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WHITE HOUSE



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

*Not the official
response.*

Admiral J. L. Holloway, III
Executive Director
Task Force on Combatting Terrorism
Office of the Vice President
Washington, D.C. 20006

Dear Admiral Holloway:

We have reviewed the issues distributed to the Senior Review Group on October 15, 1985 and believe they provide an excellent basis for discussion by the SRG. They cover the organizational, procedural, operational and legislative aspects of terrorism very well and the process of interagency comment you should have initiated will facilitate SRG review.

OMB's primary concern focuses on the role of the National Coordinator and his placement in the EOP. Establishment of this position in the EOP represents a substantial shift in responsibilities, primarily through its chairmanship of the Interdepartmental Group on Terrorism and its proposed program-budget role. We believe it is inappropriate to transfer this program-budget responsibility from the agencies to the National Coordinator since the agencies have a better insight into managing their programs and budgets within the constrained fiscal environment we are in and must justify, defend, and execute these programs. For its part, OMB is in a good position to work with both the agencies and the proposed National Coordinator to follow through on the programming document your staff is preparing within the overall budget process. As we see it, OMB should act in concert with the National Coordinator and the agencies to develop and maintain the national program, proposed in the first issue paper, within the normal program-budget process.

In addition, we are concerned that the Task Force proposals to pursue certain legislative initiatives may commit the President prematurely to legislation that is not yet drafted and has not undergone the rigors of full interagency coordination. In most cases, the proposals for legislation should be framed in terms of assignment to a lead department or agency to review the need for

the legislation and to draft specific legislative language in the specific areas identified. Draft legislation should then be vetted through the standard OMB clearance process for coordination and decision as necessary. With respect to several of these legislative proposals, I have asked my staff to provide comments directly to your staff contact.

Sincerely yours,

Alton G. Keel
Associate Director for
National Security and
International Affairs

- o FOIA Changes (29): While access of non-U.S. citizens to information through FOIA may compromise some information related to terrorism, as well as other sensitive activities, tying FOIA changes to terrorism is not likely to be a very strong case and is certain to bring forth strong opposition. We believe this proposal, if pursued, should be addressed as a broader FOIA reform, only indirectly related to terrorism.
- o Interference With Nuclear Material Movement (37): Making it a federal crime to "obstruct" nuclear shipments (it is already a crime to damage federal property) may be a political liability for the Administration and adds little to DOE's ability to deal with terrorism. The existence of daily DOE shipments would be highlighted and demonstrators willing to risk arrest may be encouraged by publicity motives to seek federal arrest.
- o Congressional Oversight Changes (19): Seeking changes in the War Powers Resolution and the intelligence oversight provisions of the National Security Act may be valid objectives, but tying these changes to terrorism both understates the case and involves heavy political risks in seeking to clarify the rules on Congressional consultation. We believe this proposal, if pursued, should be addressed in a broader context of which counter-terrorism aspects need not be the major part.

Attachments

GENERAL COMMENTS ON ISSUE #37

Status of the Proposal:

As I understand it, this idea came from the staff at Justice. No one in the Administration has yet signed up for it.

Effect of the Proposal:

The Federal Government already has the power to deal with cases where demonstrators become violent or otherwise cause damage to Federal property. This proposal would make it a Federal offense to "obstruct"--a term obviously meant to extend to cases where demonstrators are not violent, and where they do not cause damage to Government property.

Staff Comment:

To my knowledge, there is no need for this proposed legislation.

1. It does not add to DOE's ability to deal with terrorism.
2. It would most probably be a political liability for the Administration.

- (1) It is not necessary.

DOE already has the ability to deal with any terrorist activity aimed at a nuclear shipment. Whether by rail or truck, all shipments are accompanied by three groups of courriers. These are Federal employees. Each group has arrest authority, an arsenal that is impressive, and clear orders to use whichever is necessary. The new proposal would not enhance DOE's ability to deal with a terrorist threat.

- (2) It could become a political liability.

There is a distinct possibility that such a proposal would be seen by the public as an attempt to get at peaceful demonstrators by using the umbrella of anti-terrorism.

It could also be seen by civil rights groups as undermining the hallowed methods of the sixties.

It would afford new heights of publicity to those willing to risk arrest by Federal marshals for lying down on a railroad track. It could provide national coverage. They could even dream of a long protracted case before the Supreme Court.

COMMENTS ON ISSUE #38

Status of the Proposal:

A bill embodying this proposal has unanimously passed the Senate. It is in Committee in the House, where its chances are said to be excellent.

NRC also has had a rulemaking in progress on this issue since 1980. The final rule is expected before the end of the year. With or without the mantle of an Administration Initiative, this one is going forward.

Effect of the Proposal:

According to staff at NRC, a utility would send fingerprints of prospective employees to the FBI. The utility would receive a list of arrests, whether or not there was a conviction. The utility would also receive a list of convictions for that employee. The list would go back to the person's first offense.

The utility would be free to use this information in deciding whether or not to hire the person.

Staff Comment:

This idea has more merit as a way of screening prospective employees than it does as an approach to controlling terrorism. As a way to control terrorism, the idea has one merit. It would stop any threat from insiders who already have FBI records.

The idea did not start out as an action to avoid terrorism. It started with NRC assuming that it was a Federal responsibility to help employers screen their applicants. (Vignettes include a person wanted for armed robbery. He showed up in another state in a training program to become a guard at a nuclear plant.)

NRC found out that the Federal banks and the National Stock Exchange both had access to FBI files in order to screen applicants. NRC proposed a rule to give the same access to utilities having nuclear power plants. FBI was eager to extend the use of their files. The utilities were eager for the information.

On a parallel track, Senator Denton connected nuclear plants, nuclear terrorism and the ongoing NRC effort. His bill would essentially do the same thing as the NRC rule.

It would probably do little harm to associate this idea with a package of ideas to reduce the potential for terrorism. The idea should probably not be sold as being a major element of such a package.

On a daily basis, DOE now successfully transports weapons the length and breadth of the country. Because of its controversial nature, this proposal can only attract more attention to those shipments and thus attract more demonstrations. It could have precisely the opposite effect from that which the proponents hope for.