

Exchange Mail

DATE-TIME 4/9/99 9:22:25 AM

FROM Wechsler, William F.

CLASSIFICATION UNCLASSIFIED

SUBJECT FW: Bioterrorism provisions in Omnibus Crime Bill
[UNCLASSIFIED]

TO Tavlarides, Mark J.

CARBON_COPY Burrell, Christina L.
Dempsey, John M. (Jack)
Lackey, Miles M.
Tavlarides, Mark J.

TEXT_BODY Mark, your comments needed as well. Also, could you please give a copy of this to WH legislative affairs?

-----Original Message-----

From: Wechsler,
William F.

Sent: Thursday, April 08, 1999 5:44 PM

To: Krass, Caroline

D.; Saunders, Richard M.; Bernard, Kenneth W.; MacDonald, Bruce W.

Cc: @LEGAL

- Legal Advisor; Orfini, Michael H.; @HEALTH - International Health

Affairs; @OSTP - Office Science Tech; Clarke, Richard A.

Subject: Bioterrorism provisions in Omnibus Crime Bill [UNCLASSIFIED]

Comments/Edits

please. We would like to get this up as soon as possible.

This

is also being given to DPC for their input. The goal is to have one EOP memo to the President.

Let's try to keep this to three

pages, so please look for cuts if you want to add language.

TRANSLATED_ATTACHMENT

Omnibus Crime Bill -- Bioterrorism Provisions.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: SAMUEL BERGER
BRUCE REED
NEAL LANE
RON KLAIN

SUBJECT: Proposed Biological Terrorism Provisions in the Omnibus Crime Bill

Purpose

To determine the Administration position on proposed biological terrorism provisions in the Omnibus Crime Bill.

Background

There is consensus within the Administration that serious gaps exist in federal bioterrorism laws. In contrast to chemical, nuclear or radiological weapons, there are currently few laws in place designed to limit the availability of biological weapons to the general public. Current laws are merely suited to punishing perpetrators after they unleash biological warfare agents, not keeping these substances out of the wrong hands in the first place. Therefore, there is interagency agreement that the proposed Omnibus Crime Bill would include new provisions establishing criminal penalties for:

* Possession of harmful biological agents not justified by a peaceful purpose. Justification would be determined by type and/or quantity of the agent.

* Unregistered possession of selected biological agents. This provision recognizes that authorities should be aware of who is handling the most deadly biological agents and is a logical extension of current CDC transfer regulations. Any additional reporting burden will be minimal for scientific facilities that already comply with CDC transfer regulations. You would have 60 days after this legislation comes into effect to designate the agency that would be responsible for the registration process.

* Knowingly perpetrating a hoax regarding the use of harmful biological agents. Necessary given the recent spate of such hoaxes as the rash of anthrax scares in California.

There is interagency disagreement, however, about additional steps. Janet Reno supports including far-reaching bioterrorism provisions in the Omnibus Crime Bill; Donna Shalala would scale back the proposal due to concerns that some of the provisions would overburden the legitimate medical research community.

Justice Option. Justice's draft Omnibus Crime Bill further proposes that criminal penalties be established for:

* Reckless handling of harmful biological agents. This captures conscious, gross deviations from accepted norms in handling biological agents, as would be the case with home bioterrorism labs. Similar provisions already exist for radioactive materials and pharmaceutical products.

* Possession of selected biological agents by a restricted individual. Similar to the Brady Bill, this provision recognizes that factors such as a felony record or past mental impairment raise significant questions regarding the suitability to possess deadly biological agents. Exceptions are permitted in appropriate circumstances.

