

ANTI-HOAX TERRORISM ACT OF 2003

HEARING BEFORE THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 1678

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ANTI-HOAX TERRORISM ACT OF 2003

THURSDAY, JULY 10, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 3 p.m., in Room 2141, Rayburn House Office Building, Hon. Howard Coble (Chair of the Subcommittee) presiding.

Mr. COBLE. Mr. Bobby Scott, the Ranking Member from Virginia, is on his way, so we will go ahead and commence; and then, when he comes, he will have his opening statement.

Today, we are here to consider whether certain hoaxes should be crimes. The question with which this Subcommittee and the Congress must always grapple is when does conduct constitute such a threat of harm to society that it must be made a crime?

The hearing will demonstrate that the hoaxes to make people believe they have been attacked by terrorists or that military personnel have been harmed constitutes such conduct. These jokes are no laughing matter, I think we will all agree. They can and have caused death.

At a November 7, 2001, hearing before this Subcommittee, the Department of Justice and the Federal Bureau of Investigation testified on H.R. 3209, the "Anti-Hoax Terrorism Act of 2001," and described how these types of hoaxes threaten the health and safety of the American public and the national security of the entire Nation. That bill was bipartisan and unanimously supported in the 107th Congress in the House with a vote of 423-0. I believe the Senate did not address that bill. This Subcommittee will soon consider that bill, which was reintroduced by Lamar Smith, the distinguished gentleman from Texas, and is now H.R. 1678.

The legislation makes it a felony to perpetrate a hoax relating to biological, chemical, nuclear and weapons of mass destruction attacks. This bill will help protect the public and our Nation's security by deterring and punishing those who perpetrate such hoaxes.

I believe, from reading the testimony, that this legislation should be expanded to cover hoaxes against military families. Our country is engaged in a long and dangerous war against terrorism at home and abroad. As a result, we remain on alert for terrorist acts and concerned for the safety of our military brothers and sisters abroad. Taking full advantage of these heightened concerns, some have played upon the public's apprehension with hoaxes designed to terrorize and devastate the targets of the hoax.

A hoax of terrorism and a hoax convincing Americans their loved ones in the military have been killed, captured or are missing is designed to terrorize and instill fear into the public and the specific target of the hoax. The witnesses will testify about the trauma caused by these hoaxes.

A believable hoax relating to a terrorist attack can be life-threatening and can cause the Government to react. A hoax causing a hospital to be evacuated, for example, can cost lives. A hoax causing a business to shut down can cost jobs. And a hoax causing law enforcement to respond could cost public safety.

With regard to a hoax designed to convince a mother or an uncle that their loved one has been killed in action or captured causes anguish beyond comprehension and distracts our military men and women in harm's way. As we will hear today, these distractions are deadly.

The testimony will also demonstrate the need for legislation to close a glaring gap under Federal law. Congress has previously recognized the danger of a hoax that makes the public believe lives are at risk. For example, it is a felony to perpetrate a hoax that a bomb is on an airplane under 18 USC 35. It is also a felony to communicate a threat of personal injury to another, whether it is a hoax or not, over interstate commerce.

The current rash of hoaxes which current law does not always cover demonstrate that the law must be updated. The Committee on the Judiciary addressed the terrorism hoaxes in the last Congress, but, as I said previously, the bill died in the Senate. These hoaxes threaten the public safety and health, further diminish the already overburdened resources of law enforcement and emergency responders, distract our military and harm the Nation's morale and economy. I look forward to hearing the testimony of our witnesses today.

I am now pleased to recognize the distinguished gentleman from Virginia, Mr. Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman; and thank you for convening the hearing on H.R. 1678, the Anti-Hoax Terrorism Act of 2003.

False alarms are a problem at any time. They can cause the senseless waste not only of scarce public and private resources but they can actually endanger life and property by tying up those resources when a genuine emergency arises. Mr. Chairman, during the anthrax crisis of 2001, one modest-sized jurisdiction in my district estimated that it spent over \$70,000 tracking down anthrax scares, all of which fortunately proved to be false alarms.

The false alarms are deliberate. Whether they are misguided pranks that are someone's bizarre notion of humor or deliberate or reckless hoaxes aimed at wreaking havoc, these societal and direct costs occur and those perpetrating them should be held accountable for their actions.

Of course, accountability should conform to established notions of accountability. There is a difference between being misguided and being intentionally reckless or deliberately indifferent, and any effort to hold a person liable for the consequences of their actions should conform to these established notions of accountability and proportionality. I think we came close to these standards in the

107th Congress with H.R. 3209 which passed the House unanimously, and I am pleased to see that we are starting with that bill as we proceed with the legislation today. No similar bill passed the Senate, so the policies under H.R. 3209 did not become law.

So, Mr. Chairman, I look forward to the testimony by witnesses for an update on the kinds of pranks or dangerous hoaxes that we have been experiencing since we passed the bill last year and with working with you and my colleague, the gentleman from California, Mr. Schiff, the chief Democratic sponsor of the bill, in ensuring that we have a bill this year that conforms to our ideas of making the perpetrators accountable and having proportional penalties for those acts.

Thank you, Mr. Chairman. I look forward to that testimony.

Mr. COBLE. I thank you, Mr. Scott.

Normally, in our Committee we restrict opening statements to the Chairman and the Ranking Member, but the distinguished gentleman from California is an original cosponsor with Mr. Lamar Smith, and Mr. Schiff has requested to make a brief opening statement.

Mr. SCHIFF. I want to thank you, Mr. Chairman, for holding this hearing today and for giving me the opportunity to make a brief opening statement. I would also like to extend my appreciation to the gentleman from Texas, Mr. Lamar Smith, for introducing this bill and for his leadership on the issue.

Our communities continue to struggle each day to meet the demands of our citizens and prepare for potential terrorist attacks. They are working around the clock to improve the protocols and to respond swiftly and safely in the event of such an attack. But our communities are doing all of this with very limited resources. Each time a threat is identified, authorities move into action, don protective gear, bolster hospital staffing, coordinate local, State and Federal offices and call upon additional law enforcement personnel to respond.

These reports from our citizens are critical. We want to encourage people to continue to be vigilant and report suspicious activity. A false alarm, however, is a false alarm; and every time a suspected threat turns out to be a hoax, it costs the taxpayers an enormous amount.

In my State of California, we have not been immune to hoaxes. In Los Angeles, a man phoned in an anthrax threat because he wanted to avoid appearing in bankruptcy court that day. His hoax call succeeded in shutting down the court and the courthouse and cost taxpayers \$600,000.

In my own district, a recent e-mail plagued the City of San Gabriel earlier this year. According to news reports, e-mails identifying several well-known Chinese restaurants as hotbeds of the SARS virus circulated wildly in the local community. The San Gabriel Police Department reportedly received about 50 calls a day inquiring into this hoax. Our policemen and firefighters have to be protecting our community. They cannot afford to be responding to these type of hoaxes.

In addition to closing down the very functioning of Government, it is a tremendous waste of precious resources, resources that could otherwise go into prevention and training. The manpower that is

required to respond is wasted, and the funding that is used or could be used to hire additional law enforcement personnel is simply wasted.

While millions of dollars are going into the effort to combat terrorism, really billions of dollars, we don't have, frankly, even a single dollar to waste. We cannot allow reports that come from hoaxes to clog up the investigation of potentially life-threatening dangers.

Our citizens need to be acutely aware that hoaxes have consequences. It shakes our sense of security, and the fear that many citizens are struggling to cope with continues to grow as a result of these hoaxes.

There are financial consequences, and there are community consequences. There must be criminal consequences as well. This is why I have joined my colleague from Texas in introducing this bill, H.R. 1678. It would create criminal and civil penalties for falsely reporting chemical, biological and nuclear threats. This would include threats that are in written or verbal form as well as those communicated through physical actions. It is legislation that should not be necessary but regrettably is certainly needed now. Those who would prey on the fears of the American public should be punished.

Equally disturbing are the reports of hoaxes targeting families of U.S. soldiers fighting in Iraq. I am interested to hear from our panelists on this issue. As I look at the language of the bill, it may need to be expanded to deal with these terrible, tragic hoaxes that are being perpetrated on the family members of those that are serving this country. We simply cannot allow these hoaxes to go unchallenged. We don't have a minute to waste, not a dollar to waste and not a single investigator to waste. The time is right.

I want to thank the Chairman again for his leadership and thank again my colleague from Texas. I yield back the balance of my time.

Mr. COBLE. Since we have established generosity with opening statements, I detect the distinguished gentleman from Texas who is the primary sponsor, Mr. Lamar Smith. Would you like to be recognized, Mr. Smith?

Mr. SMITH. I would, Mr. Chairman.

Mr. Chairman, I really want to be recognized just to express my appreciation to you for your work on this bill and also for having the hearing that we are about to begin today. I am not a Member of this Subcommittee, so I especially appreciate your indulgence.

I do want to say this is a bill, as has already been pointed out, that Congressman Adam Schiff and I introduced last year and that we introduced this year. With your help, Mr. Chairman, we will be able to push it all the way into law. If we do that, I have mixed feelings because I, as Chairman of this Subcommittee in the last Congress, was not able to do it; and if you are able to do it, that will perhaps not be good by comparison.

Mr. COBLE. If the gentleman would suspend, you could always blame your Ranking Member for that. I say that tongue in cheek.

Mr. SMITH. Actually I did as you did and have received much support from the Ranking Member on this particular issue.

In that regard, Mr. Chairman, I should say that I was fortunate to have served with Bobby Scott in the last Congress with him as

the Ranking Member of this Subcommittee; and I know you feel the same way this year as well.

I want to say, also, as far as the bill goes and the reason for introducing it last year, it was to address a loophole in the law that was actually called to my attention by the Chief Counsel of the Subcommittee, Jay Apperson. I appreciate his doing so, for the reasons that you and the other Members have already mentioned today.

Very briefly, just to add sort of one more description to what we are trying to do here, it is illegal under current law to perpetrate a hoax where there is an explicit threat involved. You can't, for instance, make a call to an airplane and say I have planted a bomb on an airplane. However, the loophole in today's law is that where there is no explicit threat, for instance, where someone might send an envelope of white powder through the mail or leave it at a business establishment and thereby close down the business establishment or shut down the hospital or have other consequences, that is the exception to the current law. That is the loophole that this bill endeavors to close for the reasons that have been given today. It will save lives, it will save expenses, and that is why we need to punish individuals who take advantage of that particular loophole. That is why I think this bill is necessary.

Mr. Chairman, I will just say again I appreciate your leadership on this particular piece of legislation and hope that you are more successful than I was in the last Congress.

Mr. COBLE. I thank the gentleman; and, for the record, I share your high favorable opinion of the gentleman from Virginia.

We are blessed with a very fine panel today and the distinguished gentleman from Arizona, Jeff Flake, has requested permission to introduce a constituent. I believe, Mr. Hogg, you reside in Flagstaff.

