with a list of federal statutes with extraterritorial application.

Federal law outlaws murder, manslaughter, assault and most of common law crimes when committed within the special maritime and territorial jurisdiction of the United States, *e.g.*, 18 U.S.C. 1111, 1112, 113, 114. Under cases arising prior to enactment of 18 U.S.C.

An inventory of the federal criminal laws covering acts of terrorism abroad, either explicitly<sup>124</sup> or by operation the analysis of *Bowman, Ford* and their progeny, might be roughly summarized as follows:

It is a federal crime to kill or physically assault an American for a terroristic purpose anywhere in the world regardless of the nationality of the terrorist or the means used, 18 U.S.C. 2331, 2332. No matter what the purpose, or where in the world the crime occurs, or the nationality of the offender or the means used, it is a federal crime to kill, beat, or kidnap the President,<sup>125</sup> Members of Congress,<sup>126</sup>

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3261-3267, there is a split among the circuits over whether American military and diplomatic outposts overseas should be considered part of the territorial jurisdiction of the United States, compare, *United States v. Corey*, 232 F.3d 1166, 1170-183 (9th Cir. 2000)(finding an Air Force base in Japan and apartment building in the Philippines rented by American embassy personnel within the territorial jurisdiction of the United States); and *United States v. Erdos*, 474 F.2d 157, 159-60 (4th Cir. 1973)(reaching a similar conclusion with respect to the American Embassy in Equatorial Guinea), with, *United States v. Gatlin*, 216 F.3d 207, 213-23 (2d Cir. 2000)(holding that an American military installation in Germany was not within the territorial jurisdiction of the United States); see also, *Jurisdiction Over Federal Areas Within the United States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the United States: Part I (The Facts and Committee Recommendations)* (1956)(discussing lands over which the United States has legislative jurisdiction and those in which it merely holds a proprietary interest).

<sup>124</sup> Several of the federal provisions applicable to overseas terrorism contain explicit statements of extraterritorial jurisdiction. *E.g.*, 18 U.S.C. 229(c) (relating to jurisdiction over chemical weapons offenses)(“Conduct prohibited by subsection (a) is within the jurisdiction of the United States if the prohibited conduct – (1) takes place in the United States; (2) takes place outside of the United States and is committed by a national of the United States; (3) is committed against a national of the United States while the national is outside the United States; or (4) is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States”).

<sup>125</sup> 18 U.S.C. 1751. Section 1751 covers “any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the Office of the President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States, or any person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President or appointed under section 106(a)(1)(A) of title 3 employed in the Office of the Vice President.” Sections 105(a)(2)(A) and 106(a)(1)(A) authorize employment of no more than 25 senior (executive pay level II) presidential and vice-presidential assistants.

<sup>126</sup> 18 U.S.C. 371; *United States v. Layton*, 855 F.2d 1388, 1394-395 (9th Cir. 1988). Section 371 protects “a Member of Congress or a Member-of-Congress-elect, a member of the executive branch of the Government who is the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of Central Intelligence, a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title), or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be a Justice of the United States, during the pendency of such nomination . . . .”

members of the U.S. diplomatic corps,<sup>127</sup> any other federal officers or employee including members of the armed forces (or anyone assisting them) because of or during the performance of their duties.<sup>128</sup>

A terrorist or anyone else who takes hostages,<sup>129</sup> or commits an act of violence at an international airport, 18 U.S.C. 37, sabotages, 18 U.S.C. 32 or hijacks an airplane,<sup>130</sup> anywhere in the world is subject to federal prosecution and to capital punishment if anyone is killed during the course of the crime, as long as either the offender or one of the victims is an American or the offender is later “found” in the United States.<sup>131</sup>

By the same token, overseas crimes involving the weapons of mass destruction, 18 U.S.C. 2332a, biological weapons, 18 U.S.C. 175, chemical weapons, 18 U.S.C. 229, or nuclear materials, 18 U.S.C. 831, may be prosecuted in the United States when either the victim or the offender is an American. And regardless of the nationality of the victim or offender, the overseas use of explosives to damage or destroy federal property may be prosecuted in this country and carries the death penalty if anyone is killed.<sup>132</sup>

Foreign terrorists who flee to the United States are subject to the federal laws which outlaw the use of perjury, false statements, or other schemes to gain unlawful entry into the United States even when committed within another country.<sup>133</sup>

<sup>127</sup> 18 U.S.C. 1116, 112, 1201; *United States v. Layton*, 855 F.2d 1388, 1394-395 (9th Cir. 1988).

<sup>128</sup> 18 U.S.C. 1114, 111, 1201; *United States v. Benitez*, 741 F.2d 1312, 1317 (11th Cir. 1984); *United States v. Felix-Guiterrez*, 940 F.2d 1200, 1204 (9th Cir. 1991); *United States v. Bin Laden*, 92 F.Supp.2d 189, 202-203 (S.D.N.Y. 2000).

<sup>129</sup> 18 U.S.C. 1203; *United States v. Yunis*, 924 F.2d 1086, 1090-92 (D.C.Cir. 1988).

<sup>130</sup> 49 U.S.C. 46502; *cf.*, *United States v. Rezaq*, 134 F.3d 1121, 1125 (D.C.Cir. 1998); *United States v. Yunis*, 924 F.2d 1086, 1090-92 (D.C.Cir. 1988).

<sup>131</sup> 18 U.S.C. 1203, 3592(c)(1). The jurisdictional nexus for this and several other federal statutes with extraterritorial application is the subsequent presence of the offender within the United States. The offender’s presence need not be voluntary and in fact those “found” in the United States includes both fugitives and those brought here for solely for prosecution, *United States v. Yunis*, 924 F.2d 1086, 1090 (D.C.Cir. 1991); *United States v. Rezaq*, 134 F.3d 1121, 1130-132 (D.C.Cir. 1998).

<sup>132</sup> 18 U.S.C. 844(f), 2155, 3592(c)(1); *United States v. Bin Laden*, 92 F.Supp.2d 189, 198-201, 203-204 (S.D.N.Y. 2000).

<sup>133</sup> 18 U.S.C. 1621 (perjury), 1001 (false statements), 1542 (false statement on a passport application), 1543 (forging a passport), 1544 (use of another’s passport), 1546 (fraud with respect to entry documents), 22 U.S.C. 1203 (perjury at U.S. consular offices), 8 U.S.C. 1306 (false statements in alien registration); *United States v. Pizzarusso*, 388 F.2d 8 (2d Cir. 1968); *United States v. Khalje*, 658 F.2d 90 (2d Cir. 1981); *United States v. Beliard*, 618 F.2d 886, 887 (1st Cir. 1980); *United States v. Walczak*, 783 F.2d 852, 853-55 (9th Cir. 1986); *Validity and Construction of Federal Statute (18 U.S.C. §1546) Making Fraud and Misuse of Visas, Permits and Other Entry Documents a Criminal Offense*, 3 ALR FED. 623.

Circumstances which permit federal prosecution of an act of terrorism committed abroad will also support prosecution of various auxiliary or “piggyback” offenses, like conspiracy,<sup>134</sup> aiding and abetting an act of terrorism,<sup>135</sup> harboring or otherwise assisting another after the commission of such an offense,<sup>136</sup> or possession of a firearm or explosive during the commission of the offense,<sup>137</sup> *inter alia*.

Federal criminal law features a special category of piggyback offenses for overseas terrorism – conduct in the United States made criminal because of its relationship to terrorism abroad. The earliest example may be the Walker Act, 18 U.S.C. 960, which prohibits launching a military or naval expedition against a friendly nation from the United States. More contemporary prohibitions ban conspiracies in this country to commit murder, kidnapping or mayhem abroad, 18 U.S.C. 956;<sup>138</sup> providing material assistance to terrorists, 18 U.S.C. 2339A,<sup>139</sup> or terrorist

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<sup>134</sup> 18 U.S.C. 371; *cf.*, *United States v. Larson*, 952 F.2d 1099, 1099-101 (9th Cir. 1991); *United States v. Yunis*, 924 F.2d 1086, 1089-1092 (D.C.Cir. 1991).

<sup>135</sup> 18 U.S.C. 2; *cf.*, *United States v. Goldberg*, 830 F.2d 459, 462-64 (3d Cir. 1987); *United States v. Larson*, 952 F.2d 1099, 1099-101 (9th Cir. 1991); *United States v. Yousef*, 927 F.Supp. 673, 678-83 (S.D.N.Y. 1996).

<sup>136</sup> 18 U.S.C. 3; *United States v. Felix-Gutierrez*, 940 F.2d 1200, 1203-206 (9th Cir. 1991).

<sup>137</sup> 18 U.S.C. 884(h), 924(c), *United States v. Bin Laden*, 92 F.Supp.2d 189, 198-201 (S.D.N.Y. 2000); *United States v. Yousef*, 927 F.Supp. 673, 678-83 (S.D.N.Y. 1996).

<sup>138</sup> “(a)(1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2). (2) The punishment for an offense under subsection (a)(1) of this section is – (A) imprisonment for any term of years or for life if the offense is conspiracy to murder or kidnap; and (B) imprisonment for not more than 35 years if the offense is conspiracy to maim.

“(b) Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to damage or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield, or other public utility, public conveyance, or public structure, or any religious, educational, or cultural property so situated, shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than 25 years.”

<sup>139</sup> “Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332c, or 2340A of this title or section 46502 of title 49, or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both,” 18 U.S.C. 2332A(a).

organizations, 18 U.S.C. 2339B,<sup>140</sup> engaging in financial transactions with countries that support international terrorism, 18 U.S.C. 2332d.<sup>141</sup>

Past federal prosecution of acts of terrorism committed abroad have rested on a combination of jurisdictional foundations, some explicit and others implied. For instance, the terrorists who bombed the American Embassies in Kenya and Tanzania were charged with violations of 18 U.S.C. 930 (murder while unlawfully in possession of a bomb within a federal facility), 844(f)(murder resulting from the bombing of a federal building), 844(h)(possession of a bomb during the commission of a federal felony), 844(n)(conspiracy to violate section 844), 1114 (murder of federal officers and employees), and 2155 (destruction of national defense materials), *United States v. Bin Laden*, 92 F.Supp.2d 189, 192 (S.D.N.Y. 2000). Extraterritorial application of all of these depends on *Bowman*. Prosecution of terrorists for air piracy and related offenses, on the other hand, have not tended to rely exclusively on an implied jurisdictional base.<sup>142</sup>

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<sup>140</sup> “Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 10 years, or both,” 18 U.S.C. 2339B(a)(1).

<sup>141</sup> “Except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, whoever, being a United States person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act (50 U.S.C. App. 2405) as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under this title, imprisoned for not more than 10 years, or both,” 18 U.S.C. 2332d(a).

The International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701 to 1707, grants the President broad powers to regulate foreign economic relations in order to “deal with any unusual and extraordinary threat . . . to the national security, foreign policy or economy of the United States . . . . 50 U.S.C. 1701(a). Under the authority of IEEPA the assets of various designated terrorists and terrorist organizations have been frozen and commercial or other economic relations with them forbidden, 31 C.F.R. §§595.201, 595.204, ch.V Appendix A. Wilful violations are punishable by imprisonment for not more than 10 years, 50 U.S.C. 1705.

<sup>142</sup> *E.g.*, *United States v. Yousef*, 927 F.Supp. 673, 675-76 (charged with “conspiring and attempting to destroy aircraft in foreign air commerce within the special aircraft jurisdiction of the United States, in violation of 18 U.S.C. §§32(a)(1)\*,(2)\*,(7)\* and 371 . . . conspiring to kill a national of the United States with malice aforethought in violation of 18 U.S.C. §2332(b)\* and (d)\* . . . conspiring to use a weapon of mass destruction . . . in violation of 18 U.S.C. 2332a\* . . . using and carrying an improvised explosive device . . . in violation of 18 U.S.C. §924(c) and 2 . . . [and] placing and causing the detonation of a bomb a Philippines airliner, in violation of 18 U.S.C. §32(b)\*”); *United States v. Rashed*, 83 F.Supp.2d 96, 98 (D.D.C. 1999)(prosecuted for murder and conspiracy to commit murder within the special aircraft jurisdiction of the United States, 18 U.S.C. 1111,\* 1117\*; damage to a commercial aircraft in the special aircraft jurisdiction of the United States, 18 U.S.C. 32\*; damaging property used in an activity affecting U.S. foreign commerce, 18 U.S.C. 844(i)\*; and assault within the special aircraft jurisdiction of the United States, 18 U.S.C. 113\*); *United States v. Yunis*, 924 F.2d 1086, 1089-90 (D.C.Cir. 1991)(convictions for conspiracy, 18 U.S.C. 371, hostage taking, 18 U.S.C. 1203\*, and air piracy, 49 U.S.C.App. 1472\*. \* Statutes covered by explicit statements of extraterritorial application.