Justice notes that bioterrorism is a growing concern in the Congress and that many on both sides of the aisle will be looking to see if the Administration will produce a draft bill with a strong law enforcement focus before introducing their own proposals. Justice believes that this option will provide law enforcement with critical tools to prevent a bioterrorism catastrophe, while only being minimally intrusive on the legitimate research community. This option does not criminalize the actions of persons within the scientific community, except where their conduct so deviates from accepted safety standards as to be reckless or where it involves complicity in sharing lethal agents with persons known to be barred from possessing such agents. Even with these precautions in place, Justice has agreed to a HHS proposal to accompany the submission of this legislation with a statement to the Congress indicating that we will review its provisions with responsible representatives of the scientific community over a 60 day period, after which the Administration would advise Congress concerns any changes found to be appropriate. The Justice Option is supported by NSC.

HHS Option. HHS believes the provisions in the Justice Option would chill vital scientific endeavors. HHS would instead set a Presidential deadline for consultations with the scientific community to propose measures to address the training of scientists, safe procedures for handling, storage and security of biocontaminants, civil fines and penalties, and the question of what personal characteristics or events in an individual's history could legitimately support exclusion from research on select agents.

HHS opposes the criminalization of "reckless handling" of selected biological agents because it would necessarily cover inadvertent accidents or relatively minor oversights that occur even in the best biomedical laboratories,

perhaps due
to simple lapses in memory or errors in foresight. Criminalizing this
behavior
would not enhance national security but would stifle scientific
research and
damage relations between the Administration and the scientific
community.
[response to fact that similar laws exist for other sensitive materials?]

HHS also objects to the requirement for background checks because
the limiting
factors will cover minor offenses that are unlikely to be associated
with
terrorist proclivities. For instance, the provision covers misdemeanor
convictions, which could include domestic violence; addiction to
controlled
substances, which could include prescription medicines; or
hospitalization for
mental conditions, which could include temporary depressions.
Although the
Justice provision allows for exceptions, HHS believes that in practice
employers
would not be willing to accept the risk of requesting such a waiver,
and
therefore qualified scientists with minor offenses will be effectively
excluded
from the profession. The HHS Option is supported by OSTP.

RECOMMENDATION

That you decide between the two options above.

Justice Option _____

HHS Option _____

2

XXXX

cc: Vice President
Chief of Staff

Exchange Mail

DATE-TIME 4/9/99 6:46:44 PM
FROM Epstein, Gerald L.
CLASSIFICATION UNCLASSIFIED
SUBJECT Response to NSC on Crime Bill [UNCLASSIFIED]
TO MacDonald, Bruce W.

CARBON_COPY

TEXT_BODY Holly says we can send this down to NSC. It's located in
G:/Documents/Gepstein/Te
rrorism/Crime
Bill/OSTP-Bioterrorism.doc

TRANSLATED_ATTACHMENT

OSTP-Bioterrorism.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: SAMUEL BERGER
BRUCE REED
NEAL LANE
RON KLAIN
JACK LEW

SUBJECT: Proposed Biological Terrorism Provisions in the Omnibus
Crime Bill

Purpose

To determine the Administration position on proposed biological
terrorism
provisions in the Omnibus Crime Bill.

Background

There is consensus within the Administration that serious gaps exist in federal bioterrorism laws. In contrast to chemical, nuclear or radiological weapons, there are currently few laws in place designed to limit the availability of biological weapons to the general public. Current laws only punish perpetrators after they unleash biological warfare agents; they do not address inappropriate possession or "bio-hoaxes." Accordingly, there is interagency agreement that the proposed Omnibus Crime Bill should include new provisions controlling:

- * Possession of biological agents not justified by a peaceful purpose. Justification would be depend on the type, quantity, and purpose of the agent.

- * Unregistered possession of selected biological agents. This provision, a logical extension of current CDC transfer regulations, recognizes that authorities should be aware of who is handling the most deadly biological agents. Although establishing an initial inventory may pose a challenge to the scientific community; any continuing reporting burden will be minimal for scientific facilities that already comply with CDC transfer regulations. You would have 60 days after this legislation takes effect to designate the agency that would be responsible for the registration process.

- * Knowingly perpetrating a hoax regarding the use of harmful biological agents. This provision is necessary given the recent spate of such hoaxes as the rash of anthrax scares in California.

