



Hunting Terrorists Using Confidential Informant Reward Programs

By DOUGLAS A. KASH, J.D.

The criminal acts of September 11, 2001, resulted in changes to existing U.S. law, including rewards available to confidential informants who provide information on terrorists or terrorist activities. Specifically, on October 26, 2001, the U.S. Congress enacted the Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (PATRIOT Act).¹ Prior to September 11, there were several different venues under which an informant could be eligible for a reward, depending upon which agency received the information. Although the events of September 11 did not increase the types

of rewards, they modified the incentives to informants, including those who are noncitizens.

The notion of rewards for information is neither new nor limited to terrorism. Indeed, the U.S. Code provides for several types of rewards for different kinds of information.² This article identifies the different reward mechanisms for terrorist-related information and explains the process of each program. While several U.S. intelligence agencies (civilian and military) have internally managed reward programs for confidential informants, these programs and their appropriations are classified for national security purposes and will not be addressed.

Establishment of the Confidential Informant Reward Program for Terrorist Information

Rewards for information involving terrorism were established by the 1984 Act to Combat International Terrorism (1984 ACIT)³ which provides the following:

With respect to acts of terrorism primarily within the territorial jurisdiction of the United States, the attorney general may reward any individual who furnishes information—

1) leading to the arrest or conviction, in any country, of any individual or individuals for the commission of an act

of terrorism against a U.S. person or U.S. property;

2) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of terrorism against a U.S. person or property; or

3) leading to the prevention, frustration, or favorable resolution of an act of terrorism against a U.S. person or property.⁴

Excluding government employees acting within the scope of their official duties, an individual is entitled to a reward up to \$500,000. Rewards up to \$100,000 can be paid with the approval of the attorney general, while a reward of \$100,000 or more requires the approval of the president or attorney general. The rewards are deemed conclusive, and no court has the power or jurisdiction to review it.⁵ Additionally, although the identity of an informant is kept strictly classified, informants and their immediate families are eligible to participate in the attorney general's Witness Protection Program.⁶

When he sent the bill to Congress in April 1984, President Reagan noted the limitations of existing laws, specifically the lack of authority to pay rewards for information concerning acts of terrorism abroad.⁷ President Reagan also stated that the payment for rewards in connection with domestic acts of terrorism was appropriately designated to the attorney general, while acts of terrorism outside of the territorial United States raised political and foreign relations issues within

the jurisdiction of the secretary of state.⁸ Upon signing the bill into law, President Reagan proclaimed that this law would "provide the resources and authorities essential in countering the insidious threat terrorism poses to those who cherish freedom and democracy.... This nation bears global responsibilities that demand that we maintain a worldwide presence and not succumb to these cowardly attempts at intimidation."⁹

The 1984 ACIT law adopted the definition of "terrorism" from the Foreign Intelligence Surveillance Act,¹⁰ defining terrorism as violent or dangerous acts that would be crimes if committed in the United States and that appear to be intended to intimidate or coerce a civilian population or to influence the policy or conduct of a government or political subdivision of a government by intimidation or coercion. The 1984 ACIT was first used in 1985 in connection with the slayings of four U.S. Marines and two U.S. civilians in El Salvador.

Current law, specifically, Rewards for Information Concerning Terrorist Acts and Espionage,¹¹ employs the same definition for terrorism as the 1984 ACIT. Rewards still are deemed conclusive and no court has the power or jurisdiction to review the reward. Again, informants' identities can be kept strictly classified, and their immediate families are eligible to participate in the attorney general's Witness Protection Program.¹²

The recently enacted PATRIOT Act amended the reward program's authority by increasing the amount of money offered or paid to an informant. Now, a reward totaling \$250,000 or more requires the personal approval of the president or attorney general.¹³ The PATRIOT Act also mandates that if an award is approved under this section, the attorney general must tender written notice to the chairmen and ranking minority members of the Committees on Appropriations and the Judiciary in the Senate and House of Representatives, not later

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than 30 days after the approval.¹⁴ The funding for the reward program can come from any executive agency or military department. The attorney general's refusal to make a reward is not subject to judicial review.¹⁵

The "S" Visa

In addition to the monetary reward incentive, the Immigration and Naturalization Service (INS), a component agency of the U.S. Department of Justice (DOJ), has the authority under specific limited circumstances to grant special visas to nonimmigrants and their immediate families. On November 29, 2001, Attorney General John Ashcroft announced a new program, the Responsible Cooperators Program, which provides incentives to aliens to provide useful information about terrorists and their activities.¹⁶ The incentives already existed within the U.S. Code, but this program is an effort to reinvigorate cooperative communication between the U.S. Department of State and alien groups regarding any knowledge their members may have regarding criminal acts, particularly terrorism.

The Violent Crime Control and Law Enforcement Act of 1994 created a new immigration regulation establishing an "S" visa, which provides for a temporary, and potentially permanent stay within the United States.¹⁷ There are two categories of the "S" visa. The S-1 visa, is issued to aliens who possess "critical reliable information" regarding *criminal* activity (emphasis added), who are willing to share their information with a U.S. agency or court and whose presence

in the United States is necessary for the successful prosecution of the criminal activity. The S-2 visa is available to aliens possessing "critical reliable information" regarding *terrorist* activity (emphasis added). In addition to the cooperation under S-1, the S-2 informant must be in danger as a result of providing the information to the United States. Only state and federal law enforcement authorities (including federal or state courts and U.S. attorneys) can initiate a request under the "S"

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category.¹⁸ The alien must be eligible for an award under Title 22 U.S. Code, Section 2708(a), also designated as section 36(a) of the State Department Basic Authorities Act of 1956.¹⁹ The application must contain evidence establishing the nature of the alien's cooperation with the government, the need for the alien's presence in the United States, all conduct and conditions that may constitute grounds for exclusion, and all factors and considerations warranting favorable consideration by the attorney general on the alien's behalf.²⁰

The request must be submitted to the assistant attorney general (AAG), Criminal Division,

U.S. Department of Justice. When necessary, the AAG can empanel personnel from the U.S. Marshals Service, FBI, DEA, DOJ Criminal Division, and Department of State to review the applications and prioritize the cases to conform to the statutorily mandated numerical limitations.²¹ The application then is forwarded to the commissioner of the INS for final approval.²² Within their 3-year stay, aliens can apply for permanent resident status ("green card"), which ultimately may result in citizenship.

The U.S. Department of State's Reward for Justice Program

The Department of State also has the authority to pay rewards for information on terrorism. The Department of State was authorized to establish a rewards program in the Omnibus and Diplomatic Security Act of 1986,²³ funded from the moneys available under section 36(a) of the State Department Basic Authorities Act of 1956.²⁴

Similar to the attorney general, the secretary of state may pay a reward to any individual who furnishes information leading to—

- 1) the arrest or conviction in any country of any individual for the commission of an act of international terrorism against a U.S. person or U.S. property;
- 2) the arrest or conviction in any country of any individual conspiring or attempting to commit an act of international terrorism against a U.S. person or U.S. property;...
- 4) the arrest or conviction in any country of any individual aiding or abetting in the

commission of an act described in paragraph 1 [or] 2;...

5) the prevention, frustration, or favorable resolution of an act described in paragraph 1 [or] 2), *including by dismantling an organization in whole or significant part; or*

6) *the identification or location of an individual who holds a key leadership position in a terrorist organization.*²⁵

The PATRIOT Act also amended the maximum amount of a reward under Title 22, Section 2708 (e)(1), U.S. Code, which now provides “No reward under this section shall exceed \$5,000,000, *except as personally authorized by the secretary of state if he determines that offer or payment of an award of a larger amount is necessary to combat terrorism or defend the Nation against terrorist acts*” (PATRIOT Act amendment in italic).²⁶ The PATRIOT Act appears to give the secretary of state the discretion to offer a reward without a monetary limit.

In an effort to avoid duplication or interference with the payment of informants or obtaining evidence or information, the secretary of state shall consult with the attorney general regarding—

- 1) [the identification of] individuals, organizations, and offenses with respect to which rewards will be offered;
- 2) the publication of rewards;
- 3) the offering of joint rewards with foreign governments;
- 4) the receipt and analysis of data; and

5) the payment and approval of payment.²⁷

However, before making a reward payment for any matter over which there is federal criminal jurisdiction, the secretary of state must secure the approval of the attorney general.²⁸

Since the days of the “Wanted” posters, new methods and technologies have contributed to the fight against terrorism. The Department of State, in coordination with



several media outlets and other private entities, repeatedly has broadcast ways in which the public can assist the government. The Rewards for Justice Program was created in 1984 and is managed by the Diplomatic Security Service (DSS), a component of the Department of State. The director of the DSS chairs an interagency committee that reviews reward candidates and makes recommendations to the secretary of state. Depending upon the type of incident, the committee can include representatives from the National Security Council, Central Intelligence Agency, DOJ, FBI, DEA, U.S. Marshals Service

Witness Security program, INS, Federal Aviation Administration, and Department of Energy.²⁹

Any individual can furnish confidential information at <http://www.rewardsforjustice.net>, or call toll free at 800-USREWARDS. If individuals do not have any information to offer, they can contribute money to <http://www.RewardsFund.org>, whose sole purpose is to fund Rewards For Justice, a 501(c)(3)³⁰ nonprofit charity fund from which the awards are paid. *RewardsFund.org* was created on December 13, 2001, by Steve Case and Joe Rutledge, two businessmen who were moved to lend their business and advertising expertise after the terrorist attacks. In coordination with the Department of State’s campaign undertaken by Under Secretary of State Cheryl Beers, Case and Rutledge also advised the Department of State to create the toll-free line. At least two states, Connecticut and Florida, have introduced legislation for the creation of “United We Stand” license plates. The proceeds from the sales of those plates will go to the fund.