Mr. HOGG. Yes, sir.

Mr. COBLE. Home of Northern Arizona, I believe.

So I will now recognize the distinguished gentleman from Arizona to introduce Mr. Hogg.

Mr. FLAKE. I thank the Chairman. Although Mr. Hogg is not a constituent, he is a member—a fellow citizen from Arizona. I wish I had Flagstaff as a place as well as Snowflake and all the communities up north.

But I want to take this opportunity to introduce Danny Hogg. He has been a resident for 23 years of Flagstaff. He is employed as a fireman at the Flagstaff airport. He is the father of two and the proud uncle of Army Sergeant Wayne Jeremy Hogg. He will be presenting compelling testimony today about a horrible hoax that was perpetrated on him and his family. His family has been through a lot because of this. I am particularly pleased that this hearing is going on today, and I thank him for coming and making the sacrifice to come here and talk about it.

I would like also at this time to submit for the record two newspaper articles from the Arizona Daily Sun dated March 30, 2003, and April 1, 2003.

I thank the Chairman again.

Mr. COBLE. Without objection, they will be made a part of the record.

[The information referred to follows:]

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Flag rallies behind troops

By TAYLOE MCCONNELL
Sun Staff Reporter
03/30/2003

[view additional photos]



Large Bryan/Arizona Daily Sun Deputy rings wears a large American flag in support of his nephew Wayne Hogg above the crowd during the "Support Our Troops" rally at Wheeler Park Saturday. According to organizers, almost 2,000 people turned out to show support for American troops in Iraq.

Nearly 2,000 people showed up Saturday at Flagstaff's Wheeler Park to show their support for American troops fighting in Iraq. Family members clutching pictures of loved ones deployed overseas, veterans waving American flags and children holding signs reading "We support our commander in chief," joined together in Flagstaff's first Support Our Troops rally organized by the American Legion, Marine Corps League and Veterans of Foreign Wars.

Organizers estimated around 1,800 people came to show support for those fighting, missing or killed in battle and to hear Arizona Gov. Janet Napolitano, among several elected officials, call for unity. "This is why Arizona is such a great state. In times of stress and turmoil, we don't separate, we come together," she said.

Many rally-goers felt the gathering was a long time coming.

"It's been too long since we've had this kind of support for America," Clark Davis said.

Dozens of American flags flapping in the stiff breeze, coupled with the national anthem and the Pledge of Allegiance, had many moved to tears, especially when mention was made of missing Tuba City soldier Lori Piestewa.

"We can't celebrate this day without recognizing the casualties. To Lori Piestewa, we pray a quick and safe return to your home here," Napolitano said.

Renee Buchanan, mother of deployed soldier Matt Buchanan, was hugging a picture of her son while Matt's brother, Trevor, held a sign that read, "Hug a

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U.S. Marine, not a tree."

"It feels like family. It's great to see that they care about all these men and women over there," Renee said.



Even Cub Scouts from Troop 134 arrived to voice their support.

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Hawkins Tadder, 8, said he felt that it is important to rally behind those fighting in Iraq "because if they weren't there we will probably all be in trouble."



With the average age of the American soldier in Iraq barely out of the teens, it was no surprise to see Northern Arizona University students gathering to support a friend or fellow classmate.



The Phi Delta Theta fraternity at NAU has six of its brothers deployed in the war. Wearing their Greek letters proudly along with American flag patches, they held signs with their members' names and wishes for good luck overseas.

"This support is definitely a long time coming. There has been so much negative stuff happening in the Flagstaff area," said NAU freshman and Phi Delta Theta brother Nathan Marmor.

Organizers were careful to distinguish support for the troops from support of war.

"I hate war; there's not a man in uniform who doesn't. I have four kids and I pray none of them ever has to go to war," rally organizer Rick Krug said.

What does bother Krug and others at the rally, including Flagstaff Mayor Joe Donaldson, is some Americans' hatred toward President Bush.

Krug said people who say they hate the president and tie up the community's resources by chaining themselves in the street make him lose all respect for them and their credibility.

"I really support the right to dissent, but at some level we ought to be grateful. I'm just glad we live in a place where we can have opposing views and still get together and have coffee," he said.

There were some locals at the rally handing out "Peace Please" stickers and

about 13 standing in front of City Hall holding a sign saying, "Support our troops, bring them home from an unjust war."

Milt Cruver of the Marine Corps League agreed with Krug that people have a right to protest the war, although it was bad form to do so at a rally aimed at expressing appreciation for the soldiers.

"When they get back, they don't need to get spit on. ... This time our troops aren't going to feel like they can't talk about it because they weren't supported," said Cruver to a shockwave of applause and cheers.

One of the key speakers, Jeanine Duiker, wife of Staff Sgt. Erik Duiker deployed in Iraq, read a letter from her daughter supporting her father by saying, "The freedom of many rests on the courage of a few."

Duiker said before her husband left he explained to her why he wanted to fight for his country.

"If someone were to come into my home, I'd do anything and everything to protect it. This is just a bigger house and a larger family."

Supporters were optimistic that the soldiers would return quickly, safely and victorious. The day they do, organizers already are planning another rally to celebrate.

"The day this war ends, we will meet back here in Wheeler Park for a victory celebration and throw the biggest bash you've ever seen," Cruver said

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Spokeswoman Harriet Rice of the U.S. Army Community and Family Support Center said all branches of the military adhere to the same casualty notification process where the next of kin is the first to be notified. The next of kin is whomever the soldier identifies on a form they fill out before they deploy.

Once that notification takes place, it is reported to the Department of Defense which then posts the information on the Web site: www.defendamerica.mil.

The next of kin is notified in person, she said.

Sunday morning, shortly after Danny's name and photo appeared in the Arizona Daily Sun, someone called his home, telling Danny's son, "we need to let you know Wayne died two days ago," he recalled.

His nephew serves in the U.S. Army's 1st Brigade, 3 Infantry Division in Baghdad, and the family hadn't heard from him since January. The call coincided with news of the weekend's car bombing where four soldiers from Wayne's brigade were killed.

"I called my mother; she started bawling. Then I called my brother and told him the news," he said.

The family spent the day calling different military offices trying to get news of Wayne. Finally, an officer from Fort Huachuca called Danny's brother back and had told him they contacted Wayne's company commander.

"He said he was OK and set up a call for 9:30 Sunday night," Danny said. "The military did a fantastic job of reassuring us, all the way up to a phone call from him."

Reporter Michael Marizco may be reached at 556-2257 or mmarizco@azdailysun.com

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Mr. COBLE. Our presumed first witness was to have been Representative Thaddeus McCotter, who was elected to the Congress in 2002 to represent the 11th District of Michigan. Congressman McCotter has been serving the 11th District of Michigan for over a decade as a Schoolcraft Community College trustee, a Wayne County commissioner, a Michigan State senator and now as the district's U.S. representative. Mr. McCotter was graduated cum laude from the University of Detroit in 1987 where he later earned a law degree prior to being admitted to the State Bar of Michigan in 1991. Congressman McCotter will testify, if he does in fact appear, about the need for legislation to address the problem of war-time hoaxes.

Our second witness today is United States Attorney Susan Brooks of the Southern District of Indiana. Ms. Brooks has an amazing story to tell. Her office received an envelope filled with white paper with a note attached that indicated the paper was anthrax. Ms. Brooks was appointed by the President and confirmed by the Senate on October 12, 2001. In 1991, she was named as an Influential Woman of Indianapolis by the Indianapolis Business Journal/The Indiana Lawyer. She was also named by the Indianapolis Business Journal as Who's Who in Law in 2002. Ms. Brooks will testify about her experience prosecuting hoax cases.

It is good to have you, Mr. McCotter. I introduced you in absentia, and I gave you a nice introduction which I hope will be to your satisfaction.

The Honorable James McMahon serves as superintendent of the New York State Police. He joined the New York State police in 1966. Mr. McMahon has a distinguished career in which he has supervised a number of high-profile events. He was promoted to major in 1986 and to deputy superintendent/field commander in 1991. In 1994, he was reappointed to lead the Division of State Police and reconfirmed on June 13, 1995. He will testify about New York's experience with terrorism hoaxes and its effect on the State and its citizens.

Mr. Superintendent, we formerly had a Member of this House Judiciary Committee who served as a New York City policeman, Fred Heineman. Did you ever know him?

Mr. MCMAHON. The name, yes.

Mr. COBLE. He lives in Raleigh, NC, now.

Of course, our final witness, Mr. Danny Hogg, has already been introduced.

It is good to have all of you with us.

We try to operate here, folks, as we have previously advised you, on the 5-minute rule. When the red light illuminates in your eyes, Mr. McMahon, we may have to dispatch one of your police officers to haul you away, but the red light will be your warning that the 5 minutes have expired. We would appreciate your adhering as close to that as you can.

Mr. COBLE. Mr. McCotter, we will start with you.

**STATEMENT OF THE HONORABLE THADDEUS McCOTTER, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
MICHIGAN**

Mr. McCOTTER. Thank you, Mr. Chairman. I am going to be submitting written testimony for the consideration of the Committee.

I am here today because I want to thank the Committee for its interest in this and its willingness to address the issue. I think that anything I can say in support of what seems to me to be an obvious remedy to this solution would diminish upon the time that other people have to talk about it, especially family members who have been hurt by what is in many ways an unconscionable, almost unbelievable act. So I would thank the Committee for having me and I would eagerly await the other testimony.

Mr. COBLE. Without objection, your written statement will be made a part of the record.

[The prepared statement of Mr. McCotter follows:]

PREPARED STATEMENT OF THE HONORABLE THADDEUS McCOTTER, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman and my fellow colleagues, thank you for the opportunity to participate in today's hearing to discuss the problem of terrorism hoaxes and—of particular concern to me—hoaxes against the service families as their brave relatives serve overseas.

In April of this year, as hostilities were continuing during the liberation of Iraq, media reports began to surface about a disturbing trend of harassing phone calls being placed to service families.

A spouse or other family member of a soldier, sailor, airmen, or Marines, would hear on the end a caller claiming to be from the Red Cross, the Department of Defense, or the government, and inform them—falsely—their loved one had been taken prisoner, injured, or killed while on duty in Iraq.

There was no solicitation, no financial scam—simply a horrifying hoax. Incidents were reported in Delaware, Alabama, California, and my home state of Michigan.

With two of my own relatives serving in our military, I was outraged and disturbed at these abusive calls—none of us can fathom the perpetrators' depravity.

Causing these family members unnecessary pain and grief is a cruel act against them and all of the families who really are missing or have lost a loved one.

These calls go far beyond any high school prank. They are interfering with the U.S. military and should be on their way to becoming a federal offense.