## State Law

State criminal laws are less likely to apply overseas. State law produces fewer instances where a statute was clearly enacted with an eye to its application overseas and fewer examples where frustration of legislative purpose is the logical consequence of purely territorial application. The Constitution seems to have preordained this result when it vested responsibility for protecting American interests and fulfilling American responsibilities overseas in the federal government.<sup>143</sup>

In fact, the primacy of the federal government in foreign affairs might suggest that the Constitution precludes the application of state law in other countries, but the commentators recognize a limited power of the states to enact law governing conduct outside the United States. Obviously, Congress may, by preemptive action, extinguish the legislative authority of a state in any area over which Congress has plenary powers. And the Supremacy Clause<sup>144</sup> also renders treaties to which the United States is a party binding upon the states and therefore beyond their legislative reach.

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<sup>143</sup> *U.S. Const. Art.II, §2, cl.2* (“[t]he President . . . shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, [and] other public ministers and consuls . . .”);

*U.S. Const. Art.II, §3, cl.3* (“ . . . he shall receive Ambassadors and other public ministers. . . .”);

*U.S. Const. Art.II, §2, cl.1* (“[he] shall be commander in chief of the Army and Navy of the United States . . . .”);

*U.S. Const. Art.I, §8, cl.18* (“[t]he Congress shall have power . . . to make all laws which shall be necessary and proper for carrying into execution [its] powers, and all other powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof”);

*U.S. Const. Art.I, §8, cl.10* (“[t]he Congress shall have power . . . to define and punish piracies and felonies committed on the high seas, and offences against the law of nations”);

*U.S. Const. Art.I, §8, cl.3* (“[t]he Congress shall have power . . . to regulate commerce with foreign nations . . . .”);

*U.S. Const. Art.I, §8, cl.1* (“[t]he Congress shall have the power to lay and collect . . . duties, imposts and excises, to pay debts and provide for the common defense and general welfare . . . .”);

*U.S. Const. Art.I, §8, cls.11, 12, 13, 14* ([t]he Congress shall have the power . . . to declare war. . . ; to raise and support armies . . . ; to provide and maintain a navy . . . ; [and] to make rules for the government and regulation of the land and naval forces. . . .”);

*U.S. Const. Art.VI, cl.2* (“[t]his Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; anything in the constitution or laws of any state to the contrary notwithstanding”).

<sup>144</sup> “This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.” *U.S. Const. Art.IV, cl.2*.

Beyond the constitutional limitations, however, “the question . . . is one of whether the state actually intended to legislate extraterritorially, not whether it has the power to do so.”<sup>145</sup>

The states have chosen to make their laws applicable beyond their boundaries in only a limited set of circumstances and ordinarily only in cases where there is some clear nexus to the state, some of which may be relevant in a terrorism context.<sup>146</sup>

Perhaps the most common state statutory provision claiming state extraterritorial criminal jurisdiction is one which asserts jurisdiction in cases where some of the elements of the offense are committed within the state or others are committed outside it.<sup>147</sup>

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<sup>145</sup> George, *Extraterritorial Application of Penal Legislation*, 64 MICHIGAN LAW REVIEW 609, 617 (1966); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §402 comment k, n.5 (1987).

<sup>146</sup> The Model Penal Code exemplifies most of the grounds upon which various states base their extraterritorial criminal jurisdiction and appears in appendix I. *E.g.*, *Ariz.Rev.Stat. Ann.* §13-108(c); *Fla.Stat. Ann.* §910.006; *Hawaii Rev.Stat.* §701-106(5); *Kan.Stat. Ann.* §21-3104(5); *Mo. Ann. Stat.* §541.191(3); *Mont. Code Ann.* §46-2-101(4); *N.H.Rev.Stat. Ann.* §625:4(IV); *N.J.Stat. Ann.* §2C:1-3(e); *N.Y.Crim.Proc.Law* §20.10(1); *Ohio Rev. Code Ann.* §2901.11(c); *Ore.Rev.Stat.* §131.205; *Pa.Stat. Ann.* tit.18 §102(d); *Tex.Penal Code* §1.04(d); *Wash.Rev. Code Ann.* §9A.004.030(7); *Wis.Stat. Ann.* §939.03(2).

<sup>147</sup> \**Ala. Code* §§15-2-3, 15-2-4; \**Alaska Stat.* §12.05.010; *Ariz.Rev.Stat. Ann.* §13-108(A)(1); *Ark. Code Ann.* §5-1-104(a)(1); *Cal. Penal Code* §§27(a)(1), 778, 778a; *Colo.Rev.Stat.* §18-1-201(1)(a); *Del. Code Ann.* tit.11 §204(a)(1); *Fla.Stat. Ann.* §910.005(1)(a); *Ga. Code Ann.* §17-2-1(b)(1); *Hawaii Rev.Stat.* §701-106(1)(a); *Idaho Code* §18-202(1); *Ill. Comp. Stat. Ann.* ch.720 §5/1-5; *Ind. Code Ann.* §35-41-1-1(b)(1); *Iowa Code Ann.* §803.1(1)(a); *Kan.Stat. Ann.* §21-3104(1)(a); *Ky.Rev.Stat.* §500.060(1)(a); *Me.Rev.Stat. Ann.* tit.17-A §7(1)(A); *Minn.Stat. Ann.* §609.025(1); \**Miss. Code Ann.* §99-11-15; *Mo. Ann. Stat.* §541.191(1)(1); *Mont. Code Ann.* §46-2-101; \**Nev.Rev.Stat.* §§171.015, 171.020; *N.H.Rev.Stat. Ann.* §625:4(I)(a); *N.J.Stat. Ann.* §2C:1-3(a)(1); *N.Y.Crim.Proc.Law* §20.20(1)(a); *N.C.Gen.Stat.* §15A-134; \**N.D. Cent. Code* §29-03-01; *Ohio Rev. Code Ann.* §2901.11(A); *Okla.Stat. Ann.* tit.21 §151(1); *Ore.Rev.Stat.* §131.215(1); *Pa.Stat. Ann.* tit. 18 §102(a)(1); \**S.D. Cod.Laws* §23A-16-2; \**Tenn. Code Ann.* §39-11-103(b); *Tex.Penal Code* §1.04(a)(1); *Utah Code Ann.* §76-1-201(2); *Vt.Stat. Ann.* tit.13 §2; *Wash.Rev. Code Ann.* §9A.04.030(1); *Wis.Stat. Ann.* §939.03(1)(a).

\*Statutes which phrase the extraterritorial jurisdiction statement in terms of offenses commenced outside the state and consummated within the state (or vice versa), rather than in terms of elements.

Another common claim is where an individual outside the state attempts<sup>148</sup> or conspires<sup>149</sup> to commit a crime within the state. Still others define the state's extraterritorial jurisdiction to include instances where the victim of homicide, fatally wounded outside of the state, dies within it (or vice versa).<sup>150</sup>

## APPENDICES

### I

#### Federal Anti-Terrorist Criminal Laws Which Apply Within the United States

##### **Homicide**

7 *U.S.C.* 2146 (killing animal transportation inspectors)

8 *U.S.C.* 1324 (death resulting from smuggling aliens)

15 *U.S.C.* 1825(a)(2)(C) (Horse Protection Act officials)

18 *U.S.C.* 32, 34 (death resulting from destruction of aircraft or aircraft facilities)

##### *Jurisdictional factors*

- aircraft in the special aircraft jurisdiction of the U.S.

##### *Attempt/Conspiracy*

- attempt and conspiracy are included

<sup>148</sup> *Ariz.Rev.Stat. Ann.* §13-108 (2); *Ark.Code Ann.* §5-1-104; *Colo.Rev.Stat.* §18-1-201; *Del.Code Ann.* tit.11, §204; *Fla.Stat. Ann.* §910.005(1); *Ga.Code Ann.* §17-2-1(b); *Hawaii Rev.Stat.* §701-106(1); *Ill.Comp.Stat. Ann.* ch. 720 §5/1-5; *Ind.Code Ann.* §35-41-1-1(A)(2); *Iowa Code Ann.* §803.1(1); *Kan.Stat. Ann.* §21-3104(1)(c); *Ky.Rev.Stat.* §500.060(1); *Me.Rev.Stat. Ann.* tit.17-A §7(1); *Mo. Ann.Stat.* §541.191; *Mont.Code Ann.* §46-2-101(b); *N.H.Rev.Stat. Ann.* §625:4(I)(b); *N.J.Stat. Ann.* §2C:1-3(a)(2); *N.Y.Crim.Pro.Law* §20.20(1)(b); *Ohio Rev.Code Ann.* §2901.11(A); *Ore.Rev.Stat.* §131.215; *Pa.Stat. Ann.* tit.18 §102(a)(2); *Tex.Penal Code* §1.04(a)(2); *Utah Code Ann.* §76-1-201(1)(d).

<sup>149</sup> *Ariz.Rev.Stat. Ann.* §13-108(A)(2); *Ark.Code Ann.* §5-1-104(a)(3); *Colo.Rev.Stat.* §18-1-201(1)(c); *Del.Code Ann.* tit.11 §204; *Fla.Stat. Ann.* §910.005 (1)(c); *Hawaii Rev.Stat.* §701-106(1)(c); *Ill.Comp.Stat. Ann.* ch.720 §5/1-5; *Ind.Code Ann.* §35-41-1-1; *Iowa Code Ann.* §803.1(1); *Kan.Stat. Ann.* §21-3104(1)(b); *Ky.Rev.Stat.* §500.060(1); *Me.Rev.Stat. Ann.* tit.17-A, §7(1); *Mo. Ann.Stat.* §541.191; *Mont.Code Ann.* §46-2-101(c); *N.H.Rev.Stat. Ann.* §625:4(I)(c); *N.J.Stat. Ann.* §2C:1-3(a)(3); *N.Y.Crim.Pro. Law* §20.20(1)(c); *Ohio Rev.Code Ann.* §2901.11(A); *Ore.Rev.Stat.* §131.215; *Pa.Stat. Ann.* tit.18 §102(a)(3); *Tex.Penal Code* §1.04(a)(3); *Utah Code Ann.* §76-1-201(1)(c); *Wash.Rev.Code Ann.* §9A.04.030(3); *Wis.Stat. Ann.* §939.03(1)(b).

<sup>150</sup> *Ariz.Rev.Stat. Ann.* §13-108(B); *Ark.Code Ann.* §5-1-104(b); *Cal.Penal Code* §790; *Colo.Rev.Stat.* §18-1-201(2); *Del.Code Ann.* tit.11 §204(c); *Fla.Stat. Ann.* §910.005(2); *Ga.Code Ann.* §17-2-1(c); *Hawaii Rev.Stat.* §701-106(4); *Ill.Comp.Stat. Ann.* ch.720 §5/1-5(b); *Ind.Code Ann.* §35-41-1-1(c); *Iowa Code Ann.* §803.1(2); *Kan.Stat. Ann.* §21-3104(2); *Ky.Rev.Stat.* §500.060(3); *Me.Rev.Stat. Ann.* tit.17-A §7(3); *Mass.Gen.Laws Ann.* ch.277, §62; *Miss.Code Ann.* §99-11-21; *Mo. Ann.Stat.* §541.191(2); *Mont.Code Ann.* §46-2-101(2); *Neb.Rev.Stat. Ann.* §29-1306; *N.H.Rev.Stat. Ann.* §625:4(III); *N.J.Stat. Ann.* §2C:1-3(d); *N.M.Stat. Ann.* §30-1-14; *N.Y.Crim.Pro.Law* §20.20(2)(a); *N.C.Gen.Stat.* §15-131; *N.D.Cent.Code* §29-03-18; *Ohio Rev.Code Ann.* §2901.11(B); *Ore.Rev.Stat.* §131.235; *Pa.Stat. Ann.* tit.18 §102(c); *R.I.Gen.Laws* §12-3-6; *S.C.Code* §§17-21-10 to 17-21-30; *S.D.Cod.Laws* §23A-16-11; *Tex.Penal Code* §1.04(b); *Utah Code Ann.* §76-1-201(3); *Va.Code* §§19.2-246, 19.2-247; *W.Va.Code* §61-2-6.

