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THE NUMEROUS FEDERAL LEGAL DEFINITIONS OF TERRORISM: THE PROBLEM OF TOO MANY GRAILS

Nicholas J. Perry*

“When all who were to take part in the Quest [of the Holy Grail] had taken the oath, those who were keeping the record found the tally to be one hundred and fifty. . . .”¹

I. INTRODUCTION

The search for a definition for terrorism has aptly been compared to the quest for the Holy Grail by King Arthur’s Knights of the Round Table, with “eager souls set[ting] out, full of purpose, energy and self-confidence, to succeed where so many others have failed.”² Like definitions of terrorism, the “Holy Grail assumes many forms.”³ However, unlike the Grail Quest, where many sought the Grail but only a few knights accomplished the quest,⁴ many searchers located a definition of terrorism. The different proposed scholarly and legal definitions of terrorism are more numerous than the 150 knights seeking the grail, and definitional consensus has been at least as elusive as the Grail.

Federal law provides numerous, although fewer than 150, definitions of the term “terrorism.”⁵ This Article examines twenty-two definitions or descriptions of terrorism

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1. THE QUEST OF THE HOLY GRAIL 50 (Pauline Matarasso trans., 1969).

2. Geoffrey Levitt, *Is ‘Terrorism’ Worth Defining?*, 13 OHIO N.U. L. REV. 97, 97 (1986); OMAR MALIK, ENOUGH OF THE DEFINITION OF TERRORISM xvii (2000) (“[T]he search for a single definition has come to resemble the quest for the Holy Grail.”); James A.R. Nafziger, *The Grave New World of Terrorism*, 31 DENV. J. INT’L L. & POL’Y 1, 10 (2002) (“[A]n operation definition [of terrorism] remains the Holy Grail of the terrorism debate.”); Henry H. Perritt, Jr., *Jurisdiction in Cyberspace*, 41 VILL. L. REV. 1, 119 (1996) (“Adequately defining ‘political terrorism,’ however, is the Holy Grail of political violence scholarship.”).

3. NEW ARTHURIAN ENCYCLOPEDIA 213 (Norris J. Lacy ed., 1996) (1991); compare A.T. Hatto, *Foreword* to WOLFRAM VON ESCHENBACH, PARZIVAL 7 (A.T. Hatto trans., 1980) (“[T]here were stories of as many different Grails as there were writers or syndicates exploiting the potent name.”), with L. Paul Bremer III, *Terrorism and the Rule of Law*, Address Before the Commonwealth Club of California, San Francisco (April 23, 1987), in U.S. DEP’T OF STATE, BUREAU PUB. AFF., CURRENT POLICY NO. 947 at 2 (“There are as many definitions [of terrorism] around as there are definers.”).

4. In some versions of the Grail Quest three knights find the grail, while other versions of the legend differ on the number and name of the quest achievers. See generally NEW ARTHURIAN ENCYCLOPEDIA, *supra* note 3, at 212–13.

5. Although beyond the scope of this Article, there is a similar lack of consensus in international law.

and related terms in federal law. Scholarly discussions on the difficulties of defining the term terrorism are examined in Part II. Part III analyzes current definitions of terrorism throughout federal law. Part IV then discusses three possible alternatives to the numerous federal definitions, namely maintaining the status quo, abandoning legal definitions of terrorism, and combining the current definitions into a single entity. The conclusion argues for a single definition.

II. SCHOLARSHIP ON THE PROBLEM OF DEFINING TERRORISM

The scholarly literature on terrorism is “vast and ever expanding.”⁶ Although some scholars ignore the need for a definition of terrorism⁷ or resort to Justice Stewart’s comment on obscenity, “I know it when I see it,”⁸ many others join the definitional quest. As H.H.A. Cooper observed, “[M]any conferences and writings on the subject of terrorism begin with the obligatory, almost ritualistic recitation by the presenter of some preferred definition of terrorism.”⁹ These obligatory definitional recitations have resulted in numerous definitions of terrorism in the scholarship on the topic. A 1983 study by Alex P. Schmid catalogued 109 different definitions of terrorism used between 1936 and 1980,¹⁰ and “[m]ore definitions have appeared since.”¹¹

The search for a definition of terrorism has been described by Cooper in an earlier article as “the problem of the problem of definition.”¹² The problem continues notwith-

See Levitt, *supra* note 2, at 97–103; Michael P. Scharf, *Defining Terrorism as the Peace Time Equivalent of War Crimes: A Case of Too Much Convergence between International Humanitarian Law and International Criminal Law*, 7 ILSA J. INT’L & COMP. L. 391, 391 (2001) (“The problem of defining ‘terrorism’ has vexed the international community for years.”); Robert J. Beck & Anthony Clark Arend, “Don’t Tread on Us”: *International Law and Forcible State Responses to Terrorism*, 12 WIS. INT’L L.J. 153, 165–92 (1994); Thomas M. Franck & Bert B. Lockwood, Jr., *Preliminary Thoughts Toward an International Convention in Terrorism*, 68 AM. J. INT’L L. 69, 72–82 (1974); *see also* United States v. Yousef, 327 F.3d 56, 106 (2d. Cir. 2003) (“We regrettably are no closer . . . to an international consensus on the definition of terrorism, or even its proscription.”).

6. Beck & Arend, *supra* note 5, at 193. For a bibliography of terrorism scholarship, see JONATHAN R. WHITE, *TERRORISM: AN INTRODUCTION* 293–314 (3d. ed. 2002); for an analysis of themes in “terrorism literature,” *see also* Ilena M. Porras, *On Terrorism: Reflections on Violence and the Outlaw*, 1994 UTAH L. REV. 119.

7. *See* WHITE, *supra* note 6, at 10; Levitt, *supra* note 2, at 97.

8. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1963) (Stewart, J., concurring); *e.g.*, Aaron J. Noteboom, Comment, *Terrorism: I know it when I see it*, 81 OR. L. REV. 553, 553 (2002); H.H.A. Cooper, *Terrorism: The Problem of Definitions Revisited*, 44 AM. BEHAV. SCIENTIST 881, 892 (2001) (“As with obscenity, we know terrorism well enough when we see it.”); JEFFREY RECORD, *BOUNDING THE GLOBAL WAR ON TERRORISM* 9 (2003), available at <http://www.carlisle.army.mil/ssi/pubs/2003/bounding/bounding.pdf> (last visited Mar. 2, 2004) (“We know a terrorist act when we see one”); James D. Fry, Comment, *Terrorism as a Crime Against Humanity and Genocide: The Backdoor to Universal Jurisdiction*, 7 UCLA J. INT’L L. & FOREIGN AFF. 169, 181 (2002); Beck & Arend, *supra* note 5, at 161.

9. Cooper, *supra* note 8, at 882. Even scholars critical of the efforts to find a definition propose their own definitions. *See, e.g.*, WALTER LAQUEUR, *THE AGE OF TERRORISM* 72 (1987) (describing terrorism as “the use of covert violence by a group for political ends” but warning, “[i]t can be predicted with confidence that the disputes about a single comprehensive, detailed definition of terrorism will continue for a long time, that they will not result in a consensus, and that they will make no notable contribution toward the understanding of terrorism”); MALIK, *supra* note 2, at 57–62 (proposing two definitions of terrorism in a book entitled ENOUGH OF THE DEFINITION OF TERRORISM). At the risk of defying ritual, the present Article does not propose a definition of terrorism.

10. ALEX P. SCHMID, *POLITICAL TERRORISM: A RESEARCH GUIDE TO CONCEPTS, THEORIES, DATA BASES AND LITERATURE* 119–52 (1983). The vast majority of the 109 cataloged definitions are from scholarly sources.

11. Beck & Arend, *supra* note 5, at 161; *see also* LAQUEUR, *supra* note 9, at 143 (“[T]here is every reason to assume there have been more [definitions] since [Schmid].”).

12. H.H.A. Cooper, *Terrorism: The Problem of the Problem of Definition*, 26 CHITTY’S L.J. 105, 105

standing, or perhaps in part because of, the numerous scholars seeking a definition. It has been lamented that further progress has not been made in defining terrorism, “[d]espite the increasingly large volume of publications addressing terrorism.”¹³ However, this should only be expected since one of the purposes of scholarly publications is to disagree.¹⁴ A large quantity of publications on a topic will inherently result in disagreements. The lack of definitional consensus on terrorism, however, is attributable to more than the nature of scholarship; more fundamentally, it reflects the nature of the term being defined.

The definers disagree on what should be included in a definition of terrorism. Schmid’s 1983 study cataloged twenty-two different elements which appeared in more than one of the 109 definitions of terrorism, with only three elements, “Violence, Force,” “Political,” and “Fear, Terror,” appearing in at least half of the definitions.¹⁵ The vast majority of definitions of terrorism contain some reference to the two most common components from Schmid’s review, violence¹⁶ and a political purpose or motivation.¹⁷ Beyond those elements, there is widespread disagreement as to what components should be included in a definition. For example, some definitions include the targeting of “innocents” as a component.¹⁸ Others criticize such an approach.¹⁹ Another area of disagreement is whether terrorism must be performed by a group, as opposed to an individual acting without organizational support.²⁰ There are differences in the scholarly writings on whether actions by governments should be included in the defini-

(1978) (“The problem of the definition of terrorism is more than semantic. It is really a cloak for a complexity of problems, psychological, political, legalistic, and practical.”). *Id.* at 107.

13. Louis Rene Beres, *The Meaning of Terrorism—Jurisdictional and Definitional Clarifications*, 28 VAND. J. TRANSNAT’L L. 239, 239 (1995).

14. See, e.g., David L. Gregory, *The Assault on Scholarship*, 32 WM. & MARY L. REV. 993, 1000 (1991) (“When writing for the academic and professional legal audience, a professor must do much more than entertain; the scholar is forced to analyze, reflect, disagree, and pose alternative conceptions, methods, and paradigms.”).

15. SCHMID, *supra* note 10, at 76–77. Schmid creates a definition using 13 of the 22 elements. *Id.* at 111.

16. *Id.* at 11. (“There is hardly a definition of terrorism [that] does not contain the word ‘violence.’”); WALTER LAQUEUR, *THE NEW TERRORISM* 6 (1999) (“Perhaps the only characteristic generally agreed upon is that terrorism always involves violence or the threat of violence.”); Nafziger, *supra* note 2, at 9.

17. MALIK, *supra* note 2, at 52 (“General convention has long held that terrorism must have a political component.”); LAQUEUR, *supra* note 9, at 143; SCHMID, *supra* note 10, at 57; see also FIROOZ E. ZADEH, *ISLAM VERSUS TERRORISM* 23 (2002) (“[I]t is difficult to leave the motivation out of the definition [of terrorism].”); Nafziger, *supra* note 2, at 9.

18. See, e.g., Benjamin Netanyahu, *Defining Terrorism*, in *TERRORISM: HOW THE WEST CAN WIN* 9 (Benjamin Netanyahu ed., 1986) (“What distinguishes terrorism is the willful and calculated choice of innocents as targets Terrorism is the deliberate and systematic murder, maiming, and menacing of the innocent to inspire fear for political ends.”); see also Porras, *supra* note 6, at 129 (“Indeed, terrorism is often defined in relation to the ‘innocence’ of its victims.”).

19. See, e.g., Theodore P. Seto, *The Morality of Terrorism*, 35 LOY. L.A. L. REV. 1227, 1236–39 (2002); Franck & Lockwood, *supra* note 5, at 80; SCHMID, *supra* note 10, at 79–80.