There is interagency disagreement, however, about additional steps. Janet Reno supports including wide-ranging bioterrorism provisions in the Omnibus Crime Bill; Donna Shalala would scale back the proposal due to concerns that some of the provisions would chill legitimate scientific research - including the very

research you have explicitly called for to protect against bioterrorism -
-
without providing compensating security benefits.

Justice Option. Justice's draft Omnibus Crime Bill further proposes that criminal penalties be established for:

- * Reckless handling of biological agents. This captures handling of biological agents that creates an "unreasonable risk to public health and safety," e.g., home bioterrorism labs.

- *

- * Possession of selected biological agents by a restricted individual. In

language taken verbatim from the Brady Bill, this provision asserts that factors such as a felony record or country of permanent residence raise important questions about a person's suitability to possess deadly biological agents. Exceptions are permitted in appropriate circumstances.

Justice notes that bioterrorism is a growing concern in the Congress and that many on both sides of the aisle will be looking to see if the Administration will produce a draft bill with a strong law enforcement focus before introducing their own proposals. Justice believes that this option will provide law enforcement with critical tools to prevent a bioterrorism catastrophe, while being only minimally intrusive on the legitimate research community. This option is not intended to criminalize the actions of persons within the scientific community, except where their conduct so deviates from accepted safety standards as to be reckless or where it involves complicity in sharing lethal agents with persons known to be barred from possessing such agents. Even with these precautions in place, Justice has agreed to an HHS proposal to accompany the submission of this legislation with a statement to the Congress that we will review its provisions with responsible representatives of the scientific community over a 60 day

period, after which the Administration would advise Congress of any changes found to be appropriate. The Justice Option is supported by NSC.

HHS Option. HHS believes some of the provisions in the Justice option would chill vital scientific endeavors. HHS agrees to submit the "unlawful possession" and hoax provisions of the bill to the Hill, responding to calls from Congress to fill the most glaring gaps in current law. HHS also proposes a deadline for consultations with the scientific community to propose additional non-criminal measures to address training of scientists, safe procedures for handling, storage and security of dangerous biological agents, and the question of what personal characteristics or events in an individual's history could legitimately support exclusion from research on select agents.

HHS opposes the criminalization of "reckless handling" of selected biological agents because it could include inadvertent accidents or relatively minor oversights that occur even in the best biomedical laboratories, perhaps due to simple lapses in memory or errors in foresight. Criminalizing this behavior could well stifle scientific research. Also, introducing criminal penalties without consulting the scientific community will be seen as acting in bad faith. Such a provision is not needed to counter home bioterrorism labs, which would be addressed by the "unlawful possession" or "unregistered possession" provisions.

HHS also objects to the "restricted individual" provisions because they would subject researchers and students to intrusive personal questions regarding minor offenses that are unlikely to be associated with terrorist proclivities, and because they will in effect exclude qualified scientists from this field who have some episode in their past involving a listed factor. For instance, the provision covers misdemeanor convictions; addiction to controlled

substances,
which could include prescription medicines; or hospitalization for
mental
conditions, which could include temporary depression. Although the
Justice
provision allows for exceptions, HHS believes that in practice
employers would
not be willing to accept the risk of requesting such a waiver, thereby
excluding
from this work qualified scientists who are not security threats but
have some
episode in their past involving a listed factor. The HHS Option is
supported by
OSTP.

RECOMMENDATION

That you decide between the two options above.

_____ Send draft bill to Congress, including the "reckless
handling"
and "restricted individual" provisions; if necessary forward
amendments after
conferring with scientific community (Justice Option)

_____ Send draft bill to Congress without the "reckless
handling" and
"restricted individual" provisions; send additional portions after
conferring
with scientific community (HHS Option)

_____ Discuss

4

XXXX

cc: Vice President
Chief of Staff

Exchange Mail

DATE-TIME 4/9/99 7:32:45 PM
FROM MacDonald, Bruce W.
CLASSIFICATION UNCLASSIFIED
SUBJECT OSTP Comments on Crime Bill Memo [UNCLASSIFIED]
TO Wechsler, William F.
CARBON_COPY Epstein, Gerald L.
TEXT_BODY

Will,

Here are our comments on the memo to the President.
Let's discuss ASAP Monday.