18 U.S.C. 33, 34 (death resulting from destruction of motor vehicles used in interstate commerce or their facilities)

*Attempt/conspiracy*

- attempt is concluded

18 U.S.C. 36 (death resulting from drive-by shooting)

*Jurisdictional factors*

- in furtherance of drug kingpin violation
- in furtherance of a conspiracy to smuggle or distribute controlled substances, or
- in furtherance of a violation involving substantial drug trafficking

18 U.S.C. 37 (death resulting from violence at international airports)

*Jurisdictional factors*

- occurs within the U.S.

18 U.S.C. 38 (death resulting from fraud involving aircraft or space craft parts)

*Attempt/conspiracy*

- attempt and conspiracy are included

18 U.S.C. 43 (death resulting from animal enterprise terrorism)

*Jurisdictional factors*

- interstate or foreign travel,
- mail or facilities of interstate or foreign commerce used to facilitate, or
- causes in excess of \$10,000

*Attempt/conspiracy*

conspiracy is included for offenses involving damages in excess of \$10,000

18 U.S.C. 115 (killing former federal law enforcement officials, Members of Congress, Cabinet Members and family members of current federal law enforcement officials, Members of Congress, Cabinet Members)

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 229, 229A (death resulting from chemical weapons offenses)

18 U.S.C. 241 (death resulting from conspiracy to violate civil rights)

18 U.S.C. 242 (death resulting from deprivation of civil rights under color of law)

18 U.S.C. 245 (death resulting from interference with federally protected activities)

18 U.S.C. 247 (death resulting from interference with the free exercise of religious beliefs)

*Jurisdictional factor*

- offense in or affecting U.S. interstate or foreign commerce

18 U.S.C. 248 (death resulting from interfering with access to abortion clinics)

18 U.S.C. 351 (committed against Members of Congress, the Supreme Court or the Cabinet)

*attempt/conspiracy*

- includes attempt and conspiracy to murder

18 U.S.C. 794 (death resulting from disclosure of U.S. agent identities in course of delivering defense information to a foreign government)

18 U.S.C. 831 (death resulting from nuclear material offenses)

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 844 (explosive offenses)

*Attempt/conspiracy*

- conspiracy to violate any subsection of section 844 is a separate offense

18 U.S.C. 844(d) (death resulting from unlawful interstate transportation or receipt of explosives)

18 U.S.C. 844(f) (death resulting from destruction of a federal building or any other U.S. real or personal property by fire or explosives)

18 U.S.C. 844(i) (death resulting from destruction of property by fire or explosives)

*Jurisdictional factors*

- property used in or used in an activity affecting interstate or U.S. foreign commerce)

18 U.S.C. 930 (killing while possession of a firearm or destructive device on a federal facility)

*Attempt/conspiracy*

- includes attempts to kill

18 U.S.C. 1091 (killing as an act of genocide)

*Attempt/conspiracy*

- includes attempts to kill

18 U.S.C. 1111 (murder within the special maritime and territorial jurisdiction)

*Attempt/conspiracy*

- attempt, 18 U.S.C. 1113
  - conspiracy, 18 U.S.C. 1117
- 18 U.S.C. 1112 (manslaughter within the special maritime and territorial jurisdiction)  
*Attempt/conspiracy*
- attempt, 18 U.S.C. 1113
- 18 U.S.C. 1114 (federal officers or employees or members of the U.S. armed forces)  
*Attempt/conspiracy*
- includes attempts to kill
  - conspiracy, 18 U.S.C. 1117
- 18 U.S.C. 1116 (foreign dignitaries)  
*Attempt/conspiracy*
- includes attempts to kill
  - conspiracy, 18 U.S.C. 1117
- 18 U.S.C. 1118 (murder by a federal prisoner under life sentence)  
 18 U.S.C. 1120 (killing by an escaped federal prisoner under life sentence)  
 18 U.S.C. 1121(a) (homicide of persons aiding federal investigations)  
 18 U.S.C. 1121(b) (homicide of state correctional officer)  
*Jurisdictional factor*
- while officer is transporting prisoners interstate
  - while guarding a federal prisoner
- 18 U.S.C. 1201 (resulting from kidnapping)  
*Jurisdictional factors*
- victim is transported in interstate or foreign commerce
  - committed within the special maritime or territorial or aircraft jurisdiction of the U.S.
  - victim is a foreign dignitary and the offender is subsequently in the U.S.
  - victim is a federal officer or employee or members of U.S. armed forces
- 18 U.S.C. 1203 (resulting from hostage taking or attempted hostage taking)  
*Jurisdictional factors*
- committed in the U.S.
    - purpose was to compel federal governmental action or abstention
    - the victim or offender is a foreign national
    - the offender is subsequently found outside the U.S.
- 18 U.S.C. 1365 (resulting from tampering with consumer products)  
*Jurisdictional factor*
- product affects interstate or U.S. foreign commerce
- 18 U.S.C. 1503 (killing federal jurors or court officers)  
*Attempt/conspiracy*
- includes attempt
- 18 U.S.C. 1512 (killing a witnesses, victim or informant to obstruct federal proceedings)  
*Attempt/conspiracy*
- includes attempt
- 18 U.S.C. 1513 (retaliatory killing of a witness, victim or informant of a federal proceeding)  
*Attempt/conspiracy*
- includes attempt
- 18 U.S.C. 1581 (peonage if death results)  
 18 U.S.C. 1583 (enticement into slavery if death results)  
 18 U.S.C. 1584 (sale into involuntary servitude if death results)  
 18 U.S.C. 1589 (forced labor if death results)  
 18 U.S.C. 1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor if death results)  
 18 U.S.C. 1652 (murder of an American by an American on the high seas in the name of a foreign state or person)  
 18 U.S.C. 1716 (death resulting from mailing injurious articles)
- 18 U.S.C. 1751 (killing the President, one in the line of Presidential succession, or high White House officials)  
*Attempt/conspiracy*
- includes attempt and conspiracy

18 U.S.C. 1952 (interstate or foreign travel or use of the mails with the intent to commit a crime of violence in furtherance of any “unlawful activity” resulting in death)

18 U.S.C. 1958 (death resulting from murder for hire)

*Jurisdictional factor*

- use interstate or foreign travel facilities
- use of the mails, or
- use of interstate or foreign commerce facilities

*Attempt/conspiracy*

- includes conspiracy

18 U.S.C. 1992 (death resulting from train wrecking)

*Jurisdictional factor*

18 U.S.C. 2113 (death resulting from the commission of or flight from robbery of a federally insured bank, credit union, or savings and loan institution)

- train used in interstate or foreign commerce

18 U.S.C. 2118 (death resulting from robberies or burglaries involving controlled substances)

18 U.S.C. 2119 (death resulting from carjacking)

*Jurisdictional factors*

- car transported, shipped or received in interstate or foreign commerce in the course of the offense

18 U.S.C. 2241, 2245 (death resulting from aggravated sexual abuse committed in a federal prison or in U.S. special maritime or territorial jurisdiction)

18 U.S.C. 2242, 2245 (death resulting from sexual abuse committed in a federal prison or in U.S. special maritime or territorial jurisdiction)

18 U.S.C. 2243, 2245 (death resulting from sexual abuse of a ward or minor in a federal prison or in U.S. special maritime or territorial jurisdiction)

18 U.S.C. 2261A (death resulting from stalking)

*Jurisdictional factors*

- interstate or foreign travel
- occurs within U.S. special maritime or territorial jurisdiction

18 U.S.C. 2280 (death resulting from violence against maritime navigation)

*Jurisdictional factors*

- aboard a ship of American registry
- in U.S. waters but not unlawful under applicable state law
- victim was an American
- committed in an effort to compel federal action or abstention

18 U.S.C. 2281 (death resulting from violence against fixed maritime platforms)

*Jurisdictional factors*

- aboard a platform on the U.S. continental shelf
- victim was an American
- committed in an effort to compel federal action or abstention

18 U.S.C. 2332a (death resulting from use of weapons of mass destruction)

*Jurisdictional factors*

- affects interstate or foreign commerce
- committed against federal property

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 2332b (death result from international terrorism occurring within the U.S.)

*Jurisdictional factors*

- the mails or facilities in interstate or foreign commerce used in furtherance
- obstructs, or if successful would obstruct interstate or foreign commerce
- victim is the U.S. or a federal officer, employee or agent
- federal property is damaged or destroyed
- occurs in U.S. territorial sea
- occurs within the special maritime or territorial jurisdiction of the U.S.

18 U.S.C. 2441 (war crimes)

*Jurisdictional factors*

- offender or victim is an American or member of U.S. armed forces

21 U.S.C. 461(c) (killing federal poultry inspectors)

21 U.S.C. 675 (killing meat inspectors)

21 U.S.C. 848 (murder in furtherance of a continuing criminal enterprise (“drug kingpin”))

- 21 U.S.C. 1041(c) (killing an egg inspector)
- 42 U.S.C. 2000e-13 (killing of EEOC personnel)
- 42 U.S.C. 2283 (killing nuclear inspectors)
- 42 U.S.C. 3631 (death resulting from Fair Housing Act violations)
- 49 U.S.C. 46502 (death resulting from aircraft piracy or attempted aircraft piracy)

*Jurisdictional factor*

- committed within the special aircraft jurisdiction of the U.S.
- offender subsequently found in the U.S.

**Assaults**

- 7 U.S.C. 2146 (animal transportation inspectors)
- 8 U.S.C. 1324 (resulting from smuggling aliens)
- 15 U.S.C. 1825(a)(2)(C) (Horse Protection Act officials)
- 18 U.S.C. 36 (drive-by shootings)

*Jurisdictional factors*

- in furtherance of drug kingpin violations
- in furtherance of a conspiracy to smuggle or distribute controlled substances, or
- in furtherance of a violation involving substantial drug trafficking

- 18 U.S.C. 37 (violence at U.S. international airports)
- 18 U.S.C. 43 (animal enterprise terrorism)

*Jurisdictional factors*

- interstate or foreign travel
- mail or facilities of interstate or foreign commerce used to facilitate

- 18 U.S.C. 111 (assault of federal officers or employees or members of the U.S. armed forces)
- 18 U.S.C. 112 (assault of foreign dignitaries)
- 18 U.S.C. 113 (assaults within the special maritime and territorial jurisdiction of the United States)
- 18 U.S.C. 114 (maiming within the special maritime and territorial jurisdiction of the United States)
- 18 U.S.C. 115 (former or current federal officers or employees, Members of Congress, Cabinet Members and members of their families)

*Attempt/conspiracy*

- includes attempt and conspiracy

- 18 U.S.C. 116 (female genital mutilation)
- 18 U.S.C. 242 (bodily injury resulting from deprivation of civil rights under color of law)
- 18 U.S.C. 245 (bodily injury resulting from interference with federally protected activities)
- 18 U.S.C. 247 (bodily injury resulting from interference with the free exercise of religious beliefs)

*Jurisdictional factors*

- offense in or affecting interstate commerce

- 18 U.S.C. 248 (interfering with access to abortion clinics)
- 18 U.S.C. 351 (assaulting a Member of Congress, the Supreme Court or the Cabinet)
- 18 U.S.C. 831 (nuclear weapons offenses)
- 18 U.S.C. 844(f) (personal injury resulting from destruction of a building or any other real or personal property by fire or explosives)

*Jurisdictional factors*

- federal department or agency
- organization receiving federal financial assistance

- 18 U.S.C. 844(i) (personal injury resulting from destruction of property by fire or explosives)

*Jurisdictional factors*

- property used in or used in an activity affecting interstate or foreign commerce)

- 18 U.S.C. 924 (c) (commission of a federal crime of violence while armed with a firearm or destructive device)

*Attempt/conspiracy*

- transporting a firearm or destructive device with the knowledge it will be used to commit a crime of violence)[no jurisdictional other than a presumption with respect to the transported (?)], 18 U.S.C. 924(h)(
- smuggling or attempted smuggling of a firearm or destructive device into the U.S. with the intent to use it or promote a crime of violence, 18 U.S.C. 924(j)
- conspiracy to violate 18 U.S.C. 924(c), 18 U.S.C. 924(n)

- 18 U.S.C. 1091 (inflicts serious injury as an act of genocide)

*Attempt/conspiracy*

- includes attempts
- 18 U.S.C. 1365 (resulting from tampering with consumer products)
  - Jurisdictional factor*
  - product affects interstate or foreign commerce
- 18 U.S.C. 1501 (assault of a process server)
  - Jurisdictional factor*
  - federal process
- 18 U.S.C. 1502 (obstruct a U.S. extradition agent)
- 18 U.S.C. 1503 (injuring federal jurors or court officers)
- 18 U.S.C. 1509 (obstruction of federal court orders by force)
- 18 U.S.C. 1716 (mailing injurious articles)
- 18 U.S.C. 1751 (assaulting the President, one in the line of Presidential succession, or high White House officials)
- 18 U.S.C. 1752 (physical violence against a person in an area restricted for the protection of an individual protected by the Secret Service)
  - Attempt/conspiracy*
  - includes attempts and conspiracies
  
- 18 U.S.C. 1951 (use of physical violence against an individual)
  - Jurisdictional factor*
  - affects interstate or foreign commerce
  - obstructs, delays or affects movement of article or commodity in interstate or foreign commerce
- 18 U.S.C. 1952 (interstate or foreign travel or use of the mails to commit a crime of violence in furtherance of a violation of federal arson laws)
  
- 18 U.S.C. 1958 (resulting from murder for hire)
  - Jurisdictional factor*
  - use interstate or foreign travel facilities
  - use of the mails
  - use of interstate or foreign commerce facilities
  - Attempt/conspiracy*
  - includes conspiracy
- 18 U.S.C. 1991 (entering a train within the territorial jurisdiction of the U.S. to commit an assault)
- 18 U.S.C. 2119 (serious physical injury resulting from carjacking)
  - Jurisdictional factors*
  - car transported, shipped or received in interstate or foreign commerce in the course of the offense
- 18 U.S.C. 2280 (an injury resulting from violence against maritime navigation)
  - Jurisdictional factors*
  - aboard a ship of American registry
  - in U.S. waters but not unlawful under applicable state law
  - victim was an American
  - committed in an effort to compel federal action or abstinence
- 18 U.S.C. 2281 (injury resulting from violence against fixed maritime platforms)
  - Jurisdictional factors*
  - aboard a platform on the U.S. continental shelf
  - victim was an American
  - committed in an effort to compel federal action or abstinence
- 18 U.S.C. 2332a (use of weapons of mass destruction)
  - Jurisdictional factors*
  - within the U.S.
  - against federal property in or outside the U.S.
  - Attempt/conspiracy*
  - includes attempts and conspiracies
- 18 U.S.C. 2332b (international terrorism occurring in the U.S.)
  - Jurisdictional factors*
  - the mails or facilities in interstate or foreign commerce used in furtherance
  - obstructs, of if successful would obstruct interstate or foreign commerce
  - victim is the U.S. or a federal officer, employee or agent

- federal property is damaged or destroyed
- occurs in U.S. territorial sea
- occurs within the special maritime or territorial jurisdiction of the U.S.(

18 U.S.C. 2441 (war crimes)

*Jurisdictional factors*

- victim or offender is an American
- victim of offender is a member of the U.S. armed forces

21 U.S.C. 461(c) (assaulting federal poultry inspectors)

21 U.S.C. 675 (assaulting meat inspectors)

21 U.S.C. 1041(c) (assaulting an egg inspector)

42 U.S.C. 2000e-13 (assaulting EEOC personnel)

42 U.S.C. 2283 (assaulting nuclear inspectors)

42 U.S.C. 3631 (Fair House Act offenses)

## **Kidnapping**

18 U.S.C. 115 (former or current federal officers or employees, Members of Congress, Cabinet Members or members of their families)

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 241 (kidnapping as part of a conspiracy to violate civil rights)

18 U.S.C. 242 (kidnapping as part of a deprivation of civil rights under color of law)

18 U.S.C. 245 (kidnapping as part of interference with federally protected activities)

18 U.S.C. 247 (kidnapping as part of interference with free exercise of religious beliefs)

*Jurisdictional factor*

- offense is in or affects interstate or foreign commerce

18 U.S.C. 351 (kidnapping a Member of Congress, the Supreme Court or the Cabinet)

*attempt/conspiracy*

- includes attempt and conspiracy to murder

18 U.S.C. 924(c) (commission of a federal crime of violence while armed with a firearm or destructive device)

*Attempt/conspiracy*

- transporting a firearm or destructive device with the knowledge it will be used to commit a crime of violence[no jurisdictional other than a presumption with respect to the transported(?)], 18 U.S.C. 924(h)
- smuggling or attempted smuggling of a firearm or destructive device into the U.S. with the intent to use it or promote a crime of violence, 18 U.S.C. 924(j)
- conspiracy to violate 18 U.S.C. 924(c), 18 U.S.C. 924(n)

18 U.S.C. 1201 (kidnapping)

*Jurisdictional factors*

- victim is transported in interstate or foreign commerce
- committed within the special maritime or territorial or aircraft jurisdiction of the U.S.
- victim is a foreign dignitary and the offender is subsequently in the U.S.
- victim is a federal officer or employee or member of the U.S. armed forces

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 1203 (hostage taking)

*Jurisdictional factors*

- committed in the U.S.
  - purpose was to compel federal governmental action or abstention
  - the victim or offender is a foreign national
  - the offender is subsequently found outside the U.S.

*Attempt/conspiracy*

- includes attempts

18 U.S.C. 1513 (retaliatory physical injury of a witness, victim or informant of a federal proceeding)

*Attempt/conspiracy*

- includes attempt

18 U.S.C. 1751 (kidnapping the President, one in the line of Presidential succession, or high White House officials)

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 2194 (shanghaiing sailors for service within the special maritime jurisdiction of the United States)

18 U.S.C. 2280 (seizes control of a ship by force or violence)

*Jurisdictional factors*

- aboard a ship of American registry
- in U.S. waters but not unlawful under applicable state law
- victim was an American
- committed in an effort to compel federal action or abstention

18 U.S.C. 2281 (seizes control of a fixed maritime platform by force and violence)

*Jurisdictional factors*

- aboard a platform on the U.S. continental shelf
- victim was an American
- committed in an effort to compel federal action or abstention

18 U.S.C. 2332b (international terrorism occurring in the U.S.)

*Jurisdictional factors*

- the mails or facilities in interstate or foreign commerce used in furtherance
- obstructs, or if successful would obstruct interstate or foreign commerce
- victim is the U.S. or a federal officer, employee or agent
- federal property is damaged or destroyed
- occurs in U.S. territorial sea
- occurs within the special maritime or territorial jurisdiction of the U.S.

49 U.S.C. 46502 (death resulting from aircraft piracy or attempted aircraft piracy within the special aircraft jurisdiction of the U.S.)

*Jurisdictional factor*

- committed within the special aircraft jurisdiction of the U.S.
- offender subsequently found in the U.S.

**Bombing & Property Destruction**

18 U.S.C. 32 (destruction of aircraft or aircraft facilities)

*Jurisdictional factors*

- aircraft in the special aircraft jurisdiction of the U.S.

*Attempt/conspiracy*

- attempt and conspiracy are included

18 U.S.C. 33 (destruction of motor vehicles used in interstate commerce or their facilities)

18 U.S.C. 37 (violence at U.S. international airports)

18 U.S.C. 43 (animal enterprise terrorism)

*Jurisdictional factors*

- interstate or foreign travel
- mail or facilities of interstate or foreign commerce used to facilitate, or
- damage in excess of \$10,000

*Attempt/conspiracy*

- conspiracy is included for offenses involving damage in excess of \$10,000

18 U.S.C. 81 (burn a building, vessel, machinery, building materials, or military stores or munitions within the special maritime or territorial jurisdiction of the United States)

18 U.S.C. 242 (use of fire or explosives as part of a deprivation of civil rights under color of law)

18 U.S.C. 245 (use of fire or explosives as part of interference with federally protected activities)

18 U.S.C. 247 (damage to religious property)

*Jurisdictional factor*

- offense is in or affects interstate or foreign commerce

18 U.S.C. 831 (nuclear weapons offenses)

18 U.S.C. 844(f) (destruction of a building or any other real or personal property by fire or explosives)

*Jurisdictional factors*

- federal department or agency
- organization receiving federal financial assistance

*Attempt/conspiracy*

- possession of an explosive in a federal building or airport under FAA regulatory authority, 18 U.S.C. 844(g)
- use or possession of fire or explosives during the commission of a federal felony, 18 U.S.C. 844(h)
- theft of explosives from interstate or foreign commerce, 18 U.S.C. 844(k)
- theft of explosives from a permittee, or licensed dealer, importer, or manufacturer, 18 U.S.C. 844(l)
- conspiracy to commit a federal felony using or while armed with an explosive, 18 U.S.C. 844(m)

18 U.S.C. 844(i) (destruction of property by fire or explosives)

*Jurisdictional factors*

- property used in or used in an activity affecting interstate or foreign commerce)

18 U.S.C. 924 (c) (commission of a federal crime of violence while armed with a firearm or destructive device)

*Attempt/conspiracy*

- transporting a firearm or destructive device with the knowledge it will be used to commit a crime of violence)[no jurisdictional other than a presumption with respect to the transported (?)], 18 U.S.C. 924(h)
- smuggling or attempted smuggling of a firearm or destructive device into the U.S. with the intent to use it or promote a crime of violence, 18 U.S.C. 924(j)
- theft of firearm or destructive device from interstate or foreign commerce, 18 U.S.C. 924(k)
- theft of firearm or destructive device from a permittee, or licensed dealer, importer, or manufacturer, 18 U.S.C. 924(l)
- conspiracy to violate 18 U.S.C. 924(c), 18 U.S.C. 924(n)

18 U.S.C. 1361 (injury to or destruction of federal property)

18 U.S.C. 1362 (injury to or destruction of communications lines, stations or systems operated by the federal government or used by the federal government for military or civil defense purposes)

18 U.S.C. 1363 (injury to or destruction of buildings, vessels, machinery, building materials or supplies, or military stores or munitions within the special maritime or territorial jurisdiction of the U.S.)

18 U.S.C. 1364 (injury to or destruction of articles in U.S. foreign commerce by fire or explosive)

18 U.S.C. 1365 (tampering with consumer products)

*Jurisdictional factor*

- product affects interstate or foreign commerce

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 1366 (injury to or destruction of energy facilities)

18 U.S.C. 1367 (interference with the operation of a satellite)

18 U.S.C. 1651 (piracy)

*Jurisdictional factor*

- offender is found in the U.S.