20. Compare BRUCE HOFFMAN, *INSIDE TERRORISM* 42–43 (1998) (“To qualify as terrorism, violence must be perpetrated by some organizational entity with at least some conspiratorial structure and identifiable chain of command beyond a single individual acting on his or her own.”), and MALIK, *supra* note 2, at 18 (“There is a common reluctance to apply the term ‘terrorism’ to the activity of an individual”), with Yonah Alexander, *Terrorism in the Twenty-First Century: Threats and Responses*, 12 DEPAUL BUS. L.J. 59, 65 (2000) (“[T]errorism is defined as the calculated employment or the threat of violence by individuals, subnational groups, and state actors to attain political, social, and economic objectives in the violation of law, intended to create an overwhelming fear in a target area larger than the victims attacked or threatened.” (emphasis added)). Legal definitions of terrorism generally are not limited to group conduct and several explicitly include actions by individuals. See, e.g., 18 U.S.C. § 921(a)(22)(A) (2000); 22 U.S.C. § 2708(j)(1) (2000); see also *United States v. Hicks*, 997 F.2d 594, 599 (9th Cir. 1993) (“Although Hicks was not a member of an organized group, we conclude that the district court did not clearly err in finding that Hicks’ actions constituted ‘terrorism.’”).

tion of terrorism.²¹ Additionally, some argue that any definition of terrorism needs to include a component excusing terrorism when rendered for a just cause,²² while others criticize definitions that involve judgment of the cause.²³

Several reasons for the lack of definitional consensus have been advanced in terrorism scholarship.²⁴ One of the more frequently cited reasons is the changing nature of terrorism.²⁵ A prominent scholar of the topic has argued “[n]o definition can possibly cover all the varieties of terrorism that have appeared through history.”²⁶ The difficulties in defining terrorism caused by the changing nature of the term apply not only to the past but also to the future, since no definition can cover all of what a prospective terrorist might do.²⁷

The changing nature of the term through time is by no means the only reason for the definitional difficulties. One recognized reason is reckless use of the term, especially in the media. Terrorism is a “loose label” that has been applied to the actions of various political extremists, as well as ordinary criminals.²⁸ The careless use of the terminology resulted in “loose thought on the subject.”²⁹

Probably the most significant reason for the lack of definitional consensus is the judgmental nature of the word terrorism.³⁰ As Cooper observed, “The term ‘terrorism’ is a judgmental one in that it not only encompasses some event produced by human behavior but seeks to assign a value or quality to that behavior.”³¹ The very use of the word not only describes an event but also assigns a moral judgment to the act and the actor, a moral judgment, which is nearly universally negative.

21. Compare LAQUEUR, *supra* note 9, at 146 (arguing against considering state actions as terrorism), with RECORD, *supra* note 8, at 7 (arguing that state terrorism should be included in the definition), and Alexander, *supra* note 20, at 65 (including “state actors” in the definition of terrorism). See also SCHMID, *supra* note 10, at 105 (“If a revolutionary movement like the [Nazis] in the 1920s, by a combination of terroristic, violent, and legal means manages to gain state power, and thereafter continues to wield power with a similar mix of methods, it would be artificial . . . to rebaptize the terroristic methods into something different for the period after 1933.”).

22. See, e.g., Beres, *supra* note 13, at 249 (“[T]he United States should immediately begin to articulate and to apply a single set of standards . . . supported by both just cause and just means . . .”); Seto, *supra* note 19.

23. See, e.g., SCHMID, *supra* note 10, at 100 (“[W]e can define terrorism without entering the value-laden area of moving causes.”); BREMER, *supra* note 3, at 2; Netanyahu, *supra* note 18, at 12 (“[T]errorism is always unjustifiable, regardless of the professed or real goals.”).

24. There is a large and growing subgroup of terrorism scholarship specifically related to the definitional difficulties. See, e.g., Levitt, *supra* note 2; Noteboom, *supra* note 8; Cooper, *supra* note 8; Charles Ruby, *The Definition of Terrorism*, ANALYSIS OF SOC. ISSUES & PUB. POL’Y, 2002, at 9; BRIAN MICHAEL JENKINS, *THE STUDY OF TERRORISM: DEFINITIONAL PROBLEMS* (1980); see also MALIK, *supra* note 2, at xvii (“The search for a definition of terrorism has been long and painful and is now living a separate life of its own.”).

25. See, e.g., HOFFMAN, *supra* note 20, at 15 (“The most compelling reason perhaps is because the meaning of the term has changed so frequently over the past two hundred years.”); WHITE, *supra* note 6, at 3 (“[T]he nature of terrorism has changed over the course of history.”); ZADEH, *supra* note 17, at 29.

26. LAQUEUR, *supra* note 9, at 11. For a discussion of the changes of terrorism through history, see *id.* at 11–23; HOFFMAN, *supra* note 20, at 15–28.

27. JENKINS, *supra* note 24, at 10.

28. *Id.* at 9–10; see also Beres, *supra* note 13, at 240 (“[T]he term has become so broad and so imprecise that it embraces even the most discrepant activities.”).

29. LAQUEUR, *supra* note 9, at 299; see also JENKINS, *supra* note 24, at 2 (“What we have, in sum, is the sloppy use of a word that is rather imprecisely defined to begin with.”).

30. See, e.g., WHITE, *supra* note 6, at 4 (“[T]errorism is difficult to define because it has a pejorative connotation.”); see also RECORD, *supra* note 8, at 8 (“The definitional mire that surrounds terrorism stems in large measure from differing perspectives on the moral relationship between objectives sought and means employed.”); ZADEH, *supra* note 17, at 29 (“The meaning of terrorist differs depending on who are the individuals describing it, their motives, and when it is defined.”).

31. Cooper, *supra* note 12, at 106.

The pejorative nature of the term is the one point upon which everyone seems to agree.³² To some, this pejorative connotation is the defining quality of terrorism:

With terrorism, . . . everyone means the same thing. What changes is not the meaning of the word, but rather the groups and activities each person would include or exclude from the list. Everyone uses the word 'terrorism' to mean a kind of violence of which he or she does not approve, and about which he or she wants something done. The sense of the word always stays the same; it is the referents that change.³³

The pejorative nature of the word terrorism gives power to those who can attach the term to others. "Use of the term [terrorism] implies a moral judgment; and if one party can successfully attach the label *terrorist* to its opponent, then it has indirectly persuaded others to adopt its moral viewpoint."³⁴ A person or group is politically and socially degraded when described as terrorist,³⁵ and governments have labeled opponents "terrorists" in order to maintain power.³⁶ The degradation of the label is, however, not always permanent; at least three former or current leaders of groups once widely considered terrorist organizations have been awarded the Nobel Peace Prize: Menachem Begin of the Irgun,³⁷ Nelson Mandela of the African National Congress,³⁸ and Yasser Arafat of the Palestinian Liberation Organization.³⁹

A related issue in the definitional quest is the natural desire not to use the term terrorism to describe one's own actions or even actions of those one approves, since "[t]errorism is what the bad guys do."⁴⁰ Events from American history, which are gen-

32. HOFFMAN, *supra* note 20, at 31 ("On one point, at least, everyone agrees: terrorism is a pejorative term. It is a word with intrinsically negative connotations that is generally applied to one's enemies and opponent's, or to those with whom one disagrees and would otherwise prefer to ignore.").

33. Porras, *supra* note 6, at 124.

34. JENKINS, *supra* note 24, at 1.

35. WHITE, *supra* note 6, at 4.

36. See Seto, *supra* note 19, at 1235 ("Condemnation of terrorism becomes merely an instrument for the preservation of existing power relationships."); WHITE, *supra* note 6, at 6 ("Governments can increase their power when they label opponents as 'terrorists.' Citizens seem more willing to accept more abuses of governmental power when a counterterrorism campaign is in progress."); RECORD, *supra* note 8, at 8 ("It is easy for the politically satisfied and militarily powerful to pronounce all terrorism evil regardless of circumstance . . .").

37. Seto, *supra* note 19, at 1227–29. The Irgun was a Zionist organization active in British-controlled Palestine in the 1940's responsible for, *inter alia*, the bombing of the King David Hotel in Jerusalem which killed 91 people. *Id.* See also WHITE, *supra* note 6, at 100 ("A Jewish terrorist organization called the Irgun Zvai Leumi launched a series of attacks against British soldiers and Arab Palestinians."); LAQUEUR, *supra* note 16, at 23.

38. Amy C. Roma, Note, *Assassinations: Executive Orders and World Stability*, 36 SUFFOLK U. L. REV. 109, 135 (2002) ("In the past, the United States classified Nobel Peace Prize recipient Nelson Mandela as a terrorist, and had the African National Congress, the movement to end apartheid, on its terrorist watch list."); Makua Mutua, *Terrorism and Human Rights: Power, Culture, and Subordination*, 8 BUFF. HUM. RTS. L. REV. 1, 9 (2002); see also Suresh v. Canada (Minister of Citizenship & Immigration), [2002] 208 D.L.R. (4th) 1, ¶ 95 ("Perhaps the most striking example of the politicized nature of the term [terrorism] is that Nelson Mandela's African National Congress was, during the apartheid era, routinely labeled a terrorist organization, not only by the South African government but by much of the international community.").

39. Beres, *supra* note 13, at 246–47; WHITE, *supra* note 6, at 144; see also ZADEH, *supra* note 17, at 28 ("The terrorist of yesterday is the hero of today, and the hero of yesterday becomes the terrorist of today."); LAQUEUR, *supra* note 16, at 23 (referring to "the many cases of guerrilla or terrorist leaders having a second, political career after their fighting days were over").

40. JENKINS, *supra* note 24, at 1; see also Cooper, *supra* note 8, at 884 ("It must be stressed that there is a basic antinomy here: What *I* do, however unpleasant is not terrorism; what *you* do is terrorism."); BRIAN CROZIER, *THE REBELS: A STUDY OF POST-WAR INSURRECTIONISTS* 168 (1960) ("Often enough, the victim of terrorism are 'us', whereas the victims bombing raids are 'them.'"), *quoted in* SCHMID, *supra* note 10, at 48.

erally praised, such as the Boston Tea Party, which helped trigger the American Revolution, and John Brown's anti-slavery raid on the federal arsenal at Harper's Ferry, would fall under many current definitions of terrorism.⁴¹ Since terrorism is pejorative, "the decision to call someone or label some organization 'terrorist' becomes almost unavoidably subjective, depending largely on whether one sympathizes with or opposes the person / group / cause concerned."⁴² The subjectivity of the term has led to the oft-repeated⁴³ and nearly as often criticized⁴⁴ cliché, "One person's terrorist is another person's freedom fighter."

This succinct review of the terrorism scholarship shows that the lack of definitional consensus can be explained through several different possibilities, including the changing nature of terrorism, sloppy use of the term, and, most importantly, the pejorative and subjective nature of the term terrorism.

III. DEFINITIONS OF TERRORISM IN FEDERAL LAW

United States federal lawmakers' attempts to craft a definition of terrorism began relatively late. At the time of Schmid's 1983 study and its listing of 109 definitions for terrorism, there was only one definition of terrorism in the United States Code, the Foreign Intelligence Surveillance Act of 1978 (FISA) definition of international terrorism.⁴⁵ Despite this late start, American lawmakers finally entered the definitional quest including creating several new statutory definitions enacted since the attacks of September 11, 2001. Additionally, the executive branch joined the definitional quest, providing definitions of terrorism in the Code of Federal Regulations and an Executive Order.⁴⁶ "The

41. Seto, *supra* note 19, at 1230; *see also* Louis Rene Beres, *The Legal Meaning of Terrorism for the Military Commander*, 11 CONN. J. INT'L L. 1, 3 (1995) ("Ironically, using certain of the prevailing definitions of terrorism adopted by some U.S. government agencies and some scholars, the American Revolution . . . [would] conceivably [be an] example[] of 'terrorism.'"); WHITE, *supra* note 6, at 8 ("Ironically, some Latin American revolutionaries who oppose our repressive friends espouse the rights expressed in the U.S. Declaration of Independence and Constitution, yet we refer to them as terrorists."). *But see* United States v. Jordan, 223 F.3d 676, 694 n.15 (7th Cir. 2000) (rejecting a comparison between the actions of a supporter of Puerto Rican independence involved in a bombing campaign and the Boston Tea Party since "no attempt was made to blow up the ship" in the Boston Tea Party).

42. HOFFMAN, *supra* note 20, at 31; *see also* Grenville Byford, *The Wrong War*, 81 FOREIGN AFF. July-Aug. 2002, at 34 ("Like beauty, it would seem, that terrorism is in the eye of the beholder."); MALIK, *supra* note 2, at 32 ("Context, or viewpoint, is everything in the definition of terrorism."); SCHMID, *supra* note 10, at 6 ("The question of definition of a term like terrorism can not be detached from the question of who is the defining agency.").

43. *See, e.g.*, Cooper, *supra* note 8, at 882 ("One person's terrorist will ever remain another's freedom fighter. The process of definition is wholly frustrated by the presence of irreconcilable antagonisms."); Levitt, *supra* note 2, at 109-10 ("[T]he dictum 'one man's terrorist is another man's freedom fighter' can be seen as a statement not so much of an inherent moral conundrum, but of an international political reality."); Nafziger, *supra* note 2, at 8; Monette Zard, *Exclusion, Terrorism, and the Refugee Convention*, 7 BENDER'S IMMIGR. BULL. 933, 934 (2002); SCHMID, *supra* note 10, at 112; *see also* Cheema v. INS, 350 F.3d 1035, 1042 (9th Cir. 2003) ("One country's terrorist can often be another country's freedom fighter.").

44. *See, e.g.*, LAQUEUR, *supra* note 9, at 7 ("Of all the observations on terrorism this is surely one of the tritest."); Netanyahu, *supra* note 18, at 7; SCHMID, *supra* note 10, at 112-13; JENKINS, *supra* note 24, at 2 ("One man's terrorist is everyone's terrorist."); *see also* United States v. Gonzales Claudio, 806 F.2d 334, 338 n.4 (2d Cir. 1986) ("Whether or not acts of terrorism are committed to enhance the freedom of others, the perpetrators are acting not only beyond the law, but beyond the pale of civilized conduct when they take innocent lives.").

45. Pub. L. No. 95-511, § 101, 92 Stat. 1783, 1784 (1978) (codified at 50 U.S.C. § 1801); Levitt, *supra* note 2, at 104. Schmid did not include that definition in his list of 109 definitions but did include a definition from a proposed bill. SCHMID, *supra* note 10, at 146-47.

46. *See infra* Part III.F.

definitions run from the fairly simple to extremely complex.⁴⁷ There are at least nineteen different definitions or descriptions of terrorism,⁴⁸ as well as three terms relating to the support of terrorism,⁴⁹ in federal law.

Legal definitions of terrorism generally fall into one of two categories, described by Geoffrey Levitt as deductive and inductive.⁵⁰ Deductive definitions “cover[] a wide variety of criminal conduct, but only under certain circumstances” and are “characterized by the use of a fairly broad substantive element and a general, politically oriented intent element.”⁵¹ These definitions generally use the term terrorism⁵² and attempt to create a complete definition “into which all ‘terrorist’ acts would then fit.”⁵³ Definitions under the deductive approach typically consist of three parts: (a) a substantive element containing the prohibited conduct, (b) an intent or motivation requirement, and (c) a jurisdictional element.⁵⁴

The inductive approach, by contrast, “relies upon a relatively precise description of the conduct constituting the substantive element and omits the political intent requirement that characterizes the deductive approach.”⁵⁵ Inductive definitions are generally limited to specified conduct and do not attempt to cover all conduct which might be terrorism.⁵⁶ The term terrorism is not explicitly included in the definition, “though it may find its way into a preamble.”⁵⁷

A. Foreign Intelligence Surveillance Act (FISA)

The oldest statutory definition of terrorism in federal law is the FISA definition of “international terrorism,” which is defined as activities that:

- (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;
- (2) appear to be intended—
 - (A) to intimidate or coerce a civilian population;
 - (B) to influence the policy of a government by intimidation or coercion; or

47. Noteboom, *supra* note 8, at 568.

48. See 50 U.S.C. § 1801(c) (2000); 18 U.S.C.A. § 2331(1) (2000 & West Supp. 2003); 18 U.S.C.A. § 2331(5) (West Supp. 2003); 18 U.S.C.A. § 2332b(g)(5) (2000 & West Supp. 2003); 18 U.S.C. § 2332b(a)(1) (2000); 18 U.S.C. § 2332(d) (2000); 18 U.S.C.A. § 1993 (West Supp. 2003); 18 U.S.C. § 43 (2000); 18 U.S.C. § 921(a)(22) (2000); 8 U.S.C.A. § 1182(a)(3)(B)(iii) (2000 & West Supp. 2003); 22 U.S.C. § 2656f(d)(2) (2000); 22 U.S.C. § 2708(j)(1) (2000); Homeland Security Act of 2002, Pub. L. No. 107-296, § 2(15), 116 Stat. 2135, 2141; § 865(2), 116 Stat. at 2242; Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, § 102(1)(A), 116 Stat. 2322, 2323-24; 49 U.S.C.A. § 44703(g)(3) (West Supp. 2003); Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, § 14(1), 110 Stat. 1541, 1549; Exec. Order No. 13224, § 3, 66 Fed. Reg. 49,079, 49,080 (Sept. 23, 2001); 28 C.F.R. § 0.85(l) (2003).

49. 18 U.S.C.A. § 2339(a) (West Supp. 2003) (harboring or concealing terrorists); 18 U.S.C.A. § 2339A(a) (2000 & West Supp. 2003) (providing material support for terrorists); 8 U.S.C.A. § 1182(a)(3)(B)(iv) (2000 & West Supp. 2003) (engaging in terrorist activity).

50. Levitt, *supra* note 2, at 97. Malik similarly, although not identically, divides terrorism definitions into extrinsic and intrinsic “routes to definition.” MALIK, *supra* note 2, at 19–25. Other commentators identify different components to legal definitions of terrorism. See, e.g., Franck & Lockwood, *supra* note 5, at 72–82.

51. Levitt, *supra* note 2, at 108–09.

52. *Id.* at 109.

53. *Id.* at 97.

54. *Id.* at 104. Levitt uses jurisdiction to refer to location of the conduct, not in the traditional legal use of the term concerning which courts may exercise authority over such conduct.

55. *Id.* at 109.

56. *Id.*

57. *Id.*

(C) to affect the conduct of a government by assassination or kidnapping; and (3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.⁵⁸

This definition is a deductive definition with the first subsection containing the substantive element, namely that it be a violent act that violates some American criminal law.⁵⁹ The intent requirement is in the second subsection, and the jurisdictional element, which makes the conduct “international,” constitutes the third subsection.⁶⁰

FISA “establish[ed] a procedure under which the Attorney General can obtain a judicial order authorizing electronic surveillance in the United States to acquire information for foreign intelligence purposes.”⁶¹ Although the definition of “international terrorism” remains unchanged since its 1978 enactment,⁶² amendments to FISA increased the reach of the Act.⁶³ The reach of its definition of terrorism makes the FISA definition one of the most significant in federal law. Additionally, this first statutory definition of terrorism is the model for several subsequent definitions.⁶⁴

B. Criminal Code Definitions

Title 18 of the United States Code—the Criminal Code—contains the most definitions of terrorism; it includes a chapter entitled “terrorism,”⁶⁵ as well as definitions of terrorism in other parts of the title. The basic definitions of terrorism in the terrorism chapter, found in 18 U.S.C. § 2331, mirror the FISA definition. The definition of “international terrorism,”⁶⁶ enacted in 1992⁶⁷ and amended slightly in 2001 by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act),⁶⁸ is a verbatim copy of the FISA definition,⁶⁹ with the exception that the motivation component includes affecting governments

58. 50 U.S.C. § 1801(c) (2000).

59. § 1801(c)(1). *See also In re Sealed Case*, 310 F.3d 717, 726 (Foreign Int. Surv. Ct. Rev. 2002) (“‘International terrorism,’ by definition [under FISA], requires the investigation of activities that constitute crimes.”).

60. *See generally* Levitt, *supra* note 2, at 104–05 (discussing the FISA international terrorism definition).

61. *United States v. Megahey*, 553 F. Supp. 1180, 1183 (E.D.N.Y. 1982).

62. *Compare* 50 U.S.C. § 1801(c), with Pub. L. 95-511, § 101, 92 Stat. 1783, 1784 (1978).

63. *See generally* Alison A. Bradley, Comment, *Extremism in the Defense of Liberty?: The Foreign Intelligence Surveillance Act and the Significance of the USA PATRIOT Act*, 77 TUL. L. REV. 465, 481–82 & 485–89 (2002); William Michael, *A Window on Terrorism: The Foreign Intelligence Surveillance Act*, 58 BENCH & BAR OF MINN., Nov. 2001, at 23; *see also* Sharon H. Rackow, Comment, *How the USA Patriot Act Will Permit Governmental Infringement upon the Privacy of Americans in the Name of ‘Intelligence’ Investigations*, 150 U. PA. L. REV. 1651, 1658 (2002) (characterizing the USA PATRIOT Act amendments to FISA as bestowing “far-reaching and unwarranted surveillance authority [to] law enforcement and intelligence agencies.”); *In re Sealed Case*, 310 F.3d 717 at 735 (Foreign Int. Surv. Ct. Rev. 2002) (discussing the reach of FISA under the USA PATRIOT Act).

64. *See, e.g.*, 18 U.S.C.A. § 2331(1) (2000 & West Supp. 2003); 18 U.S.C.A. § 2331(5) (West Supp. 2003); 18 U.S.C. 921(a)(22) (2000); 49 U.S.C.A. § 44703(g)(3) (West Supp. 2003); Exec. Order No. 13224, § 3, 66 Fed. Reg. 49,079, 49,080 (Sept. 23, 2001).

65. Chapter 113B - Terrorism, 18 U.S.C. §§ 2331–2339B.

66. 18 U.S.C.A. § 2331(1) (2000 & West Supp. 2003).

67. The Federal Courts Administration Act of 1992, Pub. L. No. 102-572, § 1003(a)(3), 106 Stat. 4506, 4521.

68. Pub. L. No. 107-56, § 802(a)(1), 115 Stat. 272, 376 (2001). *See generally* Michael T. McCarthy, *Recent Development: USA PATRIOT Act*, 39 HARV. J. ON LEGIS. 435 (2002); Bradley, *supra* note 63.

69. 50 U.S.C. § 1801(c) (2000); *see also supra* Part III.A.

by “mass destruction” in addition to assassination and kidnapping.⁷⁰ Likewise, the definition of “domestic terrorism,”⁷¹ enacted in 2001 as part of the USA PATRIOT Act,⁷² is identical to the definition of FISA except for the inclusion of “mass destruction” in the motivation component⁷³ and the jurisdictional requirement that limits the definition to “domestic.” The definition of “domestic terrorism” requires that the event “occur primarily within the territorial jurisdiction of the United States”⁷⁴ as opposed to requiring conduct outside of the United States or transcending national boundaries under the FISA and § 2331 “international terrorism” definitions.⁷⁵ Both definitions are deductive with a requirement that the conduct “appear[s] to be intended” to affect or influence a government or population⁷⁶ and potentially include all acts of terrorism.

Despite being located within the federal criminal code, the § 2331 definitions of terrorism are not elements of criminal offenses. However, the § 2331 definitions of terrorism have been incorporated into a wide variety of other contexts. Statutory provisions have referred to the § 2331 definitions in provisions: 1) governing the possession, use, and transfer of biological agents and toxins;⁷⁷ 2) expanding warrant authority for terrorism investigations;⁷⁸ 3) determining civil liability for acts of international terrorism against United States nationals;⁷⁹ 4) rewarding the furnishing of information on terrorism;⁸⁰ 5) granting immunity for airline employees who report suspicious behavior relating to terrorism;⁸¹ 6) disclosing of tax⁸² and education⁸³ information during terrorism investigations; 7) and removing liability protections for otherwise shielded volunteers and teachers who engage in international terrorism while in the scope of volunteering⁸⁴ or teaching.⁸⁵ The § 2331 definitions have further been incorporated into regulations involving the disclosure of financial information⁸⁶ and grants for assistance to victims of crime.⁸⁷ Through such wide application in a variety of contexts, the definitions in § 2331 are among the most significant definitions of terrorism in federal law.

The § 2331 definitions are not the only definitions of terrorism in the terrorism chapter of the federal criminal code. The chapter defines “federal crime of terrorism” as

70. 18 U.S.C.A. § 2331(1)(B)(iii) (West Supp. 2003).

71. 18 U.S.C.A. § 2331(5) (West Supp. 2003).

72. § 802 (a)(5), 115 Stat. at 376.

73. 18 U.S.C.A. § 2331(5)(B)(iii) (West Supp. 2003).

74. § 2331(5)(c).

75. § 2331(1); 50 U.S.C. § 1801(c) (2000).