I introduced a bill, H.R. 1771, amending the *Communications Act of 1934* to prohibit individuals from knowingly misinforming the relative of a member of the Armed Forces of the United States their family member is deceased, injured or missing due to an event associated with the military service.

The bill received positive words from those most impacted by these calls.

"H.R. 1771 is an important step in protecting the families from devastating information that no family wants to receive," said Julia Pfall, Executive Director of the *National Military Family Association*. "It is incomprehensible that people are taking advantage of the vulnerable state that families of deployed service members are in this time of war, thus making this legislation necessary."

The Red Cross is responsible for maintaining a communications network to inform those in the service and on duty of emergencies *back home*, including the joyous news of soldiers becoming new fathers. These hoax calls posed a direct threat to the credibility of this network, which is why the Red Cross has also indicated their support for my bill:

"As the organization required by the Department of Defense to provide emergency communication services to military personnel on issues such as the death or serious illness of a family member back home, the American Red Cross is committed to preventing these hoaxes," said American Red Cross President and Chief Executive Officer (and retired Rear Admiral) Marsha Johnson Evans.

"H.R. 1771 provides an important solution to this problem."

Mr. Chairman, I recognize my efforts take a slightly different tack from the Title 18 which falls within your jurisdiction.

However, we both share a common goal—protecting the brave men and women who wear the uniform and the families who love them.

I am anxious to work with you and your colleagues here on this distinguished panel so together we can put in place lasting solutions to give these families every assurance they are free from this kind of harassment.

I applaud your efforts and look forward to working with you.

Mr. COBLE. Ms. Brooks, glad to have you with us.

STATEMENT OF THE HONORABLE SUSAN BROOKS, UNITED STATES ATTORNEY, SOUTHERN DISTRICT OF INDIANA, UNITED STATES DEPARTMENT OF JUSTICE

Ms. BROOKS. Good afternoon, Chairman Coble and Members of the Subcommittee. It is an honor for me to appear before this Subcommittee to testify about the need for the creation of a Federal hoax statute.

My name is Susan Brooks. I am the United States Attorney for the Southern District of Indiana. I became the U.S. Attorney in October of 2001, barely 1 month after the tragic events of 9/11. U.S. Attorneys' offices all across the country, working hand in hand with the FBI and joint terrorism task forces, were thrust into investigations involving the terrorists of 9/11 as well as the anthrax incidents in New York, Washington, D.C., and Florida.

These horrific crimes combined to create a fear in this country unlike one that this generation has ever experienced. Therefore, when individuals commit hoaxes for the sole purpose of perpetrating fear, a separate criminal charge is warranted.

Federal prosecutors need necessary tools to bring these individuals to justice. Currently, our laws are such that those who perpetrate hoaxes either face minimal penalties or face potential life imprisonment. When acts of terror turn out to be hoaxes and our State and local partners have invested in significant resources, they expect us to act with statutes that have teeth, punishment that fits the crime.

For instance, on three separate occasions in October of 2001, David Jones placed a white powdery substance on the counter in a restroom at the Hoosier Heartland Travel Center located off I-69 outside of Muncie, Indiana. He was an employee. On the final occasion, he wrote a warning on the restroom door that anthrax was present. Each incident required law enforcement personnel to go to the scene, and the truck stop closed for a period of time.

My Assistant U.S. Attorney charged this individual with a violation of imparting and conveying false information, causing that truck stop to be made unworkable or hazardous. Use of this statute involving interstate transportation facilities was very creative, yet clearly it was a hoax case. And that was the specific statute that we really needed to really prosecute this case.

We have prosecuted other hoax cases under the statute of mailing of threatening communications. In one case, the defendant sent three letters in October of 2001 to three different Federal Government agencies. Each letter contained a white powdery substance with an enclosed letter that read, "You die now!" State health labs across this country were so backed up that the anxiety that those office personnel suffered during the wait for the results is unthinkable.

The sentencing guidelines range from as low as 10 to 18 months in this type of case. Yet if the AUSA had charged the crime of

threatening the use of weapons of mass destruction, an individual could possibly be facing up to a potential life sentence, which is far too draconian for the crime. So we need more tools.

On October 7, 2001, again less than 1 month after 9/11, Brian Seifert, a computer data recovery specialist, called the FBI and indicated he received a computer disk from an unknown person of Middle Eastern origin. The disk contained a text message hidden in a computer graphic file called steganography. Unknown persons were planning to drive fuel tanker trucks into churches, schools, synagogues and shopping malls. The timing and location of the intended attacks was unknown. The hidden message was a call to arms, rather than an express threat to a specific target. But, given the nature of the statement coming less than 30 days after 9/11, the FBI both locally and nationally devoted extensive resources to determine the validity of the threat.

Finally, after multiple interviews by authorities, he admitted he lied about the source of the computer files. After we concluded that it was a hoax, the only crime we had to punish him with was a violation of title 18, section 1001, for making that false statement to a Federal agent or agency. He sent the FBI on a wild goose chase. It was exceptionally expensive to the taxpayers both in investigative resources and also in U.S. Attorney Office expenses.

The harm from this type of conduct is just as great, whether or not the language used to perpetrate the hoax constitutes a threat. In many cases, a hoax may present law enforcement with what appears to be a credible risk of a terrorist attack, which then distracts them from pursuing legitimate leads to terrorist organizations.

All of these cases would have been difficult if not impossible to prosecute if only relatively slight changes in the facts were made. If Seifert had not made the statements to the FBI, if Jones had not spread the powder at a truck stop and if Panko had not included the threatening language in the letters, it would have been very difficult, if not impossible, to prosecute any of these offenders.

Changes in Title 18 to expand the reach of the law to prohibit conduct resulting in such hoaxes would provide prosecutors with the appropriate tool. Such legislation would be particularly helpful if it prohibited hoaxes involving all crimes that terrorists are likely to commit. It is not possible for us to predict with certainty what those future terrorist hoaxes would look like.

Thank you for the opportunity to testify about this important issue, and I welcome further questions.

Mr. COBLE. Thank you, Ms. Brooks.

[The prepared statement of Ms. Brooks follows:]

PREPARED STATEMENT OF SUSAN BROOKS

Good afternoon Chairman Coble and Members of the Subcommittee. It is an honor for me to appear before this Subcommittee to testify about the need for the creation of a federal hoax statute. My name is Susan Brooks. I am the United States Attorney for the Southern District of Indiana.

I became the United States Attorney for the Southern District of Indiana on October 16, 2001, barely one month after the tragic events of September 11, 2001. The work of United States Attorney's Offices changed dramatically in the aftermath of the terrorist attacks. US Attorney Offices all across the country, working hand in hand with the FBI and Joint Terrorism Task Forces, were thrust into investigations involving the terrorists of September 11th and the need to find potential future ter-

rorists. These were not routine or “normal” investigations for our offices. Then in October, 2001, individuals across the east coast died or fell ill from exposure to anthrax. Congressional offices fell victim to anthrax attacks. All of these horrific crimes combined to create a fear in this country unlike one this generation had ever experienced. Therefore, when individuals commit acts for the sole purpose of perpetrating fear in the lives of others, a separate criminal charge addressing this unimaginable fear is warranted.

Federal prosecutors need the necessary tools to bring to justice individuals who perpetrate hoaxes. Currently our laws are such that those who perpetrate hoaxes either face minimal penalties or face potential life imprisonment where they can be prosecuted at all under Federal statutes. Federal prosecutors and federal law enforcement have worked harder than ever to reach out to our State and local prosecutors and law enforcement agencies in the spirit of cooperation with the goal of preventing future acts of terrorism. When acts of terror turn out to be hoaxes and our partners have invested significant resources investigating, they rightfully expect us to act with statutes that have teeth to ensure the punishment fits the crime.

For instance, on three separate occasions in October 2001, during the same time period where individuals were dying from actual anthrax attacks, David Jones placed a white powdery substance on the counter in a restroom at the Hoosier Heartland Travel Center located off of busy Indiana Highway I-69 just outside of Muncie, Indiana. Jones was employed at the Travel Center. On the final occasion, Jones wrote a warning on a door inside the restroom that anthrax was present. After each incident, Jones brought it to the attention of other employees or encouraged others to call out law enforcement when the powder was discovered by someone else. He later admitted that he placed the powder on the counter each time, first using laundry soap on October 11, crushed aspirin on October 24 and ingredients from the capsules of an herbal remedy on October 26, 2001. He wrote the anthrax threat the third time. Each incident required law enforcement personnel to go to the scene, and this busy truck stop closed for a period of time during the investigation. In this particular case, due to the timing of the anthrax scares around the country, the Indiana State Police asked federal prosecutors to assist. They wanted to send a message across the State of Indiana that these types of hoaxes would not be tolerated. The Assistant United States Attorney responsible for prosecuting terrorism cases charged this individual with a violation of Title 18 Section 35, for imparting and conveying false information concerning an attempt of the commission of a federal criminal act, that is, causing the truck stop, which engages in interstate commerce, to be made unworkable, unusable or hazardous. Use of this obscure statute involving interstate transportation facilities was very creative yet this clearly was a hoax case. Because there was no specific statute on point, this AUSA used whatever tool she could find to make our point.

We have prosecuted other cases in the Southern District of Indiana that in my opinion were classic hoax cases but instead were brought under the statute which criminalizes the mailing of threatening communications, in violation of Title 18, United States Code, Section 876. In one case, a fugitive under indictment, sent three letters on October 23, 2001, again during the national anthrax scare, to three different federal government agencies. Mr. Panko sent one to the FBI Indianapolis office, one to the Defense Security Services in Indianapolis and one to the COPS office here in Washington DC. Each letter contained white powdery substance with an enclosed letter that read “You die now!” The clerical staff who opened those letters lost sleep for many nights I’m sure. At least the Washington DC office of COPS had their mail irradiated prior to receiving it. The other office personnel were not so fortunate and were not certain as to what material fell from the envelopes. Emergency management teams and hazmat teams were called to investigate. The powders were sent to Indiana State Department of Health laboratory for analysis. Labs were so backed up all across the country that the anxiety that those office personnel suffered during the wait for the results is unthinkable. How do we adequately prosecute and punish those who cause this fear? The sentencing guideline ranges for this crime of mailing threatening communications range from as low as 10 months to 18 months in this case, yet if the AUSA had charged the crime of threatening the use of weapons of mass destruction, which anthrax clearly is, the defendant would be facing a potential sentence of up to life, which is far too draconian for this crime. We need some more tools.

The disruption of government and the use of government resources to investigate these cases are extensive, particularly during times of actual terrorist attacks, whether foreign or domestic. In the case of Brian Seifert, an individual now serving a twenty two month sentence for lying to a federal agency, the amount of government resources spent on this investigation are unbelievable. On October 7, 2001, again less than one month after 9/11, Seifert, a computer data recovery specialist,

called the FBI and indicated that he received a computer disk from an unknown person. The disk contained a statement that unknown persons were planning to drive fuel trucks into churches, schools, synagogues and shopping malls. Both the timing and location of the intended attacks were unstated. Seifert initially indicated to the FBI that an unidentified male of apparently Middle Eastern origin came to his business and wanted assistance opening a data file. Seifert indicated that over the next two days he uncovered the statement as a text message hidden in a computer graphic file. This process is called steganography. The “container” file or image that was initially seen was an image of an American flag. However, the “steg’d” or hidden files were three graphic images of Koranic verses and a text file containing the statement about the fuel trucks being driven into Jewish or Christian schools or shopping malls. It was a “call to arms” rather than an express threat to a specific target. Given the nature of the statement, coming less than 30 days after the terrorist attack, the FBI, both locally and nationally, devoted numerous resources to determine the validity of the threat. For instance, the FBI locally set up surveillance at Seifert’s place of business in the event the unknown male would return. The FBI attempted without success to locate security cameras in the area to determine if one had captured a photo of the man Seifert said was the source. Seifert indicated the man drove a late model Lexus or Mercedes so all information was obtained regarding the registrations of such cars in a multi-county area. Items this individual purportedly touched were collected and sent to the FBI laboratory for fingerprint analysis. Databases were searched to determine whether this threat or any part of it, was uncovered elsewhere in the country. Finally, after multiple interviews by authorities, Seifert admitted that he lied about the source of the computer files. However, he then told multiple stories about the source of the computer files during FBI interviews, and the FBI had to determine the veracity of each story. Through time consuming forensic examinations of his own home computers as well as his other computers at his place of business, the FBI concluded that he had wiped data from his home computer and that he had downloaded software to prevent the forensic recovery of data through the use of file wiping technology.

The FBI had to follow any and all leads regarding this hidden message. The consequences of a failure to investigate this type of allegation were unthinkable. This particular individual, Brian Seifert, had assisted local law enforcement in the past with investigations involving computers, therefore when this so-called “friend” of law enforcement brings to law enforcement’s attention the serious allegations of a future terrorist attack plan, the resources devoted were immeasurable. However, after the FBI came to the conclusion that this was a hoax, our office believed that the only crime we could prove was a violation of Title 18 Section 1001 or making a false statement to a federal agent or agency. The penalties available under a 1001 violation did not come close to reflecting the seriousness of Seifert’s conduct or the subsequent investigation that ensued to ensure the safety of our citizens.

Although Seifert agreed to plead guilty to a Section 1001 violation, the government had to vigorously argue that his sentencing guideline range should be increased by three levels for the “substantial interference with the administration of justice.” This enhancement is proper when there has been “unnecessary expenditure of substantial governmental . . . resources.” Fortunately we were able to demonstrate to the Court that the enhancement was justified.

The hoax perpetrated in this case was specifically targeted at the FBI and federal law enforcement agencies. Seifert sent the FBI on a “wild goose chase” both in Indiana and across the country, that was exceptionally costly to the taxpayers, both in law enforcement investigative expenses, as well as US Attorney office expenses, such as the cost of the computer expert witness hired in this case for approximately \$30,000, as well as the time of the two AUSAs who put this case together. The equally egregious part of this hoax was that it targeted innocent men of Middle Eastern descent. The FBI had to follow any and all leads regarding this hidden message allegedly delivered by a man of Middle Eastern descent driving a late model Lexus or Mercedes.

The harm from this type of conduct is just as great whether or not the language used to perpetuate the hoax constitutes a threat. In many cases, a hoax may present law enforcement with what appears to be a credible risk of a terrorist act which then distracts them from pursuing legitimate leads to terrorist organizations or other criminal activity which may come to them in a less certain method.

All of these cases would be difficult or impossible to prosecute if only relatively slight changes were made in the way in which the offenders committed the offenses. If Seifert had not made statements to the FBI, if Jones had not spread the powder at an interstate truck stop, if Panko had not included threatening language in his letters to federal agencies, then it would have been very difficult to prosecute any of these offenders. A fair conclusion to draw from these cases is that situations may

commonly arise where the present state of the law too narrowly focuses on the preparation and sending of threatening communications. The language used by the maker of the threat should not entirely control the result. Prosecutors need a tool to address the equally damaging situation where conduct falls short of being a threat, yet nevertheless was engaged in with the intent to cause substantial interference with law enforcement and public activities. To this end, changes in Title 18 to expand the reach of the law to prohibit conduct resulting in such hoaxes would provide prosecutors with an appropriate tool to respond to these situations. Such legislation would be particularly helpful if it prohibited hoaxes involving all crimes that terrorists are likely to commit, since it is not possible to predict with certainty what future terrorist hoaxes would look like.

Thank you for the opportunity to testify about this important issue. I welcome any questions that you may have.

Mr. COBLE. Mr. McMahon.

**STATEMENT OF THE HONORABLE JAMES McMAHON,
SUPERINTENDENT, NEW YORK STATE POLICE**

Mr. McMAHON. Chairman Coble and distinguished Members of the Subcommittee, I want to thank you for the opportunity to speak before you concerning H.R. 1678.

Mr. COBLE. Mr. McMahon, if you would suspend just a minute, I failed to recognize the distinguished gentleman from Florida and the distinguished gentleman from Indiana. Good to have you all with us.

Mr. McMahon, if you will continue.

Mr. McMAHON. Thank you. I hope my remarks will be of assistance to you.

As you indicated, I am a career trooper in the New York State Police. The New York State Police has over 4,500 sworn members. In many rural and suburban areas of New York State, troopers are the primary policing agency; and, in essence, they are the local police in those areas.

In my 37 years with the New York State Police, I have investigated and supervised or otherwise been familiar with numerous false reports of threats to the safety and well-being of people and/or institutions. Unfortunately, over the last few years, I have seen these calls escalate significantly. This increase, it would appear, came as a result of two tragic incidents.

The first apparent trigger was the Columbine school incident in Littleton, Colorado, in 1999. Immediately after that tragedy, we saw in New York State a dramatic increase in hoaxes involving schools. The resultant fear level in parents, students and school personnel was tremendous; and often parents would not send their children back to school for days afterwards. The cost in terms of the emergency service response, disruption of school business and the emotional strain to students, teachers and parents was enormous.

The second tragedy that spawned an increase in the number of hoax calls regarding public safety threats were the post-September 11, 2001, terrorism scares related to anthrax or other biological agents. Anthrax threats escalated hoax calls to a new level, both from the standpoint of the response required by emergency and public health personnel as well as the fear generated in the public.

This heightened response and fear factor occurred for two reasons. In the first case, the threat was perceived as real. Several deaths relating to anthrax had already gained national attention as

well as the anthrax mailings that were received here at the Capitol. So the public was extremely frightened by a national threat that was not only invisible but was capable of being dispensed and circulated through the air and ventilation systems or the United States mail.

The other factor that caused emergency first responders difficulty is that we were dealing with an unknown and dealing with a threat that, until the World Trade Center attacks, police and other emergency responders had not considered or had really prepared for—that is, the potential of someone using a biological agent as a weapon against society or as the substance of hoax calls to alarm, threaten or disrupt society. It is important to note that the threats or suspicious packages that turned out to be hoaxes were and are handled as if they were legitimate threats and a huge amount of emergency resources are expended.

As an example of a typical hoax incident, let me illustrate just one isolated case handled by the New York State Police in October, 2001. This case occurred in Halfmoon, New York, a town just north of Albany. A 47-year-old man returned home to his residence to find an envelope tucked in the front door with the word “anthrax” written across it. The man called the State Police and wisely did not open the envelope following the State Police guidelines that we heavily promoted in the press and other media.

The State Police spent over 30 staff hours handling the case. In addition, a special hazardous materials team assisted, along with two volunteer fire departments and an ambulance corps with emergency medical personnel. The cost of the State Police was over \$1,500 in salary alone. The hazardous material team cost was \$800. The cost of volunteer services could not be calculated.

Congressman Scott, I think, talked about the loss of business. Most of the volunteers leave their businesses to respond to these, so that cost is very hard to calculate. The New York State Department of Health took control of the envelope and on a priority basis expended approximately \$4,000 to test the substance, which, incidentally, turned out to be sugar. Parenthetically, I would also note that the responding hazardous material team was almost involved in a very serious motor vehicle accident responding to the scene.

This case was just one of close to 700 biological hazard report incidents that occurred in New York State during the period of October through December, 2001. Most of these incidents were hoaxes. A few of them were actual anthrax cases, mostly in the New York City area.

While the cost in terms of dollars and cents, especially to small localities, cannot be overlooked, I don’t think that I can overemphasize the magnitude of the fear factor in these cases. Certainly never in my almost four decades of police work have I witnessed such a high level of concern on the part of the public. Fortunately, these hoaxes have declined. This legislation, however, is necessary to send a clear message to those who would perpetrate the sick, misguided hoaxes which I submit are acts of terrorism in and of themselves.

Thank you once again for your gracious invitation. I will be happy to answer questions at the conclusion.

Mr. COBLE. Thank you, Mr. McMahon.

[The prepared statement of Mr. McMahon follows:]

PREPARED STATEMENT OF JAMES W. MCMAHON

Chairman Coble and distinguished members of the Subcommittee.

I would like to thank you for the invitation to speak before you this afternoon in relation to H.R. 1678. It is an honor to appear before you, and I hope that my presence and remarks will be of assistance to you.

I have been Superintendent of the New York State Police for over 9 years and a member of this organization for over 37 years. The New York State Police is a full service police agency with over 4,500 sworn officers, assigned to over 200 stations, and having statewide jurisdiction. While in larger metropolitan areas, routine police matters are generally handled by local municipal departments, the State Police often work closely with local or county police agencies on significant cases. In many rural and suburban areas, the New York State Police is the primary police agency and Troopers therefore are, in essence, the local police officer.

In my 37 years with the New York State Police, I have investigated, supervised, or otherwise been familiar with, numerous false reports of threats to the safety and well-being of people and/or institutions. These false threat hoaxes usually consist of bomb threats or letter bomb hoaxes, usually directed at schools, malls, government office buildings, or other public gathering areas.

Unfortunately, over the last few years I have seen these calls escalate significantly. This increase, it would appear, came as a result of two tragic incidents.

The first apparent trigger was the Columbine School incident in Littleton, Colorado, in 1999. Immediately after this tragedy we saw in New York State a dramatic increase in hoaxes involving schools. The resultant fear level in parents, students, and school personnel was tremendous. The slightest threat, even something perhaps scribbled on a bathroom wall or desk could result in full evacuation of the school, and a full police response and evaluation of the situation. Often, parents would not send their children back to school for days afterward. The cost, in terms of the emergency service response, disruption of school business, and the emotional strain to students, teachers, and parents was enormous.

The second tragedy that spawned an increase in the number of hoax calls regarding public safety threats were post September 11th terrorism scares relating to anthrax or other biological agents.