Bruce

TRANSLATED_ATTACHMENT
OSTP-Bioterrorism.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: SAMUEL BERGER
BRUCE REED
NEAL LANE
RON KLAIN
JACK LEW

SUBJECT: Proposed Biological Terrorism Provisions in the Omnibus
Crime Bill

Purpose

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Background

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Bill; Donna Shalala would scale back the proposal due to concerns that some of the provisions would chill legitimate scientific research - including the very research you have explicitly called for to protect against bioterrorism - without providing compensating security benefits.

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- *

- * Possession of selected biological agents by a restricted individual. In

language taken verbatim from the Brady Bill, this provision asserts that factors such as a felony record or country of permanent residence raise important questions about a person's suitability to possess deadly biological agents. Exceptions are permitted in appropriate circumstances.

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legislation with a statement to the Congress that we will review its provisions with responsible representatives of the scientific community over a 60 day period, after which the Administration would advise Congress of any changes found to be appropriate. The Justice Option is supported by NSC.

HHS Option. HHS believes some of the provisions in the Justice option would chill vital scientific endeavors. HHS agrees to submit the "unlawful possession" and hoax provisions of the bill to the Hill, responding to calls from Congress to fill the most glaring gaps in current law. HHS also proposes a deadline for consultations with the scientific community to propose additional non-criminal measures to address training of scientists, safe procedures for handling, storage and security of dangerous biological agents, and the question of what personal characteristics or events in an individual's history could legitimately support exclusion from research on select agents.

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who have some episode in their past involving a listed factor. For instance, the provision covers misdemeanor convictions; addiction to controlled substances, which could include prescription medicines; or hospitalization for mental conditions, which could include temporary depression. Although the Justice provision allows for exceptions, HHS believes that in practice employers would not be willing to accept the risk of requesting such a waiver, thereby excluding from this work qualified scientists who are not security threats but have some episode in their past involving a listed factor. The HHS Option is supported by OSTP.

RECOMMENDATION

That you decide between the two options above.

_____ Send draft bill to Congress, including the "reckless handling" and "restricted individual" provisions; if necessary forward amendments after conferring with scientific community (Justice Option)

_____ Send draft bill to Congress without the "reckless handling" and "restricted individual" provisions; send additional portions after conferring with scientific community (HHS Option)

_____ Discuss

XXXX

cc: Vice President
Chief of Staff

Exchange Mail

DATE-TIME 4/13/99 10:39:59 AM
FROM Wechsler, William F.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Bioterrorism provisions in Omnibus Crime Bill
[UNCLASSIFIED]
TO Gordon-Hagerty, Lisa E.

CARBON_COPY**TEXT_BODY**

-----Original Message-----

From: Bernard, Kenneth W.
Sent: Friday,
April 09, 1999 9:08 AM
To: Wechsler, William F.
Subject: FW: Bioterrorism
provisions in Omnibus Crime Bill [UNCLASSIFIED]

I mismarked the
attachment. Pls use this one and discard the last. -Ken

-----Original
Message-----

From: Bernard, Kenneth W.
Sent: Friday, April 09,
1999 9:04 AM
To: Wechsler, William F.
Subject: FW: Bioterrorism
provisions in Omnibus Crime Bill [UNCLASSIFIED]

Will: It is so
clear which position the writer supports, that it undermines your
case. I would guess Chris Jennings and
OSTP will ask for changes
in the tone of the HHS section. See minor comments below. I'll
look again after input from DPC and Gerry. --Ken

-----Original
Message-----

From: Wechsler, William F.
Sent: Thursday, April
08, 1999 5:44 PM

To: Krass, Caroline D.; