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Remarks of Professor Robert A. Friedlander*

If I seem to be vague and overbroad in my remarks, it is because very early yesterday morning I left the Washington, D.C. Beltway; yesterday afternoon I taught at Ohio Northern University school of law; and last night, too late to participate in the famed Charney Nashville Nightlife Tour, I arrived in Nashville close to midnight by way of ComAir, which is, in itself, an act of terrorism. Before I forget, Professor Franck, I should also add that I have been accused at times, in the classroom and on Capitol Hill, of being both an idiot and a sophist, though not necessarily in that order. But idiotic though I may be, at least I know enough to stay away from English lifeboats and American sailors named Holmes.

My law professor self requires no disclaimer or apology except for what I seem to be turning out in the classroom—bluebooks are another form of terrorism—but my Washington, D.C. persona specifically mandates that I separate myself on a public platform from those with whom and for whom I work. So I will now proceed to disclaim. That is why I am listed simply as panelist without a speech title. This is, therefore, a mystery talk. The mystery is going to refer to its substantive content. So let us just say, in contemporary sports jargon, that I am the wrap-up commentator.

I am required to declare that I speak only for myself and not for the United States Senate Committee on Foreign Relations, the Republican Minority, the Committee Chairman or the Ranking Minority Member, though I would like to think that the Ranking Minority Member sometimes thinks what I think and sometimes not. I am here as a conservative commentator on terrorism and as a conservative analyst of the international political arena, which makes me somewhat unique today. I guess that is the result of being an historian, a conservative and a lawyer.

* Remarks delivered to the Symposium on State Sponsored International Terrorism, held at the Vanderbilt University School of Law on March 27, 1987. Professor Friedlander teaches at Ohio Northern University school of law, and he is Minority Special Counsel to the Committee on Foreign Relations of the United States Senate. Dr. Friedlander has written extensively on the subjects of terrorism, the Middle East, human rights, and American foreign policy. He is Chairman of the Committee on International Terrorism of the American Branch of the International Law Association.

These three categories, of course, are not mutually exclusive.

Admittedly, however, one does not always find the traditional civil libertarian values of the historic conservative—by that I do not mean a conservative with a doctorate in history—combined with the alleged tough-minded political perspective of a Republican Capitol Hill Counsel and Senatorial Staff Aide. But as we have unhappily discovered in Washington during the past four months, taking a hard stance against terrorism and making a hard stand against terrorism are not necessarily the same thing. Terrorism is everyone's business, because everyone is a potential victim. It is the special task of government to protect its citizenry from the barbaric acts perpetrated by terrorists and their state supporters and their state sponsors. A government that cannot meet the challenge of terrorism is a government which has failed to meet its obligations. A terrorist act is a criminal act because it is an attack on the law and on the legal system. Our democratic open society is based on the rule of law. The means we utilize to combat terrorism, therefore, must be legal means. That is why terrorism is not only a political issue, why it is not only a moral issue and why it is not only a diplomatic issue. It is in my opinion, first and foremost a legal issue.

Terrorism, in its essence, consists of common crimes: murder, attempted murder, kidnapping, aggravated battery, aggravated assault, arson and whatever other act of violence is utilized for terrorist ends and as terrorist means. Admittedly the world's democracies have not only failed to develop an acceptable definition for the global arena, they have also been unable to fashion a proper meaning for their own domestic statutes. We should never forget the symbiotic relationship which exists between terrorism and democracy. As the French political analyst, Jean François Ravel, has cogently remarked: "The main target of international terrorism is the idea of freedom as embodied in the democratic state." Mexican novelist Carlos Fuentes, whose politics I do not accept, has expressed this view in graphic and succinct words: "Terrorism is but the dark flower of a poisonous plant—disregard for the rule of law."

Our society is based on the rule of law. Terrorism challenges not only the United States but all free peoples everywhere. We must devise diplomatic measures, political actions and legislative initiatives which will counter the terrorist war and which will subject the terrorist to penalty and punishment either by the American legal system or by the other free societies and their governments and also, if necessary, impose economic sanctions, symbolic or otherwise.

This leads to certain questions that the Symposium touched on this morning that I hope we have attempted to answer in all our presentations. We will have to struggle with these questions in our various pro-

fessional capacities. Are the so-called root causes of terrorism sufficiently justifiable to negate the operation of law on a national or international level? I think the answer to that should be obvious because it is a long-standing Anglo-American tradition that no one is above the law. In our domestic criminal law and in international law, rights do not arise from wrongs.

Has terrorism in a global context been a successful instrument for social and political change? What does this mean for the operation of law? What are the sources of contemporary terrorism? Is state sponsored terrorism the primary cause of world violence at the present time? What is the future of terrorism?

I believe that state sponsored terrorism is, in effect, an act of war. It threatens the survival of all free societies. The United States would prefer to work together with our friends and allies who themselves have been and will continue to be victims of terrorism. To exercise a proper control of terror-violence there must also be a will on the part of governments and their peoples to deal with terrorism in the way that it must be dealt with.

This raises the final, and for those of us in Washington, the very important question: Have the major branches of our government—the executive branch, the legislative branch and the judicial branch—been doing all that they can to control and to respond to terrorism? What should be done now, and how should we do it? We can no longer afford to stand by while our embassies, our diplomats, our commercial airlines, and our citizenry, are placed at risk by global terrorism. We are confronted by the threat of a global deadly force which in many ways will determine the future of democracy itself. What then is the appropriate response to terrorist acts by democratic societies?

The real question, I think, is not one of elimination but rather one of control. First and foremost, there must be a firm resolve on the part of democratic governments and their citizenry to deal with terrorism in a meaningful fashion. Preserving fundamental rights while protecting societal order is not an easy task in the best of times. Democracy is drawing near the razor's edge. The alternative to the rule of law and the rule of reason is the rule of barbarism and the rule of anarchy. Choices have to be made, and they have to be made soon. But we still have time to make the proper choices. Thank you.