Anthrax threats escalated hoax calls to a new level, both from the standpoint of the response required by emergency and public health personnel, as well as the fear generated in the public.

This heightened response and fear factor occurred for two reasons. In the first case, the threat was perceived as real—several deaths related to anthrax had already gained national attention, as well as the anthrax mailings that were received here at the Capitol. So the public was extremely frightened by an actual threat that was not only invisible, but was dispensed and circulated through the air and ventilation systems.

The other factor that caused emergency first responders difficulty is that we were dealing with an unknown, and dealing with a threat that until the World Trade Center attacks, police and other emergency responders had not considered or had really prepared for, that is, the potential of someone using a biological agent as a weapon against society.

Exacerbating the fear factor and the intricacy of the emergency response was the fact that these responders were not readily equipped with the knowledge or the equipment to handle biological agents.

Within the New York State Police, we had to rapidly acquire equipment such as respirators, protective clothing, and sealed transport containers, to handle these items and engage in coordinated efforts with fire, medical, and health department personnel to work out proper protocols for decontamination, evacuation, handling, transport, and testing of packages suspected of containing anthrax or other biological agents. Many similar local departments are still unequipped to properly handle this threat. The enormous costs associated with acquisition of equipment were joined by a substantial increase in training costs associated with the use of that equipment and proper handling and response techniques.

Of course, the threats that turned out to be hoaxes, were handled as if they were legitimate threats and a huge amount of emergency resources were expended.

As an example of a typical hoax incident, let me illustrate just one isolated case handled by the New York State Police in October of 2001. This case occurred in Halfmoon, New York, a town just north of Albany. A 47-year-old man returned home to his residence to find an envelope stuck in the front door with the words "Anthrax" written across it. The man called the State Police and wisely did not open

the envelope, following the State Police guidelines that we heavily promoted in the press and other media. The State Police spent over 30 staff hours handling the case. In addition, a special hazardous materials team assisted, along with two volunteer fire departments who sent 20 firefighters, and an ambulance corp with emergency medical personnel. The cost to the State Police was over \$1500 in salary alone.

The New York State Department of Health took control of the envelope and, on a priority basis, expended approximately \$4,000 to test the substance, which, incidentally, turned out to be sugar and was deposited at the residence by an acquaintance who owed the resident some money. Parenthetically, I would also note that the responding hazardous material team was almost involved in a serious motor vehicle accident responding to the scene.

This case was just one of close to 700 biological hazard reported incidents that occurred in New York State during the period October through December, 2001. The New York State Health Department Laboratory tested over 1,000 samples relating to these cases for suspected bio/chemical threat, of which only 23 samples proved positive for Anthrax. These positive samples were related to a few New York City incidents. Most of the cases were either hoaxes or innocent mistakes. The cost, both in terms of financial impact to towns, cities, and the state, as well as the disruption to business and emotional fear factor was huge. While the costs, in terms of dollars and cents, especially to small localities cannot be overlooked, I don't think that I can overemphasize the magnitude of the fear factor in these cases. Certainly, never in my almost four decades of police work, have I witnessed such a high level of concern on the part of the public.

Fortunately, these hoaxes have declined. This legislation, however, is necessary to send a clear message to those who would perpetrate the sick, misguided hoaxes, which I submit, are acts of terrorism in and of themselves.

Thank you once again for your gracious invitation. I will be happy to answer any questions you may have.

Mr. COBLE. Mr. Danny Hogg.

**STATEMENT OF DANNY HOGG, TARGET OF WAR-TIME HOAX,
UNCLE OF U.S. SERVICEMAN**

Mr. HOGG. Chairman Coble, Ranking Member Scott, Members of the Subcommittee, my name is Danny Hogg. Thank you for inviting me to testify today on the wartime hoax that my family and I experienced.

On the morning of March 29, 2003, I attended a "Support Your Troops" rally at a local park in Flagstaff, Arizona. While at the rally, a reporter for the local newspaper, the Arizona Daily Sun, took pictures of me and asked me why I was there. I told him I was there to support my nephew, Wayne Jeremy Hogg, who was stationed in Iraq and to my knowledge was on his way to Baghdad. He told me to look in the newspaper the next morning.

On the morning of Sunday, March 30, 2003, I was at my brother-in-law's home when my son told me that Jeremy had died. He had just received a phone call that Jeremy had been killed a couple of days ago. This coincided with the report 2 days earlier of four people being killed in El Nasaria in the push into Baghdad from the 3rd Infantry Division, possibly a maintenance company. He said that the person was from Jeremy's unit and that they had talked about a reunion after the war. At that point, my son hung up and came to get me.

I immediately went home and called my mother, Jeremy's grandmother, to see if she had heard anything about this. She told me, no, what is going on? I told her that we had received a phone call that Jeremy had been killed, which upset her. I told her not to believe it until I talked to David, my brother, and Jeremy's father. I then called my brother and asked him if he had heard anything

about Jeremy. He said he hadn't. I told him that I had received the call, which also upset him.

I said, David, we need to find out what's going on. I told David that I would call a phone number that I had taken off of MSNBC about what to do to find out about the troops. My brother at that point called Fort Huachuca, the major military institution in Arizona. When I contacted the MSNBC number, they told me that they do not notify the status of loved ones over the phone, that they come to your house. They gave me the number to Fort Stewart, Georgia, which is where Jeremy is stationed. I called my brother and gave him the number to Fort Stewart.

I then went to the store, and the clerk told me that I was a celebrity. I asked him why, and he told me to look at the front page of the paper. I looked at the paper, and the caption under my picture on the front page read, "Danny Hogg waves an American flag in support of his nephew Wayne Hogg during the 'Support Our Troops' rally." at this point, I figured where they had gotten the name Wayne, as I referred to him as Jeremy.

I went home and called my mother and then my brother and told them that it was a hoax. My brother said that he had contacted Fort Stewart and they stated that no one in his unit had been injured or killed. This gave us reassurance. I then had figured where they had gotten the name Wayne.

I then tried to contact the Department of Homeland Security and could find no number. I tried the Flagstaff office of the FBI and no one answered. I then found the number of the Phoenix office of the FBI and called them. They told me that unless I could prove that it was an out-of-State call they had no jurisdiction and I needed to call my local law enforcement agency. The Coconino County Sheriff's Department told me that they could not do anything, but they took a report and told me that there was a State statute covering harassing and hoax phone calls. They told me if it happened again to give them a call.

I then tried to call Qwest phone company to see if I could find the phone number of the caller, as I wanted to find out who made the phone calls so I could press charges through the State laws. I have an older-style caller ID and the phone has to ring twice for the number to register and my son had picked up the phone on the first ring, so the number did not register on my caller ID. I could not get through to talk to a person with Qwest.

I called my brother, and he had been contacted by Fort Huachuca, and they stated that they had talked to his commander, and they said that he was fine. They were going to try to get us a phone call later in the day.

All this started at approximately 9 a.m. We had reassurance from the commander by 2 p.m. I called my work and took off for the day and then told them what had happened and would let them know when I had word on what was happening. By this time, we knew it was a hoax.

I then called everyone else quoted in the newspaper article and asked them if they had received similar phone calls. I told them about my phone call and warned them if they received a similar call not to believe it. The military comes to your house in uniform to let you know the status of your loved ones. I then figured that

I would get ahold of as many people as possible to let them know what had happened to my family so, hopefully, what happened to my family would not happen to another.

By 9 p.m., my brother received a phone call from Jeremy saying that he was fine and that the Army would like to know who had made the phone call as they would like to prosecute.

I then contacted the newspaper and asked if they would print my story. They printed a story on April 1, 2003. The headlines read: Prank Call Sends Flag Man Scurrying for Information About Dead Nephew.

The morning of April 1, 2003, I received phone calls from numerous television stations asking if I would be willing to do an interview. I said yes. I did two video interviews with television stations and three phone interviews with television stations. I did interviews with stations as far away as Georgia. I have relatives that live in other States that stated they had seen my story on CNN in their States. I felt that I had done the right thing getting the information to as many people as possible via the news media.

I would like to thank the military for the reassurance given us on the 30th of March, 2003. At no time in the history of the United States could someone have received a phone call from their loved one in such a timely manner up to and including a phone call from my nephew. I received a letter from Jeremy dated the 18th of April, 2003.

While reading the letter, I found out that someone had died bringing Jeremy the satellite phone so he could call us. This is a quote from my nephew's letter: I have seen things words can't describe and done things I don't want to do. I lost some friends out here. Loading their bodies on the truck was the worst feeling in the world. One guy died bringing me a satellite phone so I could call Dad to let him know I was alive. It made me think of Saving Private Ryan. Was it worth his life and the risk of three others to bring me a phone? I know it was a relief to all of you to hear I was okay. Now I feel I must make my life worth his. I don't know if I can do that.

As a result of this ordeal, my family has been put in an upheaval that is unimaginable. My mother, my brother, my sister and everybody in my family were placed in terror and immeasurable pain. My niece even went into premature labor. My nephew is still in Baghdad and has been shot in the chest. The bullet was stopped by a bulletproof vest. He has suffered from a broken hand and has received shrapnel in his hand.

I would like to see this legislation be approved so other families would have some sort of recourse should this happen again.

Thank you again for the opportunity to testify before you today.
Mr. COBLE. Thank you, Mr. Hogg.

[The prepared statement of Mr. Hogg follows:]

PREPARED STATEMENT OF DANNY HOGG

Chairman Coble, Ranking Member Scott, members of the Subcommittee, my name is Danny Hogg. Thank you for inviting me to testify today on the war-time hoax that my family and I experienced.

On the morning of March 29, 2003, I attended a "Support Your Troops" rally at a local park in Flagstaff, Arizona. While at the rally, a reporter for the local newspaper, the Arizona Daily Sun, took pictures of me and asked me why I was there.

I told him I was there to support my nephew, Wayne Jeremy Hogg, who was stationed in Iraq and to my knowledge was on his way to Baghdad. He told me to look in the newspaper the next morning.

On the morning of Sunday, March 30, 2003, I was at my brother-in-law's home when my son told me that Jeremy had died. He had just received a phone call that Jeremy had been killed a couple of days ago. This coincided with a report two days earlier of four people being killed in El Nasaria in the push into Baghdad from the 3rd Infantry Division, possibly a maintenance company. He said that the person was from Jeremy's unit and they had talked about a reunion after the war. At that point, my son hung up the phone and came to see me.

I immediately went home and called my mother (Jeremy's grandmother) to see if she had heard anything about this. She told me "No, what is going on?" I told her that we had just received a phone call that Jeremy had been killed, which upset her. I told her not to believe it until I talked to David, my brother and Jeremy's father. I then called my brother and asked him if he had heard anything about Jeremy. He said he hadn't. I told him that I had received the phone call, which upset him also.