18 U.S.C. 1656 (piracy of American vessel by ship's officer or crew member)

18 U.S.C. 1752 (physical violence against a property in an area restricted for the protection of an individual protected by the Secret Service)

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 1952 (interstate or foreign travel or use of the mails in furtherance of a violation of federal arson laws)

18 U.S.C. 1992 (resulting from train wrecks)

*Jurisdictional factor*

- train used in interstate or foreign commerce

18 U.S.C. 2071 (destruction of U.S. records)

18 U.S.C. 2152 (injury to or destruction of U.S. harbor defenses or defensive sea areas)defensive sea areas)

18 U.S.C. 2153 (injury to or destruction of U.S. or allied war material, premises or utilities in time of war or national emergency)

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 2155 (injury to or destruction of U.S. national defense material, premises or utilities)

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 2275 (injury to or destruction of vessels of U.S. registry or vessels within U.S. waters)

*Attempt/conspiracy*

- includes attempts

18 U.S.C. 2277 (unlawful possession of explosives aboard a vessel of American registry)

18 U.S.C. 2280 (injures or damages a ship)

*Jurisdictional factors*

- aboard a ship of American registry
- in U.S. waters but not unlawful under applicable state law
- committed in an effort to compel federal action or abstention

18 U.S.C. 2281 (injures or destroys a fixed maritime platform)

*Jurisdictional factors*

- aboard a platform on the U.S. continental shelf
- victim was an American
- committed in an effort to compel federal action or abstention

18 U.S.C. 2332a (use of weapons of mass destruction)

*Jurisdictional factors*

- within the U.S.
- against federal property in or outside the U.S.

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 2332b (international terrorism occurring within the U.S.)

*Jurisdictional factors*

- the mails or facilities in interstate or foreign commerce used in furtherance
- obstructs, of if successful would obstruct interstate or foreign commerce
- victim is the U.S. or a federal officer, employee or agent
- federal property is damaged or destroyed
- occurs in U.S. territorial sea
- occurs within the special maritime or territorial jurisdiction of the U.S.

## **Threats**

7 U.S.C. 2146 (intimidate federal animal transportation inspectors)

15 U.S.C. 1825(a)(2)(C) (intimidate Horse Protection Act officials)

18 U.S.C. 35 (bomb scare concerning aircraft, commercial motor vehicles, railroad, shipping or their facilities)

18 U.S.C. 112 (threatening foreign dignitaries)

18 U.S.C. 115 (threatening to murder, kidnap or assault current or former federal officers or employees, Members of Congress, Cabinet Members or members of their families)

18 U.S.C. 175 (threatened use of biological weapons)

18 U.S.C. 229 (threatened use of chemical weapons)

18 U.S.C. 242 (threatened use of dangerous weapons, fire or explosives as part of a deprivation of civil rights under color of law)

18 U.S.C. 245 (threatened use of dangerous weapons, fire or explosives as part of interference with federally protected activities)

18 U.S.C. 247 (interference with the free exercise of religious beliefs)

*Jurisdictional factor*

- offense is in or affects interstate or foreign commerce

18 U.S.C. 248 (interference with access to abortion clinics)

18 U.S.C. 372 (conspiracy to threaten a federal officer)

18 U.S.C. 831 (threatening use of nuclear weapons)

18 U.S.C. 844(e) (using the mail, telephone, telegraph or instrument of commerce to communicate a threat to inflict personal injury or property damage by fire or explosive)

18 U.S.C. 871 (threat to kidnap, kill, or injure the President or someone in the line of Presidential succession)

18 U.S.C. 875 (threat to kidnap or injure transmitted in interstate or foreign commerce)

18 U.S.C. 876 (mailing a threat to kidnap or injure)

18 U.S.C. 877 (mailing a threat to kidnap or injure from a foreign country to the U.S.)

18 U.S.C. 878 (threatening to kill, kidnap or assault a foreign dignitary)

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18 U.S.C. 879 (threatening to kill, kidnap or assault a former President, a Vice President or members of their families)

18 U.S.C. 1203 (threaten to kill or injure a hostage)

*Jurisdictional factors*

- committed in the U.S.
  - purpose was to compel federal governmental action or abstention
  - the victim or offender is a foreign national
  - the offender is subsequently found outside the U.S.

18 U.S.C. 1365 (threats or scares involving tampering with consumer products)

*Jurisdictional factor*

- product affects interstate or foreign commerce

18 U.S.C. 1503 (threatening federal jurors or court officers)

18 U.S.C. 1505 (threats in obstruction of federal administrative or congressional proceedings)

18 U.S.C. 1509 (obstruction of federal court orders by threat)

18 U.S.C. 1512 (threatening a witnesses, victim or informant to obstruct or in an attempt to obstruct federal proceedings)

18 U.S.C. 2280 (threat or scare involving a ship)

*Jurisdictional factors*

- aboard a ship of American registry
- in U.S. waters but not unlawful under applicable state law
- an American is threatened
- committed in an effort to compel federal action or abstention

18 U.S.C. 2281 (threatens injury or destruction aboard a fixed maritime platform)

*Jurisdictional factors*

- aboard a platform on the U.S. continental shelf
- victim was an American
- committed in an effort to compel federal action or abstention

18 U.S.C. 2332a (threatening use of weapons of mass destruction)

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 2332b (international terrorism occurring within the U.S.)

*Jurisdictional factors*

- the mails or facilities in interstate or foreign commerce used in furtherance
- obstructs, or if successful would obstruct interstate or foreign commerce
- victim is the U.S. or a federal officer, employee or agent
- federal property is damaged or destroyed
- occurs in U.S. territorial sea
- occurs within the special maritime or territorial jurisdiction of the U.S.

21 U.S.C. 461(c) (intimidating federal poultry inspectors)

21 U.S.C. 675 (intimidating meat inspectors)

21 U.S.C. 1041(c) (intimidating an egg inspector)

49 U.S.C. 46507 (threats or scares concerning air piracy or bombing aircraft in the special aircraft jurisdiction of the U.S.)

### **Piggyback Statutes**

18 U.S.C. 2 (principals)

18 U.S.C. 3 (accessories after the fact)

18 U.S.C. 4 (misprision)

18 U.S.C. 371 (conspiracy)

18 U.S.C. 1959 (violence in aid of racketeering)

18 U.S.C. 1961-1965 (RICO)

18 U.S.C. 2383 (citing rebellion or insurrection against the U.S.)

18 U.S.C. 2384 (seditious conspiracy)

18 U.S.C. 2385 (advocating the overthrow of the government)

## Federal Anti-Terrorist Criminal Laws With Apparent Extraterritorial Application

### **Homicide**

7 U.S.C. 2146 (killing federal animal transportation inspectors)

8 U.S.C. 1324 (death resulting from smuggling aliens into the U.S.)

15 U.S.C. 1825 (killing those enforcing the Horse Protection Act)

18 U.S.C. 32, 34 (death resulting from destruction of aircraft or aircraft facilities)

*Jurisdictional factors*

- aircraft in the special aircraft jurisdiction of the U.S.,
- victim or offender is an American, or
- offender is later found in the U.S.

*Attempt/Conspiracy*

- attempt and conspiracy are included

18 U.S.C. 33 (destruction of motor vehicles used in U.S. foreign commerce or their facilities)

*Attempt/Conspiracy*

- attempt to violate 18 U.S.C. 33

18 U.S.C. 37 (death resulting from violence at international airports)

*Jurisdictional factors*

- offender is later found in the U.S., or
- victim or offender is an American

18 U.S.C. 38 (death resulting from fraud from fraud in aircraft or space vehicle parts in U.S. interstate or foreign commerce)\*

*Jurisdictional factors*

- offender is an American,
- operator of the craft is an American, or
- an act in furtherance of the offense occurs in the U.S.

*Attempt/conspiracy*

attempt and conspiracy are included

18 U.S.C. 43 (death resulting from animal enterprise terrorism)\*

*Jurisdictional factors*

- travel in U.S. foreign commerce, or
- use of mails or U.S. foreign commerce facility

*Attempt/conspiracy*

conspiracy is included for offenses involving damages in excess of \$10,000

18 U.S.C. 115 (killing current or former federal officers or employees, Members of Congress, Cabinet Members or members of their families)

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 229, 229A (death resulting from chemical weapons offenses)

*Jurisdictional factors*

- victim or offender is an American, or
- offense is committed against U.S. property

18 U.S.C. 245 (death resulting from interference with federally protected civil rights)

18 U.S.C. 247 (death resulting from interference with the free exercise of religious beliefs)

*Jurisdictional factor*

- offense is in or affects U.S. foreign commerce

18 U.S.C. 351 (killing Members of Congress, the Supreme Court or the Cabinet)

*Attempt/conspiracy*

- includes attempt and conspiracy to murder

18 U.S.C. 794 (death resulting from the disclosure of U.S. agent identities in course of delivering defense information to a foreign government)

18 U.S.C. 831 (death resulting from nuclear material offenses)\*

*Jurisdictional factors*

- offense occurs in the special maritime or aircraft jurisdiction of the U.S.
- victim or offender is an American
- offender is subsequently found in the U.S.
- occurs with respect to U.S. international shipments
- involves efforts to threaten or coerce the U.S.

*Attempt/conspiracy*

- includes attempt and conspiracy
- 18 U.S.C. 844 (explosives offenses)
  - 18 U.S.C. 844(d) (death resulting from unlawful transportation or receipt of explosives in U.S. foreign commerce)
    - Attempt/conspiracy*
      - conspiracy to violate any subsection of section 844 is punishable as a separate offense (18 U.S.C. 844(n))
  - 18 U.S.C. 844(f) (death resulting from destruction of a federal building or any other real or personal property of U.S. by fire or explosives)
  - 18 U.S.C. 844(i) (death resulting from destruction of property by fire or explosives)
    - Jurisdictional factors*
      - property used in or used in an activity affecting interstate or U.S. foreign commerce)
- 18 U.S.C. 930 (killing while possession of a firearm or destructive device on a federal facility)
  - Attempt/conspiracy*
    - includes attempts to kill
- 18 U.S.C. 956 (conspiracy to commit murder overseas)
  - Jurisdictional factor*
    - conspiracy within the U.S.
- 18 U.S.C. 1091 (killing as an act of genocide by an American)
  - Attempt/conspiracy*
    - includes attempts to kill
- 18 U.S.C. 1111 (murder within the special maritime and territorial jurisdiction)\* \* Provisions that apply overseas by operation of 18 U.S.C. 3261 when committed by members of the U.S. armed forces or those accompanying them abroad.
  - Attempt/conspiracy*
    - attempt, 18 U.S.C. 1113
    - conspiracy, 18 U.S.C. 1117
- 18 U.S.C. 1112 (manslaughter within U.S. special maritime and territorial jurisdiction)\*
  - Attempt/conspiracy*
    - attempt, 18 U.S.C. 1113
- 18 U.S.C. 1114 (federal officers or employees or members of the U.S. armed forces)
  - Attempt/conspiracy*
    - includes attempts to kill
    - conspiracy, 18 U.S.C. 1117
- 18 U.S.C. 1116 (foreign dignitaries)
  - Jurisdictional factor*
    - offender is subsequently present in the U.S., or
    - victim or offender is an American
  - Attempt/conspiracy*
    - includes attempts to kill
    - conspiracy, 18 U.S.C. 1117
- 18 U.S.C. 1118 (murder by a federal prisoner under life sentence)
- 18 U.S.C. 1119 (killing of an American by an American in another country)
  - Attempt/conspiracy*
    - includes attempts to kill
    - conspiracy, 18 U.S.C. 1117
- 18 U.S.C. 1120 (killing by an escaped federal prisoner under life sentence)
- 18 U.S.C. 1121(a) (killing persons aiding federal investigations)
- 18 U.S.C. 1121(b) (killing a state correctional officer while guarding a federal prisoner)
- 18 U.S.C. 1201 (death resulting from kidnapping)\*
  - Jurisdictional factors*
    - victim is transported in U.S. foreign commerce
    - committed within the special maritime or aircraft jurisdiction of the U.S.
    - victim is a foreign dignitary and (a) the offender is subsequently in the U.S. or (b) the victim or offender is an American, or
    - victim is a federal officer or employee or member of U.S. armed services
  - Attempt/conspiracy*
    - includes penalties for conspiracy and attempt, 18 U.S.C. 1201(c),(d)
- 18 U.S.C. 1203 (death resulting from hostage taking or attempted hostage taking)
  - Jurisdictional factors*

- committed outside the U.S.
  - purpose was to compel federal governmental action or abstention
  - the victim or offender is an American, or
  - the offender is subsequently found in the U.S.