76. 18 U.S.C.A. § 2331(1)(B) (2000 & West Supp. 2003); 18 U.S.C.A. § 2331(5)(B) (West Supp. 2003).

77. 42 U.S.C.A. § 262a(e)(3)(B)(ii)(II) (West Supp. 2003); 7 U.S.C.A. § 8401(e)(3)(B)(ii)(II) (West Supp. 2003).

78. FED. R. CRIM. P. 41(b)(3) (granting magistrate judges the authority to issue warrants valid outside of the judges’ districts for the purpose of terrorism investigations).

79. 18 U.S.C. § 2333 (2000); *see also* Boim v. Quranic Literacy Inst., 291 F.3d 1000, 1009 (7th Cir. 2002); *Estates of Ungar ex rel. Strachman v. Palestinian Auth.*, 228 F. Supp.2d 40, 46 (D.R.I. 2002).

80. 18 U.S.C.A. § 3077(1) (West Supp. 2003).

81. 49 U.S.C.A. § 44941(a) (West Supp. 2003) (referring to 18 U.S.C. § 3077, which refers to 18 U.S.C. § 2331).

82. 26 U.S.C.A. § 6103(b)(11) (West Supp. 2003).

83. 20 U.S.C.A. § 1232g(j)(1)(A) (West Supp. 2003).

84. 42 U.S.C. § 14503(f)(1)(A) (2000).

85. 20 U.S.C.A. § 6736(d)(1)(A) (West Supp. 2003).

86. 31 C.F.R. § 103.90(b) (2003).

87. Victims of Crime Act (VOCA) Victim Assistance Grant Program, 67 Fed. Reg. 56,444, 56,448 (proposed Sept. 3, 2002) (revising Guidelines for Victims of Crime Act Victim Assistance Grant Program, § I(N), and § I(O)). At least one state statute also refers to 18 U.S.C. § 2331 in determining eligibility for victim compensation. *See* HAW. REV. STAT. ANN. § 351-2, (c) (Michie 2002) (defining “victim”).

an offense “calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct”⁸⁸ and that violates enumerated crimes.⁸⁹ Under this two-part definition, various crimes become federal crimes of terrorism when intended to influence or affect a government. The definition is deductive but does not include an explicit jurisdictional component. Its political intent aspect is in the first part, and the substantive component is achieved in the second part through reference to other criminal provisions of the United States Code. Although the definition of “federal crime of terrorism” is part of a criminal provision, it is not used as part of the § 2331 criminal elements or penalty provisions but rather refers to the investigative power of the Attorney General.⁹⁰ Additionally, the definition serves as a basis for sentence enhancement under the United States Sentencing Guidelines.⁹¹ Due to its rare applicability, the definition of “federal crime of terrorism” is of limited significance.

The section with the “federal crime of terrorism” definition, § 2332b, is one of several provisions in the terrorism chapter with implicit definitions of terrorism. Section 2332b criminalizes, *inter alia*, killing, maiming, and committing assaults, which result in serious bodily injury against a person within the United States “involving conduct transcending national boundaries.”⁹² There is no mention of terrorism in the criminal provisions of the statutory section, nor is there any political component necessary for a conviction under this section.

Similarly, § 2339 criminalizes “harboring or concealing terrorists”⁹³ without requiring any political motivation of the harborer, the concealer, or the terrorist. Specifically, this provision provides that “[w]hoever harbors or conceals any person he knows, or has reasonable grounds to believe, has committed, or is about to commit” various specified criminal offenses shall be imprisoned for up to ten years.⁹⁴ Likewise, § 2339A, entitled “Providing material support to terrorists,” criminalizes “provid[ing] material support or resources or conceal[ing] or disguis[ing] the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of” thirty-five listed criminal provisions.⁹⁵ There is no requirement of political motivation for either the material support or the activity supported,⁹⁶ and no definition of terrorism is included in this section. Indeed, the words “terrorism” and “terrorists” do not appear in the section after the section title. The sec-

88. 18 U.S.C. § 2332b(g)(5)(A) (2000).

89. 18 U.S.C.A. § 2332b(g)(5)(B) (West Supp. 2003).

90. § 2332b(f).

91. See U.S. SENTENCING GUIDELINES MANUAL § 2L1.2, app. n.1(B)(viii) (2002) (“‘Terrorism offense’ means any offense involving, or intending to promote, a ‘federal crime of terrorism,’ as that term is defined in 18 U.S.C. § 2332b(g)(5).”); see also *id.* § 3A1.4, app. n.1; *United States v. Graham*, 275 F.3d 490, 513–19 (6th Cir. 2001).

92. 18 U.S.C. § 2332b(a)(1) (2000). The statute also contains various jurisdictional requirements. See *id.* § 2332b(b) (2000).

93. 18 U.S.C.A. § 2339(a) (West Supp. 2003).

94. *Id.* The specified offenses include, *inter alia*, offenses related to destruction of aircraft, 18 U.S.C. § 32, destruction of a nuclear facility, 18 U.S.C. § 1366(a), and aircraft piracy, 49 U.S.C.A. § 46502. See 18 U.S.C.A. § 2339(a).

95. 18 U.S.C.A. § 2339A(a) (2000 & West Supp. 2003).

96. Although some of the 35 crimes mentioned in the section require a political motivation for prosecution, such as 18 U.S.C. § 2332, discussed *infra* Part III.B, the majority of the statutes referenced have no political requirement for prosecution or conviction, such as 18 U.S.C. § 2340A, which criminalizes torture by those outside of the United States.

tion's definition of providing material support is, however, incorporated into the statute waiving immunity for foreign states that sponsor terrorism.⁹⁷

The terrorism chapter of the federal criminal code also has a deductive definition of terrorism in § 2332. This section authorizes prosecution for homicidal or violent acts against a national of the United States "while such national is outside the United States,"⁹⁸ but only upon "written certification of the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions that, in the judgment of the certifying official, such offense was intended to coerce, intimidate, or retaliate against a government or a civilian population."⁹⁹ Finally, one section of the terrorism chapter in Title 18 uses a definition of "terrorist organization" from another portion of the United States Code, the Immigration and Nationality Act.¹⁰⁰

There are additional definitions of terrorism in the federal criminal code outside of the terrorism chapter. These definitions generally are limited to specific types of attacks and are inductive definitions that do not have a political intent requirement. Section 1993 of Title 18 is entitled "Terrorist attacks and other acts of violence against mass transportation systems."¹⁰¹ The section title explicitly includes conduct besides terrorism through the title phrase "and other acts of violence," and the word "terrorism" does not appear in the section beyond the title. This section, enacted in 2001 through the USA PATRIOT Act,¹⁰² criminalizes specified acts of violence and damage against public transportation.¹⁰³ Although some parts of the section contain specific criminal-intent requirements of endangering safety¹⁰⁴ or "caus[ing] death or serious bodily injury,"¹⁰⁵ there is no political intent requirement typical of deductive definitions. Thus violence against mass transportation systems is criminalized by this section, regardless of whether the perpetrators intended any political purpose by the act.

Similarly, § 43 of the federal criminal code—"Animal enterprise terrorism"—outlaws specific, limited-context conduct without reference to any political motivation or objective of the perpetrator. This 1992¹⁰⁶ inductive definition outlaws "physical disruption to the functioning of an animal enterprise"¹⁰⁷ and intentional damage or loss "of any property (including animals or records) used by the animal enterprise."¹⁰⁸ Animal en-

97. See 28 U.S.C. § 1605(a)(7) (2000). See generally Keith Sealing, "State Sponsors of Terrorism" Is a Question, not an Answer: The Terrorism Amendments to the FISA Makes Less Sense Now Than It Did Before 9/11, 38 TEX. INT'L L.J. 119 (2003).

98. 18 U.S.C. § 2332(a)-(c) (2000). The section was added in 1986. See Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399, § 1202(a), 100 Stat. 853, 896-97. It was amended in 1992. See Federal Courts Administration Act of 1992, Pub. L. No. 102-572, § 1003(a)(3), 106 Stat. 4506, 4521-22.

99. 18 U.S.C. § 2332(d).

100. *Id.* § 2339B(g)(6) (referring to organizations designated pursuant to 8 U.S.C. § 1189). See generally Humanitarian Law Project v. United States Dep't of Justice, 352 F.3d 382 (9th Cir. 2003) (discussing and narrowing 18 U.S.C. § 2339B). The designation of "terrorist organizations" under immigration law is discussed *infra*, Part III.C.

101. 18 U.S.C.A. § 1993 (West Supp. 2003).

102. See Uniting and Strengthening America by Avoiding Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. No. 107-56, § 801, 115 Stat. 272, 374-76 (2001) (to be codified at 18 U.S.C. § 1993(a)).

103. See 18 U.S.C.A. § 1993(a) (West Supp. 2003).

104. *Id.* § 1993(a)(2)-(3), (5).

105. *Id.* § 1993(a)(6).

106. See Animal Enterprise Protection Act of 1992, Pub. L. No. 102-346, § 2(a), 106 Stat. 928, 928 (codified at 18 U.S.C. § 43(a)).

107. 18 U.S.C. § 43(a)(1) (2000).

108. *Id.* § 43(a)(2); but see SCHMID, *supra* note 10, at 84-85 (questioning whether attacks against non-

terprises include commercial and academic institutes that use animals in research and testing,¹⁰⁹ as well as, *inter alia*, zoos, circuses, and rodeos.¹¹⁰ Since there is no requirement for political motivation, any intentional physical destruction of an animal enterprise is “animal enterprise terrorism” under this section.

The firearms chapter¹¹¹ of the federal criminal code contains another limited-context definition of terrorism, although this definition is deductive and contains a political component. This provision, enacted in 1986,¹¹² defines terrorism as an:

- activity, directed against United States persons, which—
- (A) is committed by an individual who is not a national or permanent resident alien of the United States;
 - (B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and
 - (C) is intended--
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by assassination or kidnapping.¹¹³

This is similar to the FISA definition of terrorism,¹¹⁴ except that the jurisdictional requirement of the FISA definition is replaced by limitations on both the perpetrators and the victims. To fall under this provision, the activity must be performed by a person who not is a national or permanent resident of the United States and must be “directed against United States persons.”¹¹⁵ Like other deductive definitions of terrorism, this provision requires a violent, unlawful act¹¹⁶ that is done for a political purpose.¹¹⁷

This is arguably the least significant federal definition of terrorism due to its peculiar procedural context. The definition is part of the statute criminalizing the conduct of “engag[ing] in the business of importing, manufacturing, or dealing in firearms” without a license.¹¹⁸ The statute limits criminal liability to those “with the principal objective of livelihood and profit,”¹¹⁹ except that “proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism.”¹²⁰ Thus, under this statutory scheme, a person who regularly and repeatedly purchases firearms for terrorists can be prosecuted without the necessity of showing that the conduct was for profit. One commentator observed, “[t]he incongruity of requiring the licensing of terrorist supply depots is matched by the incon-

humans can properly be classified as terrorism).

109. See 18 U.S.C. § 43(d)(1)(A).

110. See *id.* § 43(d)(1)(B).

111. See 18 U.S.C.A. §§ 921–931 (2000 & West Supp. 2003).

112. See Firearms Owners’ Protection Act, Pub. L. No. 99-308, § 101(6), 100 Stat. 449, 450 (1986) (codified at 18 U.S.C. § 921(a)(22)).

113. 18 U.S.C. § 921(a)(22) (2000). The terrorism definition is part of the definition “with the principal objective of livelihood and profit.” *Id.*

114. See 50 U.S.C. § 1801(c) (2000). See *supra* Part III.A.

115. 18 U.S.C. § 921(a)(22)(A) (2000).

116. See *id.* § 921(a)(22)(B).

117. See *id.* § 921(a)(22)(C).

118. *Id.* § 922(a)(1)(A).

119. *Id.* § 921(a)(21).

120. *Id.* § 921(a)(22)(A). Even when the purchases are not for terrorism or criminal purposes, many courts have declined to find that the statute requires proof of profit. See *United States v. Graham*, 305 F.3d 1094, 1103 (10th Cir. 2002) (noting that a majority of cases have concluded “that a defendant need not be shown to have acted with profit-making intent or engaged in the sale of firearms as his primary business in order to be convicted under the statute”).

gruity of the wording employed”¹²¹ and accurately predicted in 1987 that “[t]he scope of this exception is likely to remain untested.”¹²²

C. *Immigration Law Definitions*

The definitions of terrorism that include the greatest amount of conduct are in immigration law. Terrorism-related amendments to the Immigration and Nationality Act of 1952,¹²³ most recently through the 2001 USA PATRIOT Act, significantly impact aliens in or seeking to enter the United States. Included in the grounds which make an alien inadmissible to the United States are definitions of “terrorist activity” and “engag[ing] in terrorist activity.”

The definition for “terrorist activities” is:

any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of Title 18) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.¹²⁴

This broad definition is not perfectly classifiable as either deductive or inductive. While most provisions of this definition do not contain a political motivation, one subsection requires that the act be “in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.”¹²⁵ The substantive element specifies certain activities traditionally associated with terrorism, such as hijacking¹²⁶ and assassination,¹²⁷ as well as activities not inherently seen as terrorism, such as the use of a “firearm . . . (other than for mere personal monetary gain) with intent to endanger, directly or indirectly, the safety of one or more individuals.”¹²⁸ There is no jurisdictional

121. David T. Hardy, *The Firearms Owners' Protection Act: A Historical and Legal Perspective*, 17 CUMB. L. REV. 585, 633 (1987).

122. *Id.* There appear to be no published cases on this terrorism definition. See 18 U.S.C.A. § 921 (2000 & West Supp. 2003).

123. See Immigration and Nationality Act, ch. 477, 66 Stat. 163 (1952).

124. 8 U.S.C.A. § 1182(a)(3)(B)(iii) (West Supp. 2003).

125. *Id.* § 1182(a)(3)(B)(iii)(II).

126. See *id.* § 1182(a)(3)(B)(iii)(I).

127. See *id.* § 1182(a)(3)(B)(iii)(IV).

128. *Id.* § 1182(a)(3)(B)(iii)(V).

requirement, although this provision in the Immigration and Nationality Act generally applies only to aliens.

In addition to the above definition of “terrorist activity,” the same section of the Immigration and Nationality Act further defines the phrase “engage in terrorist activity.”¹²⁹ Portions of this definition reference the “terrorist activity” definition, such as preparing or planning a terrorist activity,¹³⁰ gathering “information on potential targets for terrorist activity,”¹³¹ and committing or inciting a terrorist activity “under circumstances indicating an intention to cause death or serious bodily injury.”¹³² Additionally, the definition of “engage in terrorist activity” also includes soliciting “funds or other things of value,”¹³³ for a terrorist activity,¹³⁴ or for a terrorist organization.¹³⁵ Likewise, the “engage in terrorist activity” definition includes soliciting any individual to engage in terrorism¹³⁶ or to join a terrorist organization.¹³⁷ Finally, the definition of “engage in terrorist activity” includes providing “material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons . . . explosives, or training”¹³⁸ for “the commission of a terrorist activity”¹³⁹ to a person “who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity,”¹⁴⁰ or to a terrorist organization.¹⁴¹ The provisions for soliciting funds, recruiting members, and providing material support all have exceptions for organizations that have not been designated as “terrorist organizations” when the solicitor, recruiter, or supporter “can demonstrate that he did not know, and should not reasonably have known, that the [solicitation/recruiting/supporting] would further the organization’s terrorist activity.”¹⁴²

Like the definition of “terrorist activity,” the definition of “engage in terrorist activity” contains elements common to both deductive and inductive definitions. The substantive element is broad, including soliciting “anything of value”¹⁴³ or soliciting prospective members¹⁴⁴ for certain organizations. Aspects of the definition do not have any explicit intent requirement, such as soliciting funds for a recognized terrorist organization,¹⁴⁵ while other aspects have an affirmative defense for the reasonable lack of

129. *Id.* § 1182(a)(3)(B)(iv).

130. *See id.* § 1182(a)(3)(B)(iv)(II).

131. *Id.* § 1182(a)(3)(B)(iv)(III).

132. *Id.* § 1182(a)(3)(B)(iv)(I).

133. *Id.* § 1182(a)(3)(B)(iv)(IV).

134. *Id.* § 1182(a)(3)(B)(iv)(IV)(aa).

135. *See id.* §§ 1182(a)(3)(B)(iv)(IV)(bb)-(cc).

136. *Id.* § 1182(a)(3)(B)(iv)(V)(aa).

137. *See id.* §§ 1182(a)(3)(B)(iv)(V)(bb)-(cc).

138. *Id.* § 1182(a)(3)(B)(iv)(VI).

139. *Id.* § 1182(a)(3)(B)(iv)(VI)(aa).

140. *Id.* § 1182(a)(3)(B)(iv)(VI)(bb).

141. *See id.* §§ 1182(a)(3)(B)(iv)(VI)(cc)-(dd).

142. *Id.* § 1182(a)(3)(B)(iv)(IV)(cc); *id.* § 1182(a)(3)(B)(iv)(V)(cc); *id.* § 1182(a)(3)(B)(iv)(VI)(dd). *See also id.* § 1182(a)(3)(B)(vi)(I)-(II) (the designation of organizations as “terrorist organizations”).

143. *Id.* § 1182(a)(3)(B)(iv)(IV)(aa)-(cc).

144. *Id.* § 1182(a)(3)(B)(iv)(V)(aa)-(cc); *see also* U.S. Gen. Accounting Office, GAO-03-266, Justice Department: Better Management Oversight and Internal Controls Needed to Ensure Accuracy of Terrorism-Related Statistics (Jan. 2003), available at <http://www.gao.gov/new.items/d03266.pdf> (last visited Mar. 2, 2004) [hereinafter GAO, BETTER MANAGEMENT] (“The term ‘engage in terrorist activity’ . . . encompasses not only the commission of terrorist activities, but a broad range of conduct in support of terrorist activities, generally involving such things as preparation or planning; gathering information on potential targets; soliciting funds or members; or affording material support.”).

145. *E.g.*, 8 U.S.C.A. § 1182(a)(3)(B)(iv)(IV)(aa)-(bb).

knowledge.¹⁴⁶ As has been observed, “the plain text of law would allow deportation of a non-citizen who donates coloring books to a daycare center run by an organization that also has terrorist ties,” although “such a result is not automatic.”¹⁴⁷ The definition does not contain an explicit jurisdictional requirement, although it typically applies only to persons who are not citizens of the United States.

The immigration consequences of the definitions for “terrorist activity” and “engage in terrorist activity” are significant. A determination that an alien has engaged in or will engage in “terrorist activities” bars an alien from being admitted into the United States¹⁴⁸ and serves as a ground of deportability for an alien otherwise lawfully in the country.¹⁴⁹ An alien determined by the Attorney General to have engaged in terrorist activity is subject to mandatory detention.¹⁵⁰ Likewise, the Attorney General is authorized to remove without a hearing aliens seeking admission to the United States who are suspected of engaging in terrorist activity.¹⁵¹ Even spouses and children of those determined to have engaged in terrorist activities are inadmissible to the United States if the terrorist activity occurred within the last five years.¹⁵² A determination that a person engaged in terrorist activity bars asylum,¹⁵³ admission as a refugee,¹⁵⁴ and most other immigration benefits.¹⁵⁵

The definition of “engaging in terrorist activity” is also used in designation of “terrorist organizations” by the Secretary of State.¹⁵⁶ Such a designation removes the affirmative defense based on a reasonable lack of knowledge for those who raise funds for,¹⁵⁷ recruit members for,¹⁵⁸ or provide material support to¹⁵⁹ designated organizations

146. *E.g.*, *id.* § 1182(a)(3)(B)(iv)(V)(cc); *id.* § 1182(a)(3)(B)(iv)(IV)(cc); *id.* § 1182(a)(3)(B)(iv)(VI)(dd).

147. McCarthy, *supra* note 68, at 452; *see also* Zard, *supra* note 43, at 935 (“[T]he USA PATRIOT Act also allows for the detention and deportation of non-citizens who provide lawful assistance to groups that are not officially designated as terrorist organizations.”).

148. 8 U.S.C.A. § 1182(a)(3)(A)-(B) (2000 & West Supp. 2003).

149. *Id.* § 1227(a)(4)(B) (West Supp. 2003).

150. 8 U.S.C. § 1226a. Persons detained under this section must be released unless they are criminally charged or placed in removal proceedings within 7 days. *Id.* § 1226a(a)(5). *See In re U-H-*, 23 I. & N. Dec. 355, 357 (BIA 2002) (“This section imposes mandatory *detention* for an alien who the Attorney General has reasonable grounds to believe is engaged in terrorist activity or is a danger to national security.”). *See also* 8 U.S.C. § 1231(a)(2) (2000) (discussing the detention of aliens with a final removal order who have been found to have engaged in terrorist activity).

151. 8 U.S.C. § 1225(c) (2000).

152. 8 U.S.C.A. § 1182(a)(3)(B)(i)(VII) (2000 & West Supp. 2003). There are exceptions when the spouse or child did not or should not have known about the terrorist activity, or when the person who engaged in terrorist activity has renounced the activity. *Id.* § 1182(a)(3)(B)(ii).

153. 8 U.S.C. § 1158(b)(2)(A)(v) (2000). *See generally* Zard, *supra* note 43. Engaging in terrorist activity is not an absolute bar to a similar protection, restriction on removal, *see* 8 U.S.C. § 1231(b)(3) (2000), although a belief that a person is a danger to the community is a basis for denial, *see id.* § 1231(b)(3)(B)(iv) (2000). *But see* Cheema v. INS, 350 F.3d 1035, 1042 (9th Cir. 2003) (rejecting the argument that a person who engages in terrorism is inherently a danger to the community).

154. 8 U.S.C. § 1157(c)(3) (2000) (stating that the terrorist grounds of inadmissibility, 8 U.S.C. § 1182(a)(3), cannot be waived).

155. *See, e.g.*, 8 U.S.C. § 1255(a)(2) (2000) (requiring that applicants for adjustment of status be admissible to the United States); *id.* § 1254a(c)(2)(A)(iii)(III) (2000) (temporary protective status); 8 U.S.C.A. § 1229b(c)(4) (West Supp. 2003) (cancellation of removal); 8 U.S.C. § 1259 (2000) (registry).

156. 8 U.S.C.A. § 1189(a)(1)(B) (West Supp. 2003); *id.* § 1182(a)(3)(B)(vi)(II). Some courts have upheld constitutional challenges to portions of 8 U.S.C.A. § 1189. *See Nat'l Council of Resistance of Iran v. Dep't of State*, 251 F.3d 192, 208 (D.C. Cir. 2001) (ruling that due process can require the putative terrorist organization to be notified of the pending designation); *United States v. Rahami*, 209 F. Supp.2d 1045, 1058 (C.D. Cal. 2002) (finding 8 U.S.C. § 1189 unconstitutional).

157. 8 U.S.C.A. § 1182(a)(3)(B)(iv)(IV) (West Supp. 2003).

158. *Id.* § 1182(a)(3)(B)(iv)(V).

159. *Id.* § 1182(a)(3)(B)(iv)(VI).

under the definition of “engage in terrorist activity.” In other words, a person who raises funds for or otherwise assists a designated organization is considered to have engaged in terrorist activities regardless of the person’s knowledge or motives. Likewise, a determination that an organization is a foreign terrorist organization requires the suspension of the organization’s tax-exempt status¹⁶⁰ and authorizes the Secretary of Treasury to seize the assets of the organization.¹⁶¹ The immigration law definitions of terrorism are significant both for their consequences and for the breadth of activities covered.

D. State Department Definitions

Additional statutory definitions of terrorism relate to the Department of State. The provision requiring the State Department to prepare annual country reports on terrorism provides that “the term ‘terrorism’ means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”¹⁶² This concise definition of terrorism, enacted in 1987,¹⁶³ is a deductive definition with a substantive element of “violence perpetrated against noncombatant targets”¹⁶⁴ and an intent requirement that the violence be “politically motivated.”¹⁶⁵ There is no jurisdictional requirement, although the section generally relates to international terrorism.¹⁶⁶ The definition has limitations for both the perpetrator, “subnational groups or clandestine agents,”¹⁶⁷ and the victim, “noncombatant targets.”¹⁶⁸ Limiting the definition to “noncombatant targets” would seemingly exclude attacks on military targets, such as the 1996 bombing of the Khobar Towers military barracks in Saudi Arabia.¹⁶⁹

In addition to providing the standard for the State Department’s annual terrorism reports, this definition also is used in conjunction with the immigration law definition of engaging in terrorism activity¹⁷⁰ in the Secretary of State’s designations of “foreign terrorist organizations.”¹⁷¹ As discussed above, the immigration implications for such designations are immense.¹⁷² Also, the definition is employed as part of a statutory bar

160. Military Family Tax Relief Act, Pub. L. No. 108-121, § 108, 117 Stat. 1335, (2003) (to be codified at 26 U.S.C. § 501(p)(2)(A)).

161. 8 U.S.C.A. § 1189(a)(2)(C) (West Supp. 2003). The authority to seize assets is not activated, however, by a designation pursuant to 8 U.S.C.A. § 1182(a)(3)(B)(vi)(II), only designations under 8 U.S.C.A. § 1189(a)(1)(B). *See id.* § 1189(a)(1)(B).

162. 22 U.S.C. § 2656f(d)(2) (2000). *See also* Noteboom, *supra* note 8, at 569 (“The strength and weakness of this definition is its simplicity.”). The same definition is also used in State Department reports on terrorist assets in the United States. *See* 22 U.S.C. § 2656g(b)(2) (2000).

163. Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. No. 100-204, § 140(c)(2), 101 Stat. 1331, 1349 (1987) (codified at 22 U.S.C. § 2656f).

164. 22 U.S.C. § 2656f(d)(2) (2000).

165. *Id.*

166. *See id.* § 2656f. The section defines “international terrorism” as “terrorism involving citizens or the territory of more than 1 country,” *id.* § 2656f(d)(1), and “terrorist group” as “any group practicing, or which has significant subgroups which practice, international terrorism,” *id.* § 2656f(d)(3).

167. *Id.* § 2656f(d)(2).

168. *Id.*

169. *See* MALIK, *supra* note 2, at 45; Noteboom, *supra* note 8, at 570.

170. 8 U.S.C.A. § 1182(a)(3)(B) (West Supp. 2003). *See supra* Part III.C for a discussion of that definition. Such a designation, whether under the immigration law definitions or 22 U.S.C. § 2656f(d)(2), can cause an organization to lose its tax-exempt status. Military Family Tax Relief Act, Pub. L. No. 108-121, § 108, 117 Stat. 1335 (2003) (to be codified at 26 U.S.C. § 501(p)(2)) (referring to, *inter alia*, the statute creating 22 U.S.C. § 2656f(d)(2), the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

171. 8 U.S.C.A. § 1189(a)(1)(B) (West Supp. 2003).

172. *See supra* Part III.C.

to the Defense Department providing financial assistance to countries determined to have supported “international terrorism.”¹⁷³

Another definition of terrorism relates to the Secretary of State’s authority to grant rewards for providing information about international terrorism.¹⁷⁴ The definition, enacted in 1998,¹⁷⁵ provides:

The term ‘act of international terrorism’ includes:

(A) any act substantially contributing to the acquisition of unsafeguarded special nuclear material . . . or any nuclear explosive device . . . by an individual, group, or non-nuclear-weapon state . . . ; and

(B) any act, as determined by the Secretary, which materially supports the conduct of international terrorism, including the counterfeiting of United States currency or the illegal use of other monetary instruments by an individual, group, or country supporting international terrorism¹⁷⁶

While subparagraph (A) provides an inductive definition with a limited substantive element related to nuclear material or devices and without a political intent requirement, subparagraph (B) is so broad that it does not have sufficient boundaries to be classified as either inductive or deductive. Subparagraph (B) allows the Secretary of State extensive discretion in determining what acts “materially support the conduct of international terrorism” and therefore constitute international terrorism under this definition.¹⁷⁷ Because this definition is limited to the reward-granting authority of the Secretary of State, it is of limited significance.

E. Other Statutory Definitions

Congress has enacted additional statutory definitions of terrorism in various other contexts. The Homeland Security Act of 2002,¹⁷⁸ which, *inter alia*, created the Department of Homeland Security, contains two statutory definitions of terrorism. The “definitions” section of the Act defines terrorism as:

any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended--

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.¹⁷⁹

173. 10 U.S.C. § 2249a(c) (2000).

174. 22 U.S.C. § 2708 (2000).

175. Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, § 2202, 112 Stat. 2681, 2681-807 (1998), *amended by* State Department Basic Authorities Act Amendments of 1998, Pub. L. No. 105-323, § 101, 112 Stat. 3029, 3031-32.

176. 22 U.S.C. § 2708(j)(1) (2000).

177. *Id.* § 2708(j)(1)(B).

178. Pub. L. No. 107-296, 116 Stat. 2135 (2002).

179. *Id.* § 2(15), 116 Stat. at 2141.

This is a deductive definition with a substantive element requiring a dangerous act in violation of an American criminal law¹⁸⁰ and a political motivation identical to that found in the § 2331 definitions of terrorism.¹⁸¹ Unlike the § 2331 definitions, however, the Homeland Security Act's definition does not have a jurisdictional component; an act fitting this definition would be considered terrorism wherever it occurred.

Although the Homeland Security Act constitutes a significant reorganization of the federal government, combining all or part of twenty-two different agencies into the new Department of Homeland Security,¹⁸² the Act's definition of terrorism is not particularly significant since it only applies in limited circumstances such as rules governing procurement.¹⁸³ Although the Act, *inter alia*, abolished the Immigration and Naturalization Service¹⁸⁴ and incorporated its functions into the new department,¹⁸⁵ the Homeland Security Act does not alter the existing definitions of terrorism in immigration law applied by the new department.

The Homeland Security Act provides another definition of terrorism in a portion concerning anti-terrorism technology. Section 865 of the Act defines "act of terrorism" as an act that:

- (i) is unlawful;
- (ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and
- (iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.¹⁸⁶

This is essentially a deductive definition, although without a political motivation requirement. Rather, an unlawful act that causes harm to someone or something in the United States by means designed to cause mass destruction would be terrorism under this definition if the Secretary of Homeland Security determines it satisfies the definition's requirements.¹⁸⁷

This definition relates to a federal cause of action created by the Act "for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller."¹⁸⁸ The definition is only applicable in such causes of action brought by sellers of "qualified anti-terrorism technologies," which must be certified by the Secretary of Homeland Security.

180. *Id.* § 2(15)(A), 116 Stat. at 2141.

181. *Compare id.* § 2(15)(B), 116 Stat. at 2141, with 18 U.S.C.A. § 2331(1)(B) (2000 & West Supp. 2003), and 18 U.S.C.A. § 2331(5)(B) (West Supp. 2003).

182. See Helen Dewar, *Homeland Security Bill Sent to White House*, WASH. POST, Nov. 24, 2002, at A3.

183. See, e.g., Federal Acquisition Regulation; Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack, 68 Fed. Reg. 4048 (Jan. 27, 2003) (incorporating the Homeland Security Act terrorism definition in interim procurement rules for agencies involved in defending against a terrorist attack or the recovery after such an attack).

184. Pub. L. No. 107-296, § 471, 116 Stat. at 2205.

185. *Id.* §§ 441-60, 116 Stat. at 2192-2201.

186. *Id.* § 865(2)(B), 116 Stat. at 2242.

187. *Id.* § 865(2)(A), 116 Stat. at 2242.

188. *Id.* § 863(a)(1), 116 Stat. at 2239.

city.¹⁸⁹ Since the definition applies in only narrow circumstances it is of very limited significance.

Another recent statutory definition of terrorism was created through the Terrorism Risk Insurance Act of 2002.¹⁹⁰ In this statute, the term:

‘act of terrorism’ means any act that is certified by the Secretary [of Treasury], in concurrence with the Secretary of State, and the Attorney General of the United States—

(i) to be an act of terrorism;

(ii) to be a violent act or an act that is dangerous to—a

(I) human life;

(II) property;

(III) infrastructure;

(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

(I) an air carrier or vessel [based and insured in the United States];

(II) the premise of a United States mission; and

(iv) to have been committed by an individual or individual acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.¹⁹¹

This is a deductive definition with a substantive requirement of a violent act dangerous to human life, property, or infrastructure,¹⁹² a motivation requirement that the act be part of an effort to coerce or influence the United States population or government,¹⁹³ and a jurisdictional requirement that the damage occur within the United States, at a United States mission or to a craft based in the United States.¹⁹⁴ The definition further requires certification by the Secretary of the Treasury that the conduct satisfies the Act’s requirements.¹⁹⁵ Additionally, for an act to qualify under the definition, it must be performed on behalf of a foreign individual or interest,¹⁹⁶ and, oddly, it must also be “an act of terrorism.”¹⁹⁷ Presumably, the Secretary of the Treasury could determine that conduct is not an act of terrorism, despite otherwise satisfying the requirements of the definition.

This definition of terrorism, as apparent from the Act’s title, concerns insurance for terrorism. Although the Act is significant to insurance carriers,¹⁹⁸ its definition of terrorism is not particularly significant.

Another recent definition is from the Aviation and Transportation Security Act of 2001,¹⁹⁹ which defines an “act of terrorism” as:

189. *Id.* § 863(d)(3), 116 Stat. at 2240.

190. Pub. L. No. 107-297, 116 Stat. 2322 (2002).

191. *Id.* § 102(1)(A), 116 Stat. at 2323–24.

192. *Id.* § 102(1)(A)(ii), 116 Stat. at 2323.

193. *Id.* § 102(1)(A)(iv), 116 Stat. at 2324.

194. *Id.* § 102(1)(A)(iii), 116 Stat. at 2324; *see also* *Omni Berkshire Corp. v. Wells Fargo Bank, N.A.*, 2003 WL 1900822, at *3 (S.D.N.Y. Apr. 17, 2003) (The Terrorism Risk Insurance Act definition of terrorism “does not apply to acts of domestic terrorism.”).

195. Pub. L. No. 107-297, § 102(1)(A), 116 Stat. at 2323–24. The statute bars the Secretary from delegating the certification authority. *Id.* § 102(D). The Secretary’s determinations are not subject to judicial review. *Id.* § 102(C).

196. *Id.* § 102(1)(A)(iv), 116 Stat. at 2324.

197. *Id.* § 102(1)(A)(i), 116 Stat. at 2323.

198. *See generally* Joseph G. Jarret, *The Business of Terrorism: The Terrorism Risk Insurance Act of 2002*, 77 FLA. BAR J. 63 (Oct. 2003).

199. Pub. L. No. 107-71, § 129(2), 115 Stat. 597, 633 (2001) (to be codified at 49 U.S.C. § 44703(g)(3)).

an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State, and appears to be intended to intimidate or coerce a civilian population to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by assassination or kidnaping [sic].²⁰⁰

This is a deductive definition nearly identical to the FISA definition of international terrorism²⁰¹ except there is no jurisdictional requirement. This definition is not especially significant since it only applies in the limited context of the issuance of “airman” certificates by the Federal Aviation Administration.²⁰²

Finally, a definition of “act of international terrorism” was enacted as part of the Iran and Libya Sanctions Act of 1996.²⁰³ This un-codified definition is likewise nearly identical to the FISA definition,²⁰⁴ except that there is no jurisdictional element—despite claiming to be a definition of “international terrorism.” This definition is part of a statute establishing fines for investing in Iranian and Libyan industries due to a Congressional finding that those countries have supported “international terrorism.”²⁰⁵

F. Executive Branch Definitions

Congress is not the only source of federal legal definitions of terrorism. The executive branch of the federal government promulgated at least two definitions. A definition for terrorism was part of an Executive Order concerning asset seizure issued by President George W. Bush shortly after the September 11, 2001 attacks. Executive Order 13224 defines terrorism as:

- an activity that—
- (i) involves a violent act or an act dangerous to human life, property, or infrastructure;
 - and
 - (ii) appears to be intended—
 - (A) to intimidate or coerce a civilian population;
 - (B) to influence the policy of a government by intimidation or coercion; or
 - (C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.²⁰⁶

This is a deductive definition with a substantive portion and a political portion, although there is no jurisdictional requirement. The definition is similar, although not identical, to the substantive and the political motivation portions of FISA and § 2331 definitions.²⁰⁷ This definition is significant since the executive order authorizes the seizure of

200. 49 U.S.C.A. § 44703(g)(3).

201. *Compare id.* § 44703(g)(3), with 50 U.S.C. § 1801(c) (2000).

202. 49 U.S.C.A. § 44703(g).

203. Pub. L. No. 104-172, § 14(1), 110 Stat. 1541, 1549 (1996).

204. *Compare id.*, with 50 U.S.C. § 1801(c) (2000). There are some minor stylistic differences, such as the use of the phrase “an act . . . which is violent or dangerous to human life” in the Iran and Libya Sanctions Act, Pub. L. No. 104-172, § 14(1), 110 Stat. at 1549, while FISA contains “violent acts or acts dangerous to human life.” See 50 U.S.C. § 1801(c).

205. Pub. L. No. 104-172, §§ 2(3)–(4), 110 Stat. at 1541.

206. Exec. Order No. 13,224, 66 Fed. Reg. 49,079, 49,080 (Sept. 23, 2001).

207. See 50 U.S.C. § 1801(c) (2000); 18 U.S.C.A. § 2331(1) (2000 & West Supp. 2003); 18 U.S.C.A. § 2331(5) (West Supp. 2003). The motivational component of the Executive Order concerning affecting gov-

assets of groups that “assist in, sponsor, or provide financial, material, or technological support for . . . acts of terrorism.”²⁰⁸

Another executive branch definition of terrorism can be found in the regulation discussing the duties of the Federal Bureau of Investigation.²⁰⁹ Under this regulation, “[t]errorism includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”²¹⁰ This is a deductive definition with a substantive element of “unlawful use of force and violence against persons or property” and a motivation element of intimidating or coercing a government or population “in furtherance of political or social objectives.”²¹¹ There is no jurisdictional element.

This definition is not legally significant since it has no legal consequences. Rather, it is included in the list of functions of the FBI, which declare that the FBI is the lead agency to investigate crimes “which involve terrorist activities.”²¹² The regulation does not preclude other governmental agencies from investigating terrorism, but rather “[investigative agencies are] *requested* to promptly notify the FBI.”²¹³ Likewise, the regulation does not limit the FBI investigation to activities falling within that definition.²¹⁴ Additionally, the use of the phrase “terrorism *includes*”²¹⁵ signals that the definition is not intended to cover all possible acts of terrorism. While not legally significant, the definition is frequently cited by commentators as an example of a legal definition of terrorism.²¹⁶

IV. OPTIONS FOR THE MULTIPLE LEGAL DEFINITIONS

The federal legal definitions of terrorism discussed above are inconsistent as to what constitutes terrorism, differing on, *inter alia*, the requirements of a political motivation²¹⁷ and even the nature of the victims.²¹⁸ This section discusses three options in

ernmental conduct includes “mass destruction,” which is not part of FISA, and “hostage-taking,” which is not part of the FISA or section 2331 definitions. *Compare* Exec. Order No. 13,224, § 1(d)(ii)(C), 66 Fed. Reg. at 49,080, with § 1801(c)(2)(C), and § 2331(1)(B)(iii) (2000 & West Supp. 2003), and § 2331(5)(B)(iii) (West Supp. 2003).

208. Exec. Order No. 13224, § 1(d)(i), 66 Fed. Reg. at 49,080; *see also* Global Relief Found., Inc. v. O’Neill, 315 F.3d 748 (7th Cir. 2002) (applying the executive order); Holy Land Found. for Relief & Dev. v. Ashcroft, 219 F. Supp.2d 57 (D.D.C. 2002), *aff’d*, 333 F.3d 156 (D.C. Cir. 2003) (same).

209. 28 C.F.R. § 0.85(l) (2003).

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.* (emphasis added).

214. *See* GAO, BETTER MANAGEMENT, *supra* note 144, at 7 (discussing how FBI terrorism-related investigations need not fall under the terrorism definition of 28 C.F.R. § 0.85(l)).

215. 28 C.F.R. § 0.85(l) (2003) (emphasis added).

216. *See, e.g.*, WHITE, *supra* note 6, at 12; HOFFMAN, *supra* note 20, at 38; Noteboom, *supra* note 8, at 558–59; Beres, *supra* note 13, at 240.

217. *Compare, e.g.*, 50 U.S.C. § 1801(c)(2) (2000), and 18 U.S.C. § 921(a)(22) (2000), and 28 C.F.R. § 0.85(l) (2003), and 22 U.S.C. § 2656f(d)(2) (2000), with 18 U.S.C.A. § 1993(a) (West Supp. 2003), and 18 U.S.C. § 43(a) (2000), and 8 U.S.C.A. §§ 1182(a)(3)(I), (III)–(V) (West Supp. 2003), and 22 U.S.C. § 2708(j)(1)(A) (2000).

218. *Compare* 22 U.S.C. § 2656f(d)(2) (2000) (limited to “noncombatant targets”), with 18 U.S.C. § 2332(a) (2000) (limiting terrorism to acts against a national of the United States), with 18 U.S.C. § 921(a)(22) (2000) (limiting terrorism to acts directed against “United States persons”), with Homeland Security Act of 2002, Pub. L. No. 107-296, § 865(2)(B), 116 Stat. 2135, 2242 (limiting terrorism to persons, property or entities in the United States or United States aircraft or vessels).

addressing the situation: maintaining the status quo, abandoning the attempt to legally define terrorism, or adopting a single definition.

A. *Maintaining the Status Quo*

The principal benefit to numerous legal definitions of terrorism is that each definition can be individualized to best serve its intended purpose. As one commentator has observed, the different legal definitions “reflect[] the priorities and particular interests of the specific agency involved.”²¹⁹ It is logical that different standards are used for making determinations relating to vastly different public-policy objectives, such as determining which aliens are permitted to enter the United States, the circumstances needed for the government to obtain a warrant to conduct surveillance, or the basis for insurance coverage for terrorist attacks. In other words, there is method, or at least justification, to the seeming madness of the numerous definitions for terrorism.

The main drawback to the numerous definitions is that one act may be considered terrorism under one definition but not under another.²²⁰ As has been observed, the multiple legal definitions of terrorism result “in overlap, confusion, and ambiguity.”²²¹ Confusion is inherent when a term has multiple legal definitions, even when the defined term lacks the connotations of terrorism, such as exists with “crime of violence.”²²² When the defined term has the judgmental connotations of terrorism, the potential for confusion is augmented. A Congressional committee investigating the attacks of September 11, 2001 stated that one of the problems of the intelligence community is “practically every agency of the United States government with a counterterrorism mission uses a different definition of terrorism.”²²³ Paraphrasing the cliché, it is almost as if one agency’s terrorist is another agency’s freedom fighter. Additionally, it has been noted that “[c]onflicting definitions [of terrorism] create a problem of notice; individuals are uncertain which definition applies to them and thus which conduct is prohibited.”²²⁴ More fundamentally, the United States has long been criticized for being inconsistent on whom it calls a terrorist;²²⁵ having multiple definitions of terrorism in federal law helps fuel these criticisms.

219. HOFFMAN, *supra* note 20, at 38; *see also* Seto, *supra* note 19, at 1232–34 (discussing how different conduct would be classified as terrorism under some federal legal definitions but not others); Noteboom, *supra* note 8, at 568.

220. *See generally* LAQUEUR, *supra* note 9, at 142 (“For unless there is broad agreement on the definition of [terrorism], there will be the risk that everyone will interpret it in a different way.”).

221. Noteboom, *supra* note 8, at 568; *see also* Jeffrey F. Addicott, *Legal & Policy Implications for a New Era: The ‘War on Terror’*, 4 SCHOLAR 209, 215 (2002) (“In the United States, the difficulties in definition [of terrorism]. . . rest in the sheer number of different government instrumentalities that have offered independent interpretations which, while similar, are not identical.”).

222. *See* United States v. Charles, 301 F.3d 309, 316 (5th Cir. 2002) (en banc) (DeMoss, J., concurring) (“There are, in fact, eight different definitions of the term ‘crime of violence’ in the United States Code and the United States Sentencing Guidelines.”); *see also* United States v. Vargas-Duran, 319 F.3d 194, 203 (5th Cir. 2003) (Clement, J., dissenting) (referring to “the irrationality of having several definitions of ‘crime of violence’ scattered throughout the U.S. Code and Sentencing Guidelines”), *rev’d en banc*, 356 F.3d. 598 (5th Cir. 2004).

223. SUBCOMMITTEE ON TERRORISM AND HOMELAND SECURITY, HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE, 107TH CONG., REPORT ON COUNTERTERRORISM CAPABILITIES AND PERFORMANCE PRIOR TO 9-11 (July 2002), available at http://www.fas.org/irp/congress/2002_rpt/hpsci_ths0702.html (last visited Mar. 2, 2004).

224. Note, *Blown Away? The Bill of Rights after Oklahoma City*, 109 HARV. L. REV. 2074, 2086 (1996).

225. *See, e.g.*, Cooper, *supra* note 8, at 890 (referring to the State Department list of terrorist states as “a kind of hypocrisy”); WHITE, *supra* note 6, at 8; James T. Kelly, *The Empire Strikes Back: The Taking of Joe*

B. Abandoning Legal Definitions of Terrorism

One possible solution to the numerous legal definitions of terrorism is to abandon the legal definitional quest. Three decades ago, R.R. Baxter lamented the meeting of terrorism and law: "We have cause to regret that a legal concept of 'terrorism' was ever inflicted upon us. The term is imprecise; it is ambiguous; and above all, it serves no operative legal purpose."²²⁶ As another commentator summarized, "terrorism is not a legal term of art."²²⁷

Similar to the scholarly discussion on the difficulties of defining terrorism, several reasons have been offered for why terrorism is not well-suited for legal definition. First, "it is virtually impossible to anticipate all potential scenarios, or to devise a legal scheme that specifically identifies every possible terrorist armed attack."²²⁸ Further, most terrorist acts are already criminal acts under statutes covering murder, kidnapping, explosives, or conspiracy,²²⁹ so that terrorism laws, arguably, serve no useful legal purpose. Additionally, it has been argued that legal definitions of terrorism "are quite useless because they account for neither the social nor the political nature of terrorism."²³⁰ Precisely because terrorism is politically motivated, "it is only in the realm of the political that these definitions [of terrorism] have any useful employment."²³¹ The political motivation of terrorism separates it from ordinary crime.²³² Finally, since the use of the word "terrorism" is, at least to some, judgmental and subjective,²³³ it is ill-suited for the (ideally) objective nature of legal definitions.²³⁴

The abandonment of legal definitions of terrorism, while appealing in some ways, is not feasible. The criticism that the American government is inconsistent in dealing with terrorism would undoubtedly increase if legal definitions of terrorism were abandoned. Further, although not a war in the constitutional sense,²³⁵ a war on terrorism has been proclaimed by the President²³⁶ and supported by Congress through resolutions.²³⁷ It is

Doherty, 61 *FORDHAM L. REV.* 317, 398 (1992) (comparing the imprisonment of an Irish Republican "terrorist" Joe Doherty with the White House reception of South African "terrorist" Nelson Mandela).

226. R.R. Baxter, *A Skeptical Look at the Concept of Terrorism*, 7 *AKRON L. REV.* 380, 380 (1974).

227. Guy R. Roberts, *Self-help in Combating State Sponsored Terrorism: Self Defense and Peacetime Reprisals*, 19 *CASE W. RES. J. INT'L L.* 243, 249 (1987); see also MALIK, *supra* note 2, at 22 ("Terrorism is not . . . a precise juridical term.").

228. Beck & Arend, *supra* note 5, at 216; see also HOFFMAN, *supra* note 20, at 15; WHITE, *supra* note 6, at 3.

229. See CHARLES DOYLE, *TERRORISM AT HOME: A QUICK LOOK AT APPLICABLE FEDERAL AND STATE CRIMINAL LAWS*, CONG. RES. SERV. NO. R521033, at 1 (2001) ("The conduct we most often associate with terrorism - bombings, assassinations, armed assaults, kidnapping, threats—are generally outlawed by both federal and state law."); see also WHITE, *supra* note 6, at 7 ("[A]ll terrorist activity involves criminal activity.").