I said "David, we need to find out what is going on." I told David that I would call a phone number that I had taken off of MSNBC about what to do to find out about the troops. My brother at that point called Fort Huachuca (the major military installation in Arizona). When I contacted the MSNBC number, they told me that they do not notify the status of loved ones over the phone, that they come to your house. They gave me the number to Fort Stewart, Georgia, which is where Jeremy is stationed. I called my brother and gave him the number to Fort Stewart.

I then went to the store and the clerk told me I was a celebrity. I asked him why and he told me to look at the front page of the paper. I looked at the paper and the caption under my picture on the front page read "Danny Hogg waves an American flag in support of his nephew Wayne Hogg during the 'Support Our Troops' rally." At this point, I figured where they had gotten the name Wayne, as we refer to him as Jeremy.

I went home and called my mother, and then brother, and told them that it was a hoax. My brother said he had contacted Fort Stewart and they stated that no one in his unit had been injured or killed. This gave us reassurance. I then had figured where they had gotten the name Wayne.

I then tried to contact the Department of Homeland Security and I could find no number. I tried the Flagstaff Office of the FBI and no one answered. I then found the number to the Phoenix office of the FBI and called them. They told me that unless I could prove that it was an out-of-state call, they had no jurisdiction and I needed to call my local law enforcement agency. The Coconino County Sheriff's Department told me that they could not do anything, but they took a report and told me that there was a state statute covering harassing and hoax phone calls. They told me that if it happened again to give them a call.

I then tried to call Qwest Phone Company to see if I could find the phone number of the caller, as I wanted to find out who made the phone call so I could press charges through the state laws. I have an older style caller ID and the phone has to ring twice for the phone to register and my son had picked up the phone on the first ring, so the number did not register on my caller ID. I could not get through to talk to a person with Qwest. I called my brother and he had been contacted by Fort Huachuca and they stated they had talked to his commander and they said that he was fine. They were going to try to get us a phone call later in the day.

This all had started at approximately 9:00 AM. We had reassurance from the commander by 2:00 PM. I called my work and took off the day and I told them what had happened and I would let them know when I had word on what was happening. By this time, we knew it was a hoax. I then called everyone else quoted in the newspaper article and asked them if they had received similar phone calls. I told them about my phone call and warned them if they received a similar phone call, not to believe it. The military comes to your house in uniform to let you know the status of your loved ones. I then figured that I would get a hold of as many people as possible to let them know what had happened to my family so hopefully what happened to my family would not happen to another. By 9:00 PM, my brother received a phone call from Jeremy saying that he was fine and that the Army would like to know who made the phone call, as they would like to prosecute.

I then contacted the newspaper and asked if they would print my story. They printed a story on April 1, 2003. The headlines read, "Prank call sends Flag man scurrying for information about 'dead' nephew." The morning of April 1, 2003, I received phone calls from numerous television stations asking if I would be willing to do an interview. I said yes. I did two video interviews with television stations and three phone interviews with television stations. I did interviews with stations

as far away as Georgia. I have relatives that live in other states that stated they had seen my story on CNN in their states. I felt I had done the right thing getting the information to as many people as possible via the news media. I would like to thank the military for the reassurance given to us on the 30th of March, 2003. At no time in the history of the United States could someone have received a phone call from their loved one in such a timely manner up to and including a phone call from my nephew. I received a letter from Jeremy dated the 18th of April, 2003. While reading the letter, I found out that someone had died bringing Jeremy the satellite phone so that he could call us. This is quote from my nephew's letter: "I have seen things words can't describe and done things I don't want to. I lost some friends out here loading their bodies on the truck was the worst feeling in the world. One guy died bringing me a satellite phone so I could call dad to let him know I was alive. It made me think of Saving Private Ryan. Was it worth his life and the risk of three others to bring me a phone? I know it was a relief to all of you to hear I was OK. Now I feel I must make my life worth his. I don't know if I can do that."

As a result of this ordeal, my family had been put in an upheaval that is unimaginable. My mother, my brother, my sister and everybody in my family were placed in terror and immeasurable pain up. My niece even went into premature labor. My nephew is still in Baghdad and has been shot in the chest. The bullet was stopped by a bullet proof vest. He has suffered from a broken hand and has received shrapnel in his hand.

I would like to see this legislation be approved so other families have some sort of recourse should this happen to them.

Thank you again for the opportunity to testify before you today.

Mr. COBLE. Mr. McMahon, my first cousin is a retired State trooper in North Carolina. You as a law enforcement officer, you, Mr. Hogg, as a firefighter, you two represent America's finest. Good to have all of you with us.

Ms. Brooks, we impose the 5-minute rule upon us, too, so if you all will keep your questions brief and we may have a second round.

As a U.S. attorney, Ms. Brooks, what types of charges are you using to prosecute hoax cases not specifically covered by Federal law?

Ms. BROOKS. The types of—

Mr. COBLE. I know sometimes you have to make it fit.

Ms. BROOKS. That is exactly right.

In the first case that I talked about, we used title 18, section 35, which was imparting and conveying a threat to an interstate transportation facility. So that was what we used in that particular case. We also use mailing threatening communications, title 18, section 876. Those have been the primary charges that we have brought against these individuals.

But then, finally, in the last case with the individual who brought the computer disk to the FBI, only because he brought it to the FBI and lied about it we were able to charge him with a violation of 18, section 1001 or lying to a Federal agent. If he had taken that disk to the news media or to some other source, not to a Federal agency and didn't talk with the FBI about it, we couldn't have charged him with anything.

Mr. COBLE. In your statement, Ms. Brooks, you indicate that the hoax legislation should cover hoaxes involving all crimes. I have the fear that this may well be overbroad. Clarify for me, if you will, do you mean that we should actually cover any crime likely to be committed by a terrorist such as theft, for example, identity theft or visa fraud that on its face probably would not cause unimaginable fear? Or, rather, do you think it should apply only to crimes likely to be committed by terrorists that could cause unimaginable fear?

Ms. BROOKS. I do believe that it needs to be more relevant to those that cause unimaginable fear such as those crimes that are listed in title 18, section 2332(b), which lists various different crimes that fall under the definition of acts of terrorism. So those types of crimes are those that we are trying to rectify the situation.

Mr. COBLE. Mr. Hogg, before I forget and as an aside, is your nephew doing well now as far as you know?

Mr. HOGG. We talked to him about a week and a half ago. He is still in Baghdad, and I am not sure exactly when he is coming home. He is doing well. He is in a safe and secure area, to my knowledge.

Mr. COBLE. Good. Glad to hear that.

Mr. McMAHON, since September 11, terrorist attacks on New York may well be likely. I mean, these folks are going to come back, I have the fear, and I fear it may be next by water port or harbor. How have you all addressed this ongoing threat in a general way? I am sure it has been costly in doing it.

Mr. McMAHON. It has been extremely costly. Governor Pataki has used the State Police and the National Guard really as mobile forces to augment local law enforcement, including New York City like you said, especially at port areas, tunnels, bridges. In a recent Agent Orange on the commuter trains, we had troopers riding on the commuter trains coming in from both upstate New York and from Long Island into New York City.

A northern border initiative, we have over 400 miles of border with our Canadian neighbors to the north. The governor has augmented Federal resources on that by us hiring an additional 120 troopers, many of them working with Customs and Border Patrol at the 17 border crossings that lead into it. But these border crossings, the bridges, the tunnels—as you said, the ports are certainly potential targets.

Mr. COBLE. Mr. McCotter, have you had an occasion to have firsthand knowledge of any hoaxes that have erupted in your district?

Mr. MCCOTTER. We have not been contacted about it, but it has been occurring in Michigan and throughout other areas.

Again, what Mr. Hogg has expressed is the best way to put it, the pain and suffering that people go through. It would be very much akin to anyone in this country being told that their children were injured or killed or that their spouse had been injured or killed or someone that they cared about deeply. To sane, thinking people this is something that is unconscionable as well as almost inconceivable, and yet it is occurring.

Again, I want to reiterate my great gratitude to this Committee for asking me here to help with this and your willingness to deal with this issue.

Mr. COBLE. Good to have you with us.

The other day I read an article about a person who was described as deriving much pleasure out of humiliating others. It is difficult for me to relate to that. It is equally difficult for me to relate to how people can get some sort of kick or thrill out of disseminating hoax messages that inevitably inflict harm upon the recipient.

Yes, sir, Mr. McCotter.

Mr. McCOTTER. Yes, Mr. Chairman. And there is the practical problem that the military faces when families are the victims of such vile acts. Families need information about their loved ones overseas or in a combat zone. This could be, if unchecked, a method by which terrorists use to help slow down military operations of the United States.

Mr. COBLE. Indeed it could.

The red light is in my eyes now. I now recognize the gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. I want to thank the witnesses for their testimony.

Ms. Brooks, you indicated some of the problems you have to go through because of the limited jurisdiction criminal law that we have on the Federal level because most crime statutes are local and State. Can you give us some reaction to the problem we may have under the Lopez decision if this bill were to pass? You indicated, for example, that you had to have the FBI as the Federal nexus. Does this create enough of a Federal nexus to get past the Lopez decision?

Ms. BROOKS. I'm sorry, I am not familiar with the Lopez decision.

Mr. SCOTT. That is the one that said you couldn't have a gun-free zone, having guns near schools. The court said that there is no Federal nexus there and so you couldn't pass a Federal statute. The ones that you spoke to, that you had to have the Federal nexus, he sent it to an FBI agent, for example, that gave you the Federal nexus spoke to that very issue.

Ms. BROOKS. I believe the type of crimes that this statute is trying to address, crimes involving biological attacks, nuclear attacks, chemical attacks or any of those acts of terrorism that are enumerated under 2332(b), those are crimes that are rightfully investigated and belong to the national Government. Those are not the types of crimes that our State and local counterparts are prepared to investigate and prosecute. Because of the nature of the crimes, because they are biological, chemical, nuclear, we believe that those are really national in nature.

Mr. SCOTT. You deal with the Federal sentencing guidelines.

Ms. BROOKS. Yes.

Mr. SCOTT. This statute allows for a punishment up to 5 years. The sentencing guidelines will presumably give you some guidance as to who ought to get the 5 and who ought to get less. If there is clearly a joke, no harm intended but a bad joke, can the sentencing guidelines be descriptive enough so that those who are committing heinous acts can get the 5 years and those who are more of the pranks, no-harm-intended kind of thing, although harm was involved, be accommodated?

Ms. BROOKS. I believe that this statute does adequately cover that, in part because there are civil remedies as well as the criminal remedies covered under this proposed statute; and the sentencing guidelines often build into the guidelines numerous factors that the Commission takes into account that I am certain the bill comes up with to make certain that those who really perpetrate the most heinous, rather beyond the more minor jokes, that those will be really dealt with more severely. So I believe that the Sentencing

Commission will be able to come up with numerous factors that will be able to take that into consideration.

Mr. SCOTT. You mentioned the civil actions that are allowed in the legislation. The civil action appears to limit your recovery to expenses. Do you have the bill before you?

Ms. BROOKS. I do.

Mr. SCOTT. Page 2, line 15, appears to limit the recovery to those expenses. Usually, if you have violated a criminal law and you are liable to expenses, noneconomic damages, punitive damages and everything else, do you see that language as limiting and possibly denying recovery for, say, punitive damages?

Ms. BROOKS. I am sorry, the bill that I have before me, line 15 on page 2, is a criminal violation line, so I am not certain that we have the same—

Mr. SCOTT. The last part under civil action, 1037(b), civil action.

Ms. BROOKS. I believe—

Mr. SCOTT. It would be the last couple of words in that section.

Ms. BROOKS. Are you referring to “is liable in a civil action to any party incurring expenses incident?”.

Mr. SCOTT. Right.

Ms. BROOKS. I am sorry. Would you repeat your question?

Mr. SCOTT. Are you limited just to expenses? Usually, you can get punitive damages if you violate a criminal code against somebody.

Ms. BROOKS. The reimbursement that is set forth here—

Mr. SCOTT. Under part C.

Ms. BROOKS.—under part C does refer to all of the expenses incident to that emergency. That is correct. That is all that this currently sets forth. I do not read that it does set forth any treble damages or any punitive damages. That is correct.

Mr. SCOTT. The reimbursement section allows the court to order reimbursement. It says it shall order the defendant to reimburse for expenses. Will you have a problem if we gave the court the discretion? Some expenses may be more than any individual could possibly pay if his prank went totally awry.

Ms. BROOKS. I believe that is something certainly that the Department of Justice would like to work with the Committee on with respect to any technical amendments. We certainly would be willing to work with the Committee on that language, yes.

Mr. SCOTT. Thank you.

Mr. COBLE. I thank the gentleman.

The gentleman from Florida, Mr. Feeney.

Mr. FEENEY. Thank you. Thanks to our colleague, Mr. McCotter, who is a good friend. I thank you for bringing to our attention, Mr. Hogg and Ms. Brooks, about some of the specific issues that come up and some of the harm that is caused, which is devastating.

The bill in front of us doesn't get to the horrible tragedy in the Hogg family case. The bill that was proposed last year may or may not deal with the Brian Seifert case that Ms. Brooks described, because I am not sure that fuel, regular gasoline, is considered a biological, a chemical or nuclear weapon under the subsections that are referred to in the bill in front of us. So I suppose that we are having hearings to talk about how to expand the nature of the per-

ceived terrorism hoaxes, and I guess we come to some very difficult line-drawing problems.

Mr. Scott suggested that the Lopez case prohibits Feds from regulating safety around school zones because presumably States have the ability and capability, the primary obligation to do that under the Constitution. I happen to agree with that decision. Every weekend in Florida we have people that yell jokingly or otherwise that there are sharks in the water. We have people that pretend that they are drowning. More than once we have had lifeguards busy paying attention to a hoax when another crisis occurred. The question is when these things rise to the level of a Federal crime. Because while some offenses most of us have engaged in can be considered juvenile hoaxes, even juvenile hoaxes can cause great harm to families and people.

One of the questions I have, and I guess with respect to New York probably the best example we have—I am glad the superintendent is here—I mean threatening to use a blowtorch to the bridge cables which was a potential target—that is not covered by the bill in front of us. Shutting down the Lincoln Tunnel, for example, is the type of disaster—we have got theme parks in my community. But every large community has stadiums and the threats around there. So the problem we are going to get into is this huge line-drawing problem, of where should we as a Federal Government get in and punish people at the level of a Federal crime for a hoax?

I have to agree that lying to the family whose son or daughter is serving in the military probably ought to be a Federal crime. I happen to believe that the bill that was passed last year out of the House ought to be passed at a minimum in the version it is in. What maybe Mr. McMahon and maybe Ms. Brooks and maybe Thad would want to comment on generally is where we ought to be thinking about drawing the line. The bill before me I am perfectly prepared to support, but it doesn't get to any of the issues that you described today. I want to know how far we are going to go in terms of turning pranks and hoaxes into Federal crimes.

Mr. MCMAHON. You bring a point up I wanted to bring up, Congressman. In the last 2 weeks in New York there has been two incidents that I think this bill wouldn't cover. They deal with bomb threats and explosions, one being in the Holland Tunnel and one on Tuesday on the Peace Bridge that connects the Province of Ontario with the City of Buffalo, one of the five top border crossings in the country. The hoax call said that there was a bomb and there was going to be an explosion in these areas. The reports—the way I read this legislation, unless it said that it was going to be a dirty bomb, that it had some kind of nuclear implications, it wouldn't be covered.

On the Peace Bridge now, you are talking interstate commerce. You are talking countries. That bridge was closed from 5:30 to 8:30 in rush hour on a weeknight. It is—the U.S. Government and Canadian government have the authority on the bridge. Response was from Customs, Border Patrol, the State police and several other police agencies with bomb dogs that go out there.

Mr. FEENEY. I am going to let each of you answer this, but my time runs out in a second. I want to give you one last hypothetical for all of you to address.

Shutting down Chicago O'Hare Airport, whether you do it with a threat of a nuclear threat or just the typical bomb you could make in your garage, has the same potential impact, so judging it by the harm doesn't get to my question. Where does the Federal crime begin and where does it end?

And after the witnesses are done, I will yield back, Mr. Chairman.

Mr. MCMAHON. Well, I think—to answer your question so it gets to both ends, I think prior to 9/11 I wouldn't have said you needed a Federal crime here, but I think you do now because you are going to have jurisdictions that are Federal and they should have the laws to work with. Most of the time we are working together, State and local, now on the joint terrorist task forces on these issues, and I think that this law needs to be on a Federal level. Some States have laws, some don't.

Governor Pataki under his legislation has created in certain areas a D felony, which is up to 7 years for these kind of hoaxes. There is no civil liability in that, which there is in this law. I think it is very important for these people to put that especially to small communities, fire departments, smaller police departments with the amount of money that it costs them to respond to these type of incidents. There has got to be something to curtail them.

Ms. BROOKS. What you were talking about, Congressman, is the need to make sure we are including conduct beyond threatening language. Because not everything has an explicit threat attached to it. It could just be the conduct. For instance, an individual showing up with a hoax device strapped on to their person, they are not saying anything. They just might be standing there with something that looks like a detonator in their hand. So we need to make sure that we are including language that gets to situations where the conduct is equally as threatening and that we know it is going to cause substantial interference with the public.

ATF—I spoke with the resident agent in charge yesterday of the Indianapolis office—indicates that he does not believe—his name is Jeffrey Groh. He does not believe that we sufficiently cover hoax devices in our language as well; and he would like to ensure that hoax devices are included in any language that might be proposed.

But I think what Mr.—Superintendent McMahon is referring to, the civil reimbursement costs as well can be substantial. In the Seifert case, well over \$100,000 in Federal resources were expended. So while Superintendent McMahon talks about in the hundreds and sometimes in the thousands, which can be significant, in this particular case well over hundreds of thousands was spent on one hoax case; and I believe that if the State and local law enforcement officers really look to the Federal Government, as I said, to try and put some teeth behind some of our laws—because some of our State laws are not strong enough and they are not getting sufficient penalties in the State court where they believe that we would in the Federal court system.

Mr. COBLE. The gentleman's time has expired.

The distinguished lady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman and the Ranking Member, and I thank the witnesses who are here.

I am going to probably ask some of the questions that might have been answered in your statements. Because of activity and legislative debate on the floor of the House, I was detained and so did not hear all of your testimony.

But if you would—Mr. Hogg, first of all, thank you for being here. I know that may be difficult to have to summarize for me the very difficult situation that you went through, but I think it is very important that you were willing to be here today and, as well, very important for you to share this information because hearings are instructive and they provide you with the added information to make the legislation work.

And might I just say, before you begin, it is interesting that we are having this hearing dealing with hoaxes and the issues of terrorism because in the backdrop of this hearing is the very threat that any day a terrorist act could occur in the United States. We have a responsibility to sort of decipher the hoaxes in the backdrop of individual rights of individuals, individual rights of people who, though we may not like it, may be perpetrating a joke; and we have to be fair in that instance. But I think what your testimony—obviously, you are suggesting or your testimony will suggest that there are times when it is certainly not a joke and certainly warrants our action; and if you could just summarize for me what occurred to you, what happened to you.

Mr. HOGG. I went to a “Support Our Troops Rally,” and I had made the front page of the paper, and there was a caption underneath it that gave my name and my nephew’s name. And the next day I—the only thing I can figure out is somebody looked up my name in the phone book and got my number. They called my son and told him that my nephew had died, which started a snowball rolling, me getting ahold of my family members, trying to find out and upsetting them, all the way up to us getting ahold of the military installations to try and find out if we could find out what was going on with my nephew, up to and including my nephew getting a cell phone—or a satellite phone to call home. On the way to bring him the satellite phone, one of the soldiers was killed bringing the satellite phone to him. It pretty much ended up somebody gave me a phone call which started a snowball rolling and got everybody in my family upset.

Then, once we found out it was a hoax, I tried everything I could to get the word out to other people so they would not believe a phone call and stuff; and I went to as many news agencies as would hear me, and stuff, and did interviews, both phone and video interviews, and tried to get the information out as clearly as I possibly can.

Ms. JACKSON LEE. Was the perpetrator ever caught or any name left with respect to this?

Mr. HOGG. No, ma’am. There’s no idea who did it or why they did it. What they did was irresponsible and just totally unnecessary.

Ms. JACKSON LEE. And I would assume there is an ongoing investigation still trying to find the individual or—

Mr. HOGG. No, ma’am. There isn’t.

Ms. JACKSON LEE. And the letter that we have before us is the letter from your nephew.

Mr. HOGG. Yes, ma'am.

Ms. JACKSON LEE. Okay. Let me just say that, more than our deepest concern and sympathy, because that is, obviously, an outrageous effort, as I look at this legislation I guess I think one of the important things that we need to do is to make sure that it is carefully crafted to ensure that incidences that have not come to our attention—this is unique since this legislation was written—would still comfortably fit, while we still do not grab a fisherman's net around the very poor practical joker, because there will always be practical jokers amongst us and they certainly have rights of innocence.

So I would like to—and I thank you very much for helping me with that. I'd like to ask both Mr. McMahon and Ms. Brooks, how do you think this legislation crafts that very fine line? Thank you, Mr. Hogg.

Ms. BROOKS. Thank you, Congresswoman.