18 U.S.C. 1365 (death resulting from tampering with consumer products)

*Jurisdictional factor*

- product affects interstate or U.S. foreign commerce

18 U.S.C. 1503 (killing federal jurors or court officers)

*Attempt/conspiracy*

- includes attempt

18 U.S.C. 1512 (killing a witnesses, victim or informant to obstruct federal proceedings)

*Attempt/conspiracy*

- includes attempt

18 U.S.C. 1513 (retaliatory killing of a witness, victim or informant of a federal proceeding)

*Attempt/conspiracy*

- includes attempt

18 U.S.C. 1652 (murder of an American by an American on the high seas in the name of a foreign state or person)

18 U.S.C. 1751 (killing the President, one in the line of Presidential succession, or high White House officials)

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 1952 (U.S.-foreign travel or use of the mails or of a facility of U.S. foreign commerce in furtherance of a violation of federal arson laws)

18 U.S.C. 1958 (commission of murder for hire in violation of U.S. law where death results)

*Jurisdictional factor*

- use U.S. foreign travel facilities, or
- use of mails or U.S. foreign commerce facilities

*Attempt/conspiracy*

- includes conspiracy

18 U.S.C. 1992 (death resulting from train wrecking)

*Jurisdictional factor*

- train used in U.S. foreign commerce

18 U.S.C. 2113 (killing committed during the course of or escape from robbery of a federally insured bank, credit union, or savings and loan institution)

18 U.S.C. 2118 (killing resulting from a robbery or burglary involving controlled substances)

*Jurisdictional factors*

- offense involved
  - travel in U.S. foreign commerce, or
  - use of a facility in U.S. foreign commerce

*Attempt/Conspiracy*

attempt and conspiracy prohibitions are included

18 U.S.C. 2119 (death resulting from carjacking)

*Jurisdictional factors*

- car transported, shipped or received in U.S. foreign commerce in the course of the offense

18 U.S.C. 2261A (death resulting from interstate stalking violation involving use of the mails or a facility in U.S. foreign commerce)\*

*Jurisdictional factors*

- travel in U.S. maritime jurisdiction
- travel in U.S. foreign commerce

18 U.S.C. 2280 (a killing resulting from violence against maritime navigation)

*Jurisdictional factors*

- aboard a ship of American registry
- committed by an American national aboard a ship of foreign registry or outside the U.S.
- victim was an American
- committed in the territorial waters of another country and the offender is subsequently found in the U.S., or
- committed in an effort to compel federal action or abstention

18 U.S.C. 2281 (resulting from violence against fixed maritime platforms)

*Jurisdictional factors*

- aboard a platform on the U.S. continental shelf
- committed by an American national aboard a platform on the continental shelf of another nation
- victim was an American
- committed aboard a platform on the continental shelf of another nation and the offender is subsequently found in the U.S., or
- committed in an effort to compel federal action or abstention

18 U.S.C. 2332 (killing an American overseas)

*Jurisdictional factors*

- prosecution only on DoJ certification “to coerce, intimidate, or retaliate against a government or civilian population”

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 2332a (resulting from use of weapons of mass destruction)

*Jurisdictional factors*

- victim or offender is American, or
- against federal property

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 2340A (resulting from torture committed outside the U.S.(physical or mental pain inflicted under color of law upon a prisoner))

*Jurisdictional factors*

- American offender, or
- offender subsequently found within the U.S.

*Attempt/conspiracy*

- includes attempts

18 U.S.C. 2441 (war crimes)

*Jurisdictional factors*

- victim or offender is an American, or
- victim or offender is a member of U.S. armed forces

21 U.S.C. 461(c) (killing federal poultry inspectors)

21 U.S.C. 675 (killing meat inspectors)

21 U.S.C. 848 (murder in furtherance of a continuing criminal enterprise (“drug kingpin”))

21 U.S.C. 1041(c) (killing an egg inspector)

42 U.S.C. 2000e-13 (killing EEOC personnel)

42 U.S.C. 2283 (killing nuclear inspectors)

49 U.S.C. 46502 (death resulting from aircraft piracy or attempted aircraft piracy)

*Jurisdictional factor*

- committed within the special aircraft jurisdiction of the U.S.
- offender subsequently found in the U.S.

### **Piggyback Statutes**

18 U.S.C. 2 (principals)

18 U.S.C. 3 (accessories after the fact)

18 U.S.C. 4 (misprision)

18 U.S.C. 371 (conspiracy)

18 U.S.C. 372 (conspiracy to impede or injure federal officers or employees)

18 U.S.C. 373 (solicitation to commit a federal crime of violence)

18 U.S.C. 844(h) (possession or use of explosives during the commission of a federal felony)

18 U.S.C. 924(c) (possession or use of a firearm (including destructive devices) during the commission of a federal violent felony)

18 U.S.C. 1956-1957 (money laundering)

18 U.S.C. 1959 (violence in aid of racketeering)

18 U.S.C. 1961-1965 (RICO)

18 U.S.C. 2339A (providing material support for terrorism)

18 U.S.C. 2383 (inciting rebellion or insurrection against the U.S.)

18 U.S.C. 2384 (seditious conspiracy)

18 U.S.C. 2385 (advocating the overthrow of the government)

**Assaults**

18 U.S.C. 37 (violence at international airports)

*Jurisdictional factors*

- offender is later found in the U.S., or
- offender or victim is an American

18 U.S.C. 43 (animal enterprise terrorism)

*Jurisdictional factors*

- travel in U.S. foreign commerce, or
- use of the mails or U.S. foreign commerce facility

*Attempt/conspiracy*

- conspiracy is included for offenses involving damages in excess of \$10,000

18 U.S.C. 111 (assault on federal officers or employees and members of the U.S. armed forces)

18 U.S.C. 112 (assault of foreign dignitaries)

*Jurisdictional factors*

- offender is later found in the U.S., or
- offender or victim is an American
- offense occurs within U.S. special maritime jurisdiction

18 U.S.C. 113 (assaults within U.S. special maritime and territorial jurisdiction)\*

18 U.S.C. 114 (maiming within U.S. special maritime and territorial jurisdiction)\*

18 U.S.C. 115 (former or current federal officers or employees, Members of Congress, Cabinet Members or members of their families)

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 245 (bodily injury resulting from interference with federally protected activities)

18 U.S.C. 257 (bodily injury resulting from interference with free exercise of religious beliefs)

*Jurisdictional factor*

- offense is in or affects U.S. foreign commerce

18 U.S.C. 351 (assaulting a Member of Congress, the Supreme Court or the Cabinet)

18 U.S.C. 844(f) (personal injury resulting from destruction of a building or any other real or personal property by fire or explosives)

*Jurisdictional factors*

- federal department or agency
- organization receiving federal financial assistance

18 U.S.C. 844(i) (personal injury resulting from destruction of property by fire or explosives)

*Jurisdictional factors*

- property used in or used in an activity affecting interstate or foreign commerce)

18 U.S.C. 924 (c) (commission of a federal crime of violence while armed with a firearm or destructive device)

*Attempt/conspiracy*

- transporting a firearm or destructive device with the knowledge it will be used to commit a crime of violence)[no jurisdictional other than a presumption with respect to the transported (?)], 18 U.S.C. 924(h)
- smuggling or attempted smuggling of a firearm or destructive device into the U.S. with the intent to use it or promote a crime of violence, 18 U.S.C. 924(j)
- conspiracy to violate 18 U.S.C. 924(c), 18 U.S.C. 924(n)

18 U.S.C. 956 (conspiracy to commit maim overseas)

*Jurisdictional factor*

- conspiracy within the U.S.

18 U.S.C. 1091 (inflicts serious injury as an act of genocide)

*Attempt/conspiracy*

- includes attempts

18 U.S.C. 1365 (resulting from tampering with consumer products)

*Jurisdictional factor*

- product affects interstate or U.S. foreign commerce

18 U.S.C. 1501 (assault of a process server)

*Jurisdictional factor*

- federal process

18 U.S.C. 1502 (obstruct a U.S. extradition agent)

18 U.S.C. 1751 (assaulting the President, one in the line of Presidential succession, or high White House officials)

18 U.S.C. 1752 (physical violence against a person in an area restricted for the protection of an individual protected by the Secret Service)

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 1951 (use of physical violence against an individual)

*Jurisdictional factor*

- affects interstate or foreign commerce
- obstructs, delays or affects movement of article or commodity in interstate or foreign commerce

18 U.S.C. 1952 (interstate or foreign travel or use of the mails to commit a crime of violence in furtherance of a violation of federal arson laws)

18 U.S.C. 1958 (resulting from murder for hire)

*Jurisdictional factor*

- use interstate or foreign travel facilities
- use of interstate or foreign commerce facilities

*Attempt/conspiracy*

- includes conspiracy

18 U.S.C. 1991 (entering a train within the territorial jurisdiction of the U.S. to commit an assault)

18 U.S.C. 2119 (serious physical injury resulting from carjacking)

*Jurisdictional factors*

- car transported, shipped or received in interstate or foreign commerce in the course of the offense

18 U.S.C. 2280 (an injury resulting from violence against maritime navigation)

*Jurisdictional factors*

- aboard a ship of American registry
- in U.S. waters but not unlawful under applicable state law
- committed by an American national aboard a ship of foreign registry or outside the U.S.
- victim was an American
- committed in the territorial waters of another country and the offender is subsequently found in the U.S.
- committed in an effort to compel federal action or abstention

18 U.S.C. 2281 (injury resulting from violence against fixed maritime platforms)

*Jurisdictional factors*

- aboard a platform on the U.S. continental shelf
- committed by an American national aboard a platform on the continental shelf of another nation
- victim was an American
- committed aboard a platform on the continental shelf of another nation and the offender is subsequently found in the U.S.
- committed in an effort to compel federal action or abstention

18 U.S.C. 2332 (injuring or intending to injure an American overseas)

*Jurisdictional factors*

- prosecution only on DoJ certification “to coerce, intimidate, or retaliate against a government or civilian population”

18 U.S.C. 2332a (use of weapons of mass destruction)

*Jurisdictional factors*

- American victim overseas
- against federal property outside the U.S.

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 2340A (torture committed outside the U.S.(physical or mental pain inflicted under color of law upon a prisoner))

*Jurisdictional factors*

- American offender
- offender subsequently found within the U.S.
- against federal property in or outside the U.S.

*Attempt/conspiracy*

- includes attempts

18 U.S.C. 2441 (war crimes)

*Jurisdictional factors*

- victim or offender is an American
- victim or offender is a member of U.S. armed forces

## **Kidnapping**

18 U.S.C. 115 (former or current federal officers or employees, Members of Congress, Cabinet Members or members of their families)

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 245 (kidnapping in connection with the interference with federally protected civil rights)

18 U.S.C. 247 (kidnapping in connection with the interference of free exercise of religious beliefs)

*Jurisdictional factor*

- offense is in or affects U.S. foreign commerce

18 U.S.C. 351 (kidnapping a Member of Congress, the Supreme Court or the Cabinet)

*attempt/conspiracy*

- includes attempt and conspiracy to murder

18 U.S.C. 924(c) (commission of a federal crime of violence while armed with a firearm or destructive device)

*Attempt/conspiracy*

- transporting a firearm or destructive device with the knowledge it will be used to commit a crime of violence [no jurisdictional factor other than a presumption with respect to the transported(?)], 18 U.S.C. 924(h)
- smuggling or attempted smuggling of a firearm or destructive device into the U.S. with the intent to use it or promote a crime of violence, 18 U.S.C. 924(j)
- conspiracy to violate 18 U.S.C. 924(c), 18 U.S.C. 924(n)

18 U.S.C. 956 (conspiracy to commit kidnapping overseas)

*Jurisdictional factor*

- conspiracy within the U.S.