230. WHITE, *supra* note 6, at 8; see also LAQUEUR, *supra* note 9, at 144 ("The application of legal norms is of little help in establishing the political character of a terrorist movement.").

231. Cooper, *supra* note 8, at 885; accord MALIK, *supra* note 2, at 52 ("General convention has long held that terrorism must have a political component."); SCHMID, *supra* note 10, at 57 ("Terrorism, in everyday parlance, is often seen as *political crime* or *political murder*." (emphasis added)).

232. See SCHMID, *supra* note 10, at 25–32; MALIK, *supra* note 2, at 23; WHITE, *supra* note 6, at 19–22; Cooper, *supra* note 8, at 885.

233. See, e.g., WHITE, *supra* note 6, at 4; HOFFMAN, *supra* note 20, at 31; Cooper, *supra* note 12, at 106; Porras, *supra* note 6, at 124.

234. See generally Daniel Givelber, *The New Law of Murder*, 69 *IND. L.J.* 375, 388 n.57 (1994) ("[A]ny legal definition must be expressed in terms of the objective characteristics . . .").

235. See U.S. CONST. art. I, § 8, cl. 11.

236. See, e.g., Katharine Q. Seelye & Elisabeth Bumiller, *After Attacks: The President; Bush Labels Aerial Attacks 'Acts of War'*, *N.Y. TIMES*, Sept. 13, 2001, at A16.

illogical for the United States to have a war on something it does not even attempt to define, and “[t]he ‘w’ word has been used and now cannot be withdrawn.”²³⁸

Additionally, the United States has traditionally, although not uniformly, treated terrorism as a legal matter.²³⁹ Indeed, to some people, support for, and reliance on the law differentiates democracies from terrorists.²⁴⁰ It is thus not appropriate to abandon the quest for a legal definition of terrorism. As Baxter acknowledged in his article lamenting the meeting of terrorism and law, “we must make the best of matters and see what can be made of this notion of terrorism.”²⁴¹

C. A Single Definition

The final alternative to the numerous legal definitions of terrorism is to amend the existing definitions into a single definition applicable in all relevant circumstances. A Congressional subcommittee investigating the attacks of September 11, 2001 recommended a single definition for terrorism.²⁴² The subcommittee noted that nearly every federal agency involved in counter-terrorism used a different definition of terrorism and recommended that all governmental agencies “charged with the counterterrorism mission should agree on a single definition, so that it would be clear what activity constitutes a terrorist act and who should be designated a terrorist.”²⁴³ While it is ironic for a congressional body to be criticizing the executive branch for having so many definitions of terrorism when the legislative branch is the source of the vast majority of definitions, the recommendation for a unified definition has merit. In addition to eliminating the problems discussed above with numerous definitions, such as inconsistency in determining what terrorism is and the lack of notice, a single definition would allow better communication between law enforcement and intelligence agencies dealing with terrorism.²⁴⁴ The General Accounting Office has warned that without a commonly accepted

237. See, e.g., Condemnation of Terrorist Attacks of 2001, Pub. L. No. 107-39, § 7, 115 Stat. 222, 222 (Congress “commits to support increased resources in the war to eradicate terrorism.”).

238. See also Michael Howard, *What's in a Name? How to Fight Terrorism*, 81 FOREIGN AFF. 8,10 (2002).
239. Note, *Responding to Terrorism: Crime, Punishment, and War*, 115 HARV. L. REV. 1217, 1224 (2002) (“[T]he United States has traditionally treated terrorism as a crime.”); see also BREMER, *supra* note 3, at 2 (“[T]he firm hand of the law is the best defense against terrorism.”); Abraham D. Sofaer, *Playing Games with Terrorists*, 36 NEW ENG. L. REV. 903, 903 (2002) (arguing that criminal prosecutions has been the United States’ predominate weapon against terrorism). But see Jacques deLisle, *The New Protracted Conflict: The Roles of Law in the Fight Against Terrorism*, 46 ORBIS 301, 306 (2002) (“Yet, for all its appeal, the law paradigm has failed to become the dominant model of the United States’ fight against terrorism”); WHITE, *supra* note 6, at 269 (“The only thing one can say is the United States have been consistently inconsistent with its answer [on whether terrorism is a crime or an act of war].”). See generally Ronald J. Sievert, *War on Terrorism or Global Law Enforcement Operation?*, 78 NOTRE DAME L. REV. 307 (2003).

240. See, e.g., BREMER, *supra* note 3, at 2 (“Terrorists despise democracy because democracy cherishes that which the terrorists seek to destroy: the sanctity of the individual and the rule of law.”); see also Porras, *supra* note 6, at 139 (“The complaint is that the terrorist respects no law—not the criminal law, not moral law, not the law of peace, and not the law of war.”).

241. Baxter, *supra* note 226, at 380.

242. SUBCOMMITTEE ON TERRORISM AND HOMELAND SECURITY, *supra* note 223. The report suggests its own terrorism definition: “Terrorism is the illegitimate, premeditated use of politically motivated violence or the threat of violence by a sub-national group against persons or property with the intent to coerce a government by installing fear amongst the populace.” *Id.*

243. *Id.*

244. See, e.g., OFFICE OF HOMELAND SECURITY, THE WHITE HOUSE, NATIONAL STRATEGY FOR HOMELAND SECURITY 42 (2002) (proposing, *inter alia*, an incident management system that “would ensure that this national system defines common terminology for all parties”). The strategy also proposed a definition of terrorism, “characteriz[ing] terrorism as any premeditated, unlawful act dangerous to human life or public

governmental definition of terrorism, "the potential exists for an uncoordinated approach to combating terrorism caused by duplication in efforts or gaps in coverage, misallocation of resources, and inadequate monitoring of expenditures."²⁴⁵ The adoption of a single definition of terrorism offers significant benefits including reduced confusion, more effective communication between governmental agencies, and the maintenance of more accurate statistics on terrorism and counter-terrorism.²⁴⁶

The negative aspects of a single definition relate to the limitations it imposes. A single definition requires that the federal agencies apply the same legal standard in a wide variety of contexts, so that the determination of the Secretary of State, on which organizations engage in terrorism, would be the same standard when applied in authorizing surveillance under FISA as when determining the admissibility of aliens. Determinations serving such diverse public policy goals and their corresponding societal implications may require different definitions. Additionally, drafters face difficulties writing an all-inclusive definition since it should ideally "include all that it seeks to define" and "exclude all else."²⁴⁷ Further, because the attributes of terrorism change over time,²⁴⁸ a definition with such wide consequences makes the inevitable amendment process more difficult since, at least in theory, the proposed changes require more contemplation on the part of Congress to the definition in light of its wider-reaching consequences.

V. CONCLUSION

Following the many eager souls who joined the definitional quest, federal lawmakers have created twenty-two different definitions of terrorism and related concepts. This Article has examined the scholarship on defining terrorism, the numerous federal legal definitions of the term, and three alternatives to the present situation.

While all three alternatives have benefits, the best solution is to seek a single, unified definition. A single definition would allow better communication between agencies in the fight against terrorism and provide at least some shielding to charges that the United States is inconsistent in whom it labels a terrorist. While it may cause drawbacks, a single definition would ultimately be the most useful tool in the ongoing attempts to control terrorism. By changing the standard under which the single definition applies, rather than the definition itself, federal agencies could minimize the limitations caused by a single definition. A criminal conviction would, of course, require proof beyond a reasonable doubt,²⁴⁹ while other situations could apply a preponderance of the evidence standard, or, as is presently used in the terrorist prohibition to alien admissions

welfare that is intended to intimidate or coerce civilian populations or government." *Id.* at 2.

245. *Combating Terrorism: Observations on National Strategies Related to Terrorism: Testimony Before the House Subcomm. on Nat'l Sec., Emerging Threats, and Int'l Relations of the House Comm. on Gov't Reform*, 108th Cong. 7 (2003) (statement of Raymond J. Decker, Director, Defense Capabilities and Management). Another 2003 GAO publication concluded that a principal reason why different federal agencies were reporting different numbers of terrorism-related convictions was that the agencies were applying different definitions of terrorism, and warned that the resulting lack of reliable terrorism-related conviction data would limit counter-terrorism efforts. See GAO, *BETTER MANAGEMENT*, *supra* note 144, at 4, 14.

246. See also Beres, *supra* note 13, at 239 (The United States "should articulate and apply a *single* unambiguous standard [for terrorism]." (emphasis added)).

247. See MALIK, *supra* note 2, at xx.

248. See, e.g., WHITE, *supra* note 6, at 3 ("[T]he nature of terrorism has changed over the course of history."); LAQUEUR, *supra* note 9, at 11; JENKINS, *supra* note 24, at 10.

249. See *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000); *In re Winship*, 397 U.S. 358, 361 (1970).

to the United States, simply “reasonable grounds to believe” that the prohibition applies.²⁵⁰ Additionally, a mandate, as is already required in certain circumstances,²⁵¹ that a politically-appointed official certify that the action constitutes terrorism under the definition could limit the misapplication of the definition.

A single federal definition of terrorism would have far-reaching effects, and therefore drafters must carefully avoid being over- or under-inclusive.²⁵² An overly-narrow definition could permit those responsible for terrorism to avoid the legal consequences of terrorism. Similarly, drafters must take care to ensure that the definition is not overly-broad since there are significant consequences to the mere use of the word terrorism.²⁵³ Indeed, a government that defines the term vaguely or overly-broad risks having its applications of the term ignored.²⁵⁴ One circuit judge stated that because the word terrorism “carries far-reaching connotations,” it is comparable to treason at the time of the Constitutional Convention and therefore “must be carefully defined.”²⁵⁵ Just as the Constitutional Convention attempted to limit the “malignity” of misapplied and politically-motivated allegations of treason through a specific, constitutional definition for treason,²⁵⁶ Congress should use similar care in drafting a single federal definition of terrorism. The definitional questers from academia would undoubtedly continue their searches, but Congress, by adopting a single, well-drafted definition, could return to their other business, much as King Arthur’s knights did upon returning from the Grail Quest.²⁵⁷

250. 8 U.S.C.A. § 1182(a)(3)(A) (2000 & West Supp. 2003).

251. *See, e.g.*, 18 U.S.C. § 2332(d) (2000) (requiring a certification by the Attorney General or the highest ranking subordinate with the responsibility for criminal prosecutions for a terrorism prosecution under that section); Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, § 102(1)(A), 116 Stat. 2322, 2323 (requiring the certification by the Secretary of Treasury “in concurrence with the Secretary of State, and the Attorney General of the United States” that the actions falls under the Act’s terrorism definition).

252. *See* MALIK, *supra* note 2, at 56 (“A definition of terrorism, if it is to be the basis of legal enactment for the prevention of terrorism, must be worded with great care.”); *see also* Baxter, *supra* note 226, at 385 (“There is perhaps more to be feared in bad law on this subject than there is to be hoped for in good law.”).

253. *See* WHITE, *supra* note 6, at 4 (“A person is politically and socially degraded when labeled a terrorist, and the same thing happens when an organization is called a terrorist group . . . [P]olitical movements can be hampered when their followers are believed to be terrorists.”); JENKINS, *supra* note 24, at 1.

254. *E.g.*, Singh v. Ilchert, 63 F.3d 1501, 1508 (9th Cir. 1995) (disregarding that an Indian national had been investigated for terrorism since India’s terrorism laws are “vague” and “define[] ‘terrorism’ so broadly” that many people are investigated for actions not properly considered terrorism).

255. *United States v. Graham*, 275 F.3d 490, 537 (6th Cir. 2001) (Cohn, J., dissenting).

256. U.S. CONST. art. III, § 3, cl. 1; *see* THE FEDERALIST No. 43 (James Madison) (“But as new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their alternate malignity on each other, the convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a constitutional definition of the crime, fixing the proof necessary for conviction of it, and restraining the Congress, even in punishing it, from extending the consequences of guilt beyond the person of its author.”).

257. *See* THE QUEST OF THE HOLY GRAIL, *supra* note 1, at 284 (“[H]e journeyed on horseback as far as Camelot where he found king and court. Never was there such exultation as greeted his arrival . . .”).