The availability of rewards have been published in domestic newspapers, such as *The New York Times*, and internationally in *Al Hayat*, *Paris Match*, *Die Welt*, and *Pravda*. These announcements comport with the statutory mandate, referred to as the Aviation Security Improvement Act of 1990,³¹ requiring the secretary of state to publish the availability of U.S. rewards for information on international terrorist-related activities, which to the appropriate extent, prominently displayed domestically and abroad in international airports.³²

Secretary of State Powell called the Rewards for Justice Program “an extremely effective weapon in the United States’ arsenal to combat terrorism.” David Carpenter, assistant secretary of state for diplomatic security, added that the reward program has saved thousands of lives by preempting terrorist attacks. He noted that 22 people have received a total of more than \$8 million for information over the past 17 years since the reward program’s enactment. The program generated information that led to the arrest of Ramzi Yousef who was convicted for the World Trade Center bombing in 1993.³³ State Department spokesman Richard Boucher stated that the Rewards for Justice Program has resulted in more than 100 telephone calls, 600 letters, 1,200 e-mails and 1.2 million hits on the Web site.³⁴

Moreover, in 1990 the Air Transport Association of America (ATAA) and the Air Line Pilots Association, International (ALPA) agreed to supplement the rewards paid by the U.S. government for information that prevents a terrorist act against U.S. civil aviation or leads to the arrest or conviction of any person who has committed such an act.³⁵ Although not a separate fund, this enables the ATAA and ALPA to increase a reward by up to \$2 million.

Conclusion

Based upon the aforementioned statutes, there are sufficient tools through which confidential informants can be rewarded for their information regarding terrorism. The PATRIOT Act empowers the president and attorney general to

approve rewards. The secretary of state has the apparent authority to offer rewards, without a monetary limit, to provide an incentive to persons with information sought by the United States. Some of those who possess the information have such deeply held religious or political convictions that no amount of money would cause them to contact U.S. authorities. Consequently, the

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U.S. intelligence community continues to develop its information-gathering techniques and recruit sources who, notwithstanding their religious or political affiliations, are willing to provide confidential information in an effort to avoid attacks on those who cherish freedom and provide for its security. ♦

Endnotes

¹ Pub. L. 107-56, 115 Stat. 272 (2001).
² 18 U.S.C. § 3095B authorizes the attorney general to reward “any individual who assists the Department of Justice in performing its function”; 19 U.S.C. § 1619 enables the secretary of the treasury to pay rewards for “information concerning any fraud upon the customs revenue”; 21 U.S.C. § 881 authorizes the attorney general to pay rewards for “information which leads to the arrest and conviction of a person who kills or kidnaps a

Federal drug law enforcement agent”; 26 U.S.C. § 7623 authorizes the secretary of treasury to pay rewards “for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws”; and 28 U.S.C. § 524(c) authorizes the attorney general to reward those who provide “information or assistance leading to a civil or criminal forfeiture.”

³ Pub. L. 98-533, Stat. 2706, codified at 18 U.S.C. § 3071-77.

⁴ *Id.* Amended by P.L. 103-359, Title VIII, § 803 et. seq., Oct. 14, 1994, 108 Stat. 3438-39 (to include acts of espionage) and substituting heading to Chapter 204 from “Rewards for Information Concerning Terrorist Acts” to “Rewards for Information Concerning Terrorist Acts and Espionage.”

⁵ 18 U.S.C. § 3072 (1984).

⁶ *Id.* § 3076.

⁷ 20 Weekly Comp. Pres. Doc. 590 (April 26, 1984).

⁸ *Id.*

⁹ 20 Weekly Comp. Pres. Doc. 1573 (October 19, 1984).

¹⁰ 50 U.S.C. § 1801(c)(1) and (2)(1982).

¹¹ 18 U.S.C. § 3077(1)(2001).

¹² *Id.* § 3076.

¹³ *Supra* note 1 at Title V, § 501.

¹⁴ *Id.* at § (b)(2).

¹⁵ *Id.* at §§ (b)(3) and (4).

¹⁶ Dan Eggen, “U.S. Dangles Citizenship to Entice ‘Cooperators,’” *The Washington Post*, A1, November 30, 2001.

¹⁷ Immigration and Naturalization Act § 101(a)(15)(S), codified at 8 U.S.C. § 1101(a)(15)(S) (1994). *See also* Section 212(d) of the Immigration and Nationality Act, which allows the attorney general to waive inadmissibility with respect to a nonimmigrant as set forth in § 101(a)(15)(S) if the attorney general considers it to be in the national interest.

¹⁸ 8 C.F.R. § 214.2(t). The application is made on INS form I-854 accompanied by an I-539.

¹⁹ 22 U.S.C. § 2708 amended by Chapter 502 in the PATRIOT Act *supra* note 1; *see also* § 36 State Department Basic Authorities Act of 1956 (Pub. L. 885, August 1, 1956), 70 Stat. 890, as amended by The Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4181 (November 18, 1988) § 4602 and the International Narcotics Control Act of 1989, Pub. L. 101-231, 103 Stat. 1954 (December 13, 1989) § 13.

²⁰ *Supra* note 18 at (t)(4)(i)(C).

²¹ *Id.* at (t)(4)(ii)(B).

²² *Id.* at (t)(4).