18 U.S.C. 1201 (resulting from kidnapping)\*

*Jurisdictional factors*

- victim is transported in interstate or foreign commerce
- committed within the special maritime or territorial or aircraft jurisdiction of the U.S.
- victim is a foreign dignitary and the offender is subsequently in the U.S.
- victim is a federal officer or employee or member of the U.S. armed forces

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 1203 (hostage taking)

*Jurisdictional factors*

- committed outside the U.S.
  - purpose was to compel federal governmental action or abstention
  - the victim or offender is an American
  - the offender is subsequently found in the U.S.

*Attempt/conspiracy*

- includes attempts

18 U.S.C. 1513 (retaliatory physical injury of a witness, victim or informant of a federal proceeding)

*Attempt/conspiracy*

- includes attempt

18 U.S.C. 1751 (kidnapping the President, one in the line of Presidential succession, or high White House officials)

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 2194 (shanghaiing sailors for service within the special maritime jurisdiction of the United States)\*

18 U.S.C. 2280 (seizes control of a ship by force or violence)

*Jurisdictional factors*

- aboard a ship of American registry
- in U.S. waters but not unlawful under applicable state law
- committed by an American national aboard a ship of foreign registry or outside the U.S.
- victim was an American
- committed in the territorial waters of another country and the offender is subsequently found in the U.S.
- committed in an effort to compel federal action or abstention

18 U.S.C. 2281 (seizes control of a fixed maritime platform by force and violence)

*Jurisdictional factors*

- aboard a platform on the U.S. continental shelf
- committed by an American national aboard a platform on the continental shelf of another nation
- victim was an American
- committed aboard a platform on the continental shelf of another nation and the offender is subsequently found in the U.S.
- committed in an effort to compel federal action or abstention

49 U.S.C. 46502 (death resulting from aircraft piracy or attempted aircraft piracy within the special aircraft jurisdiction of the U.S.)

*Jurisdictional factor*

- committed within the special aircraft jurisdiction of the U.S.
- offender subsequently found in the U.S.

**Bombing & Property Destruction**

18 U.S.C. 32 (destruction of aircraft or aircraft facilities)

*Jurisdictional factors*

- aircraft in the special aircraft jurisdiction of the U.S.
- offender is an American, or
- offender is later found in the U.S.

*Attempt/conspiracy*

- attempt and conspiracy are included

18 U.S.C. 33 (destruction of motor vehicles used in U.S. foreign commerce or their facilities)

*Attempt/conspiracy*

- attempt is included

18 U.S.C. 37 (violence at international airports)

*Jurisdictional factors*

- offender is later found in the U.S., or
- offender or victim is an American

18 U.S.C. 43 (animal enterprise terrorism)

*Jurisdictional factors*

- travel in U.S. foreign commerce, or
- use of the mails or U.S. foreign commerce facility

*Attempt/conspiracy*

- conspiracy is included for offenses involving damages in excess of \$10,000

18 U.S.C. 81 (burn a building, vessel, machinery, building materials, or military stores or munitions within the special maritime or territorial jurisdiction of the United States)\*

18 U.S.C. 247 (damage to religious property)

*Jurisdictional factor*

- offense is in or affects U.S. foreign commerce

18 U.S.C. 844(f) (destruction of a building or any other real or personal property by fire or explosives)

*Jurisdictional factors*

- federal department or agency
- organization receiving federal financial assistance

*Attempt/conspiracy*

- possession of an explosive in a federal building or airport under FAA regulatory authority, 18 U.S.C. 844(g)
- use or possession of fire or explosives during the commission of a federal felony, 18 U.S.C. 844(h)
- theft of explosives from interstate or foreign commerce, 18 U.S.C. 844(k)
- theft of explosives from a permittee, or licensed dealer, importer, or manufacturer, 18 U.S.C. 844(l)

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• conspiracy to commit a federal felony using or while armed with an explosive, 18 U.S.C. 844(m)  
18 U.S.C. 844(i) (destruction of property by fire or explosives)

*Jurisdictional factors*

- property used in or used in an activity affecting interstate or foreign commerce)

18 U.S.C. 924 (c) (commission of a federal crime of violence while armed with a firearm or destructive device)

*Attempt/conspiracy*

- transporting a firearm or destructive device with the knowledge it will be used to commit a crime of violence [no jurisdictional other than a presumption with respect to the transported (?)], 18 U.S.C. 924(h)
- smuggling or attempted smuggling of a firearm or destructive device into the U.S. with the intent to use it or promote a crime of violence, 18 U.S.C. 924(j)
- theft of firearm or destructive device from interstate or foreign commerce, 18 U.S.C. 924(k)
- theft of firearm or destructive device from a permittee, or licensed dealer, importer, or manufacturer, 18 U.S.C. 924(l)
- conspiracy to violate 18 U.S.C. 924(c), 18 U.S.C. 924(n)

18 U.S.C. 956 (conspiracy to commit to destroy property overseas)

*Jurisdictional factor*

- conspiracy within the U.S.

18 U.S.C. 1361 (injury to or destruction of federal property)

18 U.S.C. 1362 (injury to or destruction of communications lines, stations or systems operated by the federal government or used by the federal government for military or civil defense purposes)

18 U.S.C. 1363 (injury to or destruction of buildings, vessels, machinery, building materials or supplies, or military stores or munitions within the special maritime or territorial jurisdiction of the U.S.)\*

18 U.S.C. 1364 (injury to or destruction of articles in U.S. foreign commerce by fire or explosive)

18 U.S.C. 1365 (tampering with consumer products)

*Jurisdictional factor*

- product affects interstate or foreign commerce

*Attempt/conspiracy*

- includes attempt and conspiracy

18 U.S.C. 1651 (piracy)

*Jurisdictional factor*

- offender is found in the U.S.

18 U.S.C. 1656 (piracy of American vessel by ship's officer or crew member)

18 U.S.C. 1752 (physical violence against a property in an area restricted for the protection of an individual protected by the Secret Service)

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 1952 (interstate or foreign travel or use of the mails in furtherance of a violation of federal arson laws)

18 U.S.C. 1992 (resulting from train wrecking)

*Jurisdictional factor*

- train used in interstate or foreign commerce

18 U.S.C. 2071 (destruction of U.S. records)

18 U.S.C. 2152 (injury to or destruction of U.S. harbor defenses or defensive sea areas) defensive sea areas)

18 U.S.C. 2153 (injury to or destruction of U.S. or allied war material, premises or utilities in time of war or national emergency)

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 2155 (injury to or destruction of U.S. national defense material, premises or utilities)

*Attempt/conspiracy*

- includes attempts and conspiracies

18 U.S.C. 2275 (injury to or destruction of vessels of U.S. registry or vessels within U.S. waters)

*Attempt/conspiracy*

- includes attempts

18 U.S.C. 2277 (unlawful possession of explosives aboard a vessel of American registry)

18 U.S.C. 2280 (injures or damages a ship)

*Jurisdictional factors*

- aboard a ship of American registry
- in U.S. waters but not unlawful under applicable state law
- committed by an American national aboard a ship of foreign registry or outside the U.S.
- committed in the territorial waters of another country and the offender is subsequently found in the U.S.
- committed in an effort to compel federal action or abstention

18 U.S.C. 2281 (injures or destroys a fixed maritime platform)

*Jurisdictional factors*

- aboard a platform on the U.S. continental shelf
- committed by an American national aboard a platform on the continental shelf of another nation
- victim was an American
- committed aboard a platform on the continental shelf of another nation and the offender is subsequently found in the U.S.
- committed in an effort to compel federal action or abstention

18 U.S.C. 2332a (use of weapons of mass destruction)

*Jurisdictional factors*

- American victim overseas
- against federal property in or outside the U.S.

*Attempt/conspiracy*

- includes attempts and conspiracies

**Threats**

18 U.S.C. 112 (“offers violence” to foreign dignitaries)

*Jurisdictional factors*

- offender is later found in the U.S., or
- offender or victim is an American

18 U.S.C. 115 (threaten to murder, kidnap or assault current federal law enforcement officials, Members of Congress, Cabinet Members and family members of current or former federal law enforcement officials, Members of Congress, Cabinet Members)

18 U.S.C. 175 (threats involving biological weapons)

*Jurisdictional factors*

- offender or victim is an American

18 U.S.C. 229 (threats involving chemical weapons)

*Jurisdictional factors*

- offender or victim is an American, or
- U.S. property is threatened

18 U.S.C. 245 (threatened use of dangerous weapons, fire or explosives as part of interference with federally protected civil rights activities)

18 U.S.C. 247 (threats interference with the free exercise of religious beliefs)

*Jurisdictional factor*

- offense is in or affects U.S. foreign commerce

18 U.S.C. 372 (conspiracy to threaten a federal officer)

18 U.S.C. 844(e) (using the mail, telephone, telegraph or instrument of commerce to communicate a threat to inflict personal injury or property damage by fire or explosive)

18 U.S.C. 871 (threat to kidnap, kill, or injure the President or someone in the line of Presidential succession)

18 U.S.C. 875 (threat to kidnap or injure transmitted in interstate or foreign commerce)

18 U.S.C. 876 (mailing a threat to kidnap or injure)

18 U.S.C. 877 (mailing a threat to kidnap or injure from a foreign country to the U.S.)

18 U.S.C. 878 (threatening to kill, kidnap or assault a foreign dignitary)

18 U.S.C. 879 (threatening to kill, kidnap or assault a former President, a Vice President or members of their families)

18 U.S.C. 1203 (threaten to kill or injure a hostage)

*Jurisdictional factors*

- committed outside the U.S.
  - purpose was to compel federal governmental action or abstention
  - the victim or offender is an American

- the offender is subsequently found in the U.S.

18 U.S.C. 1365(threats or scares involving tampering with consumer products)

*Jurisdictional factor*

- product affects interstate or foreign commerce

18 U.S.C. 2280 (threat or scare involving a ship)

*Jurisdictional factors*

- aboard a ship of American registry
- in U.S. waters but not unlawful under applicable state law
- committed by an American national aboard a ship of foreign registry or outside the U.S.
- an American is threatened
- committed in the territorial waters of another country and the offender is subsequently found in the U.S.
- committed in an effort to compel federal action or abstention

18 U.S.C. 2281 (threatens injury or destruction aboard a fixed maritime platform)

*Jurisdictional factors*

- aboard a platform on the U.S. continental shelf
- committed by an American national aboard a platform on the continental shelf of another nation
- victim was an American
- committed aboard a platform on the continental shelf of another nation and the offender is subsequently found in the U.S.
- committed in an effort to compel federal action or abstention

49 U.S.C. 46507 (threats or scares concerning air piracy or bombing aircraft in the special aircraft jurisdiction of the U.S.)

### **Piggyback Statutes**

18 U.S.C. 2 (principals)

18 U.S.C. 3 (accessories after the fact)

18 U.S.C. 4 (misprision)

18 U.S.C. 371 (conspiracy)

18 U.S.C. 372 (conspiracy to impede or injure federal officers or employees)

18 U.S.C. 373 (solicitation to commit a federal crime of violence)

18 U.S.C. 844(h) (possession or use of explosives during the commission of a federal felony)

18 U.S.C. 924(c) (possession or use of a firearm (including destructive devices) during the commission of a federal violent felony)

18 U.S.C. 1956-1957 (money laundering)

18 U.S.C. 1959 (violence in aid of racketeering)

18 U.S.C. 1961-1965 (RICO)

18 U.S.C. 2339A (providing material support for terrorism)

18 U.S.C. 2383 (inciting rebellion or insurrection against the U.S.)

18 U.S.C. 2384 (seditious conspiracy)

18 U.S.C. 2385 (advocating the overthrow of the government)

## **II**

### **Model Penal Code**

§1.03 Territorial Applicability

(1) Except as otherwise provided in this Section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

(a) either the conduct that is an element of the offense or the result that is such an element occurs within this State; or

(b) conduct occurring outside the State is sufficient under the law of this State to constitute an attempt to commit an offense within the State; or

(c) conduct occurring outside the State is sufficient under the law of this State to constitute a conspiracy to commit an offense within the state and an overt act in furtherance of such conspiracy occurs within the state; or

(d) conduct occurring within the State establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction that also is an offense under the law of this State; or

(e) the offense consists of the omission to perform a legal duty imposed by the law of this State with respect to domicile, residence or a relationship to a person, thing or transaction in the State; or

(f) the offense is based on a statute of this State that expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows or should know that his conduct is likely to affect that interest.