The legislation does permit and I think in any situation where a Federal prosecutor might be contemplating Federal charges there is prosecutorial discretion, and we look at all of the facts after the investigation has been completed to determine what is the appropriate charge, what is the appropriate penalty, what is the most readily provable offense. So I think that in some sense some prosecutor discretion as well is permitted in this particular draft that I have. There is civil action that is permitted as well, which would not rise to the level of seriousness of criminal action, and so I believe that we would be able to—this statute would cover those circumstances.

Ms. JACKSON LEE. So would you think that the fine line would be at the time that the prosecutor decides to prosecute one, whether or not this can be classified or factually a practical joke or is it going to be at the time of sentencing? Because my concern with—I think I heard you say the U.S. Sentencing Commission. Because when we have mandatory sentencing, of course, by the time it gets to the court, prosecution and conviction, then the judge is committed to the mandatory sentence. And I want to protect Mr. Hogg, long range, as he symbolizes what kind of tragedy may occur where someone's evil mind will create. But, also, there is a fine line on expression, freedom of expression, and as well this whole question of whether devices signify speech, which is what you had been speaking about earlier, that someone wanted to cover devices.

I would like to ask the Chairman unanimous consent for an additional 1 minute.

Mr. COBLE. Without objection.

Ms. JACKSON LEE. Thank you.

Ms. BROOKS. I believe that that is what—and I will defer to Superintendent McMahon, because we rely on the investigators who are investigating the matter before we decide to bring these types of charges. So we would take a whole host of things into consideration before we would decide to bring this type of violation.

Ms. JACKSON LEE. Mr. McMahon.

Mr. MCMAHON. I would agree. We would be—it would be based on our investigation.

What I testified to was that after 9/11 with the anthrax scares I have never seen the fear level on hoax calls as I had, and we have had numerous calls. You know, prior to 9/11 or really prior to Columbine, we would get—a hoax call might be where you talk about a joke, would be kids during exam week trying to get out of going to school or something maybe. I think 9/11 changed the tone. Anthrax changed it. Most of these cases are not being done by youth. They are being done by adults who should know better if it is a joke.

But the fear level that they are causing now is really substantial and I think needs to be addressed accordingly on that. I think this gives the prosecutor based on the investigation the leeway to look at that. But I think there really has to be a clear message sent that this is—I mean, besides the fear level to the individuals who may end up with white powder on them, whether it is anthrax or not, but closing buildings, closing Government facilities that go along with it, I don't see the joke in it, especially after 9/11.

Ms. JACKSON LEE. Congressman—

Ms. BROOKS. If I could just add, within the last 24 hours, the U.S. Attorneys Office in the Southern District of Indiana received an anthrax hoax letter. I have been U.S. Attorney for over 18 months and we had not received such a letter, and I found it incredibly eerie that our office received such a letter yesterday at about this time.

And the individual or the individual, once all of the emergency personnel came to our offices Superintendent McMahon talked about earlier, from the police department to the fire department to the county health department, all had to come to our office, and when they got there, the name on the return address happened to be a State prisoner that they were very familiar with. But until all of those folks had shown up and until someone recognized that, the mail personnel who handled that letter and all of the other attorneys and other office staff personnel who handled that letter, we—every one waited with baited breath, not certain as to what we had in our mail room.

I really believe that having that type—and we were very fortunate because, even though it is still going to be tested and it takes a good 48 hours for those cultures to be tested and to determine whether or not they are positive or not, only because we know that this individual has done this many, many times, do we have some sense of security. But I believe that the sense of fear and the lack of security that these types of incidents really perpetrate is what currently the law is really not addressing.

Ms. JACKSON LEE. It has been exacerbated by 9/11 and what we are presently in.

Mr. Chairman, can I just ask an inquiry? Do you—the Ranking Member and yourself have a schedule for the markup of this legislation?

Chairman SENSENBRENNER. No, not known to me.

Ms. JACKSON LEE. I would like to be able to work further with this Committee on the issues that Mr. Hogg brought up. And, Congressman McCotter, we appreciate very much your leadership. But so that we can have protection Mr. Hogg would need, because I notice his was geared around military, but it may be that there are

some other issues that should be utilized, law enforcement, et cetera.

Mr. COBLE. I think I would permit that, Mrs. Jackson Lee.

Ms. JACKSON LEE. I would like to be able to do that along with trying to respect—not respect but recognize that there are probably unhealthy practical jokers around as well.

Thank you. Yield back.

Mr. COBLE. I thank the lady.

Mr. McCotter, your body language told me that I cut you off earlier. Did you want to be heard additionally?

Mr. MCCOTTER. Yes, Mr. Chairman, if it's acceptable to you.

Mr. COBLE. All right.

Mr. MCCOTTER. In relation to the hoaxes with the military, the questions about Federal nexus should not be a problem. Obviously, it is the United States military—and I think that it also provides some insight into what type of standard that you are looking at in the larger context of what this Committee is trying to do. Because you are dealing not with the subjective standard of a joke, which is what the person who perpetrates it is thinking, but is something so vicious that it is absolutely unreasonable for any reasonable person to believe there was any intent other than mass societal disruption or extreme personal emotional distress on the part of the victim. So I think that you have some pretty good guidelines. And in the overarching context of nexus, again, the Lopez decision will delineate what you can do, but it will also give a guide to what you could be able to do, and I look forward to working with this Committee in whatever capacity you deem acceptable.

Mr. COBLE. Well, H.R. 1678 does not presently cover hoaxes on military families; and I presume, Mr. McCotter, you are suggesting that the bill be expanded to cover those situations, is that correct?

Mr. MCCOTTER. I would be extremely grateful for the Committee to do that.

Mr. COBLE. I think furthermore, folks, the information that was enlisted concerning the hoax devices, I think we need to maybe, Mr. Scott, look—and Mrs. Jackson Lee—look into that more thoroughly as well.

Mr. Hogg, I have a copy of an 18 April, 2003, letter addressed to you by your nephew; and without objection that will be made a part of the record.

Mr. HOGG. Thank you, sir.

[The information referred to follows:]

18 April 03

Dear Uncle Danny,

I got your letter today. I was very glad to hear that Josh made the honor roll. I ~~too~~ knew he was smart. He just needed the motivation to show his potential. I got a letter from Crystal too. I don't know if I wrote her back or not but please let her know that the pictures she sent are great. I really liked the ones you sent also. I miss you all so much. I was sitting here earlier reading your letter drinking coffee and having a smoke and thought of all the times we sat on the porch and talked over a pot of coffee and a cigarette. I miss those times so much. I wish I was there to do it now. Who would have thought three years ago when we talked about me joining the Army on the porch smoking and drinking coffee, I would be doing this. I have seen things words can't describe and done things I don't want to. I lost some friends out here. Looking there bodies on the truck was the worst feeling in the world. One guy died bringing me a sat. phone so I could call Dad to let him know I was alive. It made me think of 'Saving Private Ryan'. Was it worth his

life and the risk of the 3 others to bring me a phone? I know it was a relief to all of you to hear I was okay. Now I feel I must make my life worth this. I don't know if I can do that. I just want to come home. We all do. I wish I could forget all of this. Maybe then I could sleep at night. I wish I could tell you everything, but I just can't write it all down. I know I will have the chance to tell you when I get home. Maybe over a cup of coffee. Tell everyone I said Hi and I miss them and love them. Talk to you later.

*Love
Jeremy*

Mr. COBLE. Mr. Scott, did you want to say anything else?

Mr. SCOTT. No, Mr. Chairman. We have just—just going over the bill, there are a couple of technical things I think we need to discuss between now and the time we mark the bill.

Mr. COBLE. Sounds good.

Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Mr. COBLE. Thank you.

Folks, you all have contributed very significantly to this issue today. We thank you for being here.

Now, Madam Attorney—Madam U.S. Attorney, you may not be able to respond to this, but I am advised that you had a very terrifying occurrence that crossed your path recently. Can you share that with us? It may be of help to the Subcommittee.

Ms. BROOKS. Well—and, Mr. Chairman, approximately 24 hours ago we did have a letter that was delivered to our mail room, and our mail personnel did open the letter. Another envelope dropped from the letter that had "anthrax" written on the letter. She did the appropriate things, followed the procedures that the office security personnel had put into place. She shut the door and called for assistance. Unfortunately, there were individuals roaming in the halls right outside that mail room where the mail slots were.

The emergency personnel were called. The police department arrived first. The fire personnel arrived, and then the Marion County health department arrived.

And upon arrival that is when we learned that—but it took some time for all of these various personnel to get there and for someone to recognize that the individual's name that was on this particular

letter was an inmate at a State institution who has sent numerous letters to various officials. And it is—and so they were very familiar with the individual. But that gave us some assurance then that, because it had come from a State institution and he had done this on numerous occasions, we felt better, that we thought that it probably then was not anthrax.

However, the State Department of Health is still going to be doing the testing. It will be 48 hours before it is confirmed that it is not anthrax, and the FBI and the Federal Protective Services are going—are involved in this investigation and will continue, hopefully, to pursue the appropriate charges.

Mr. COBLE. Well, we of the Subcommittee very much appreciate you all being with us today.

This concludes the legislative hearing on H.R. 1678, the “Anti-Hoax Terrorism Act of 2003.” The record will remain open for 1 week, so if you all have additional contributions to make feel, free to contact us.

Again, thank you for your presence today; and the Subcommittee stands adjourned.

[Whereupon, at 4:15 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

MARK GREEN
8TH DISTRICT, WISCONSIN
ASSISTANT MAJORITY WHIP



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

COMMITTEE ON
FINANCIAL SERVICES
VICE CHAIR
SUBCOMMITTEE ON HOUSING AND
COMMUNITY OPPORTUNITY
COMMITTEE ON THE JUDICIARY
VICE CHAIR
SUBCOMMITTEE ON CRIME, TERRORISM AND
HOMELAND SECURITY
COMMITTEE ON
INTERNATIONAL RELATIONS

July 22, 2003

The Honorable F. James Sensenbrenner, Jr.
Chairman
House Committee on Judiciary
2138 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to you about H.R. 1678, the "Anti-Hoax Terrorism Act of 2003." At the hearing that was held July 10, 2003, the fact that there is not a special penalty for false statements in terrorism cases was raised.

The example that was provided was over New Year's Eve when an individual provided false information about Pakistanis who had infiltrated the United States for the purpose of committing terrorist acts. This statement caused widespread alarm, necessitated the diversion of untold law enforcement resources and prompted a worldwide manhunt. Under current law, there is no special penalty for obstructing justice in this nature or making false statements in terrorism cases.

The significant harm these actions cause must be punishable by a stricter guideline that what is currently available. We need to increase the penalty for making false statements in terrorism cases and, further, we need to instruct the U.S. Sentencing Commission to adopt stricter sentencing guidelines for obstruction in terrorism investigations. I ask that you include these changes in an amendment to H.R. 1678 as we take it up before the Committee.

Thank you and if you need any further information about this please do not hesitate to let me know.

Best Regards,

Mark Green
Member of Congress

MAG:as

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