(2) Subsection (1)(a) does not apply when either causing a specified result or a purpose to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

(3) Subsection (1)(a) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the State that would not constitute an offense if the result had occurred there, unless the actor purposely or knowingly caused the result within the State.

(4) When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a result within the meaning of Subsection (a)(1), and if the body of a homicide victim is found within the State, it is presumed that such result occurred within the State.

(5) This State includes the land and water and the air space above such land and water with respect to which the State has legislative jurisdiction.

### III

#### **Restatement of the Law, Third: The Foreign Relations Law of the United States**

##### §401. Categories of Jurisdiction

Under international law, a state is subject to limitations on

(a) jurisdiction to prescribe, *i.e.*, to make its law applicable to the activities, relations, or status of persons, or the interests of persons in things, whether by legislation, by executive act or order, by administrative rule or regulation, or by determination of a court;

(b) jurisdiction to adjudicate, *i.e.*, to subject persons or things to the process of its courts or administrative tribunals, whether in civil or in criminal proceedings, whether or not the state is a party to the proceedings;

(c) jurisdiction to enforce, *i.e.*, to induce or compel compliance or to punish noncompliance with its laws or regulations, whether through the courts or by use of executive, administrative, police, or other nonjudicial action.

##### §402. Bases of Jurisdiction to Prescribe

Subject to §403, a state has jurisdiction to prescribe law with respect to

(1)(a) conduct that, wholly or in substantial part, takes place within its territory;

(b) the status of persons, or interests in things, present within its territory;

(c) conduct outside its territory that has or is intended to have substantial effect within its territory;

(2) the activities, interests, status, or relations of its nationals outside as well as within its territory;

and

(3) certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests.

##### §403. Limitations on Jurisdiction to Prescribe

(1) Even when one of the bases for jurisdiction under §402 is present, a state may not exercise jurisdiction to prescribe law with respect to a person or activity having connections with another state when the exercise of such jurisdiction is unreasonable.

(2) Whether exercise of jurisdiction over a person or activity is unreasonable is determined by evaluating all relevant factors, including, where appropriate:

(a) the link of the activity to the territory of the regulated state, *i.e.*, the extent to which the activity takes place within the territory, or has substantial, direct, and foreseeable effect upon or in the territory;

(b) the connections, such as nationality, residence, or economic activity, between the regulating state and the person principally responsible for the activity to be regulated, or between that state and those whom the regulation is designed to protect;

(c) the character of the activity to be regulated, the importance of regulation to the regulating state, the extent

to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted;

(d) the existence of justified expectations that might be protected or hurt by the regulation;

(e) the importance of the regulation to the international political, legal, or economic system;

(f) the extent to which the regulation is consistent with the traditions of the international system;

(g) the extent to which another state may have an interest in regulating the activity; and

(h) the likelihood of conflict with regulation by another state.

(3) When it would not be unreasonable for each of two states to exercise jurisdiction over a person or activity, but the prescriptions by the two states are in conflict, each state has an obligation to evaluate its own as well as the other state's interest in exercising jurisdiction, in light of all the relevant factors, Subsection (2); a state should defer to the other state if that state's interest is clearly greater.

#### §404. Universal Jurisdiction to Define and Punish Certain Offenses

A state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism, even where none of the jurisdiction indicated in §402 is present.

#### §421. Jurisdiction to Adjudicate

(1) A state may exercise jurisdiction through its courts to adjudicate with respect to a person or thing if the relationship of the state to the person or thing is such as to make the exercise of jurisdiction reasonable.

(2) In general, a state's exercise of jurisdiction to adjudicate with respect to a person or thing is reasonable if, at the time jurisdiction is asserted:

(a) the person or thing is present in the territory of the state, other than transitorily;

(b) the person, if a natural person, is domiciled in the state;

(c) the person, if a natural person, is resident in the state;

(d) the person, if a natural person, is a national of the state;

(e) the person, if a corporation or comparable juridical person, is organized pursuant to the law of the state;

(f) a ship, aircraft, or other vehicle to which the adjudication relates is registered under the laws of the state;

(g) the person, whether natural or juridical, has consented to the exercise of jurisdiction;

(h) the person, whether natural or juridical, regularly carries on business in the state;

(i) the person, whether natural or juridical, had carried on activity in the state, but only in respect to such activity;

(j) the person, whether natural or juridical, had carried on outside the state an activity having a substantial,

direct, and foreseeable effect within the state, but only in respect to such activity; or

(k) the thing that is the subject of adjudication is owned, possessed, or used in the state, but only in respect to

a claim reasonably connected with that thing.

(3) A defense of lack of jurisdiction is generally waived by any appearance by or on behalf of a person or thing (whether as plaintiff, defendant, or third party), if the appearance is for a purpose that does not include a challenge to the exercise of jurisdiction.

#### §431. Jurisdiction to Enforce

(1) A state may employ judicial or nonjudicial measures to induce or compel compliance or punish noncompliance with its laws or regulations, provided it has jurisdiction to prescribe in accordance with §§402 and 403.

(2) Enforcement measures must be reasonably related to the laws or regulations to which they are directed; punishment for noncompliance must be preceded by an appropriate determination of violation and must be proportional to the gravity of the violation.

(3) A state may employ enforcement measures against a person located outside the territory

(a) if the person is given notice of the claims or charges against him that is reasonable in the circumstances;

(b) if the person is given an opportunity to be heard, ordinarily in advance of enforcement, whether in person or by counsel or other representative; and

(c) when enforcement is through the courts, if the state has jurisdiction to adjudicate.

## IV

**Military Extraterritorial Jurisdiction Act of 2000****18 U.S.C. 3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States**

(a) Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States--

(1) while employed by or accompanying the Armed Forces outside the United States; or

(2) while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice), shall be punished as provided for that offense.

(b) No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.

(c) Nothing in this chapter may be construed to deprive a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by a court-martial, military commission, provost court, or other military tribunal.

(d) No prosecution may be commenced against a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice) under this section unless--

(1) such member ceases to be subject to such chapter; or

(2) an indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to such chapter.

**18 U.S.C. 3262. Arrest and commitment**

(a) The Secretary of Defense may designate and authorize any person serving in a law enforcement position in the Department of Defense to arrest, in accordance with applicable international agreements, outside the United States any person described in section 3261(a) if there is probable cause to believe that such person violated section 3261(a).

(b) Except as provided in sections 3263 and 3264, a person arrested under subsection (a) shall be delivered as soon as practicable to the custody of civilian law enforcement authorities of the United States for removal to the United States for judicial proceedings in relation to conduct referred to in such subsection unless such person has had charges brought against him or her under chapter 47 of title 10 for such conduct.

**18 U.S.C. 3263. Delivery to authorities of foreign countries**

(a) Any person designated and authorized under section 3262(a) may deliver a person described in section 3261(a) to the appropriate authorities of a foreign country in which such person is alleged to have violated section 3261(a) if--

(1) appropriate authorities of that country request the delivery of the person to such country for trial for such conduct as an offense under the laws of that country; and

(2) the delivery of such person to that country is authorized by a treaty or other international agreement to which the United States is a party.

(b) The Secretary of Defense, in consultation with the Secretary of State, shall determine which officials of a foreign country constitute appropriate authorities for purposes of this section.

**18 U.S.C. 3264. Limitation on removal**

(a) Except as provided in subsection (b), and except for a person delivered to authorities of a foreign country under section 3263, a person arrested for or charged with a violation of section 3261(a) shall not be removed--

(1) to the United States; or

(2) to any foreign country other than a country in which such person is believed to have violated section 3261(a).

(b) The limitation in subsection (a) does not apply if--

(1) a Federal magistrate judge orders the person to be removed to the United States to be present at a detention hearing held pursuant to section 3142(f);

(2) a Federal magistrate judge orders the detention of the person before trial pursuant to section 3142(e), in which case the person shall be promptly removed to the United States for purposes of such detention;

(3) the person is entitled to, and does not waive, a preliminary examination under the Federal Rules of Criminal Procedure, in which case the person shall be removed to the United States in time for such examination;

(4) a Federal magistrate judge otherwise orders the person to be removed to the United States; or

(5) the Secretary of Defense determines that military necessity requires that the limitations in subsection (a) be waived, in which case the person shall be removed to the nearest United States military installation outside the United States adequate to detain the person and to facilitate the initial appearance described in section 3265(a).

#### **18 U.S.C. 3265. Initial proceedings**

(a)(1) In the case of any person arrested for or charged with a violation of section 3261(a) who is not delivered to authorities of a foreign country under section 3263, the initial appearance of that person under the Federal Rules of Criminal Procedure--

(A) shall be conducted by a Federal magistrate judge; and

(B) may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

(2) In conducting the initial appearance, the Federal magistrate judge shall also determine whether there is probable cause to believe that an offense under section 3261(a) was committed and that the person committed it.

(3) If the Federal magistrate judge determines that probable cause exists that the person committed an offense under section 3261(a), and if no motion is made seeking the person's detention before trial, the Federal magistrate judge shall also determine at the initial appearance the conditions of the person's release before trial under chapter 207 of this title.

(b) In the case of any person described in subsection (a), any detention hearing of that person under section 3142(f)--

(1) shall be conducted by a Federal magistrate judge; and

(2) at the request of the person, may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

(c)(1) If any initial proceeding under this section with respect to any such person is conducted while the person is outside the United States, and the person is entitled to have counsel appointed for purposes of such proceeding, the Federal magistrate judge may appoint as such counsel for purposes of such hearing a qualified military counsel.

(2) For purposes of this subsection, the term "qualified military counsel" means a judge advocate made available by the Secretary of Defense for purposes of such proceedings, who--

(A) is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

(B) is certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

#### **18 U.S.C. 3266. Regulations**

(a) The Secretary of Defense, after consultation with the Secretary of State and the Attorney General, shall prescribe regulations governing the apprehension, detention, delivery, and removal of persons under this chapter and the facilitation of proceedings under section 3265. Such regulations shall be uniform throughout the Department of Defense.

(b)(1) The Secretary of Defense, after consultation with the Secretary of State and the Attorney General, shall prescribe regulations requiring that, to the maximum extent practicable, notice shall be provided to any person employed by or accompanying the Armed Forces outside the United States who is not a national of the United States that such person is potentially subject to the criminal jurisdiction of the United States under this chapter.

(2) A failure to provide notice in accordance with the regulations prescribed under paragraph (1) shall not defeat the jurisdiction of a court of the United States or provide a defense in any judicial proceeding arising under this chapter.

(c) The regulations prescribed under this section, and any amendments to those regulations, shall not take effect before the date that is 90 days after the date on which the Secretary of Defense submits a report containing those regulations or amendments (as the case may be) to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

#### **18 U.S.C. 3267. Definitions**

As used in this chapter:

(1) The term "employed by the Armed Forces outside the United States" means--

(A) employed as a civilian employee of the Department of Defense (including a nonappropriated fund instrumentality of the Department), as a Department of Defense contractor (including a subcontractor at any tier), or as an employee of a Department of Defense contractor (including a subcontractor at any tier);

(B) present or residing outside the United States in connection with such employment; and

(C) not a national of or ordinarily resident in the host nation.

(2) The term “accompanying the Armed Forces outside the United States” means--

(A) A dependent of--

(i) a member of the Armed Forces;

(ii) a civilian employee of the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

(iii) a Department of Defense contractor (including a subcontractor at any tier) or an employee of a Department of Defense contractor (including a subcontractor at any tier);

(B) residing with such member, civilian employee, contractor, or contractor employee outside the United States; and

(C) not a national of or ordinarily resident in the host nation.

(3) The term “Armed Forces” has the meaning given the term “armed forces” in section 101(a)(4) of title 10.

(4) The terms “Judge Advocate General” and “judge advocate” have the meanings given such terms in section 801 of title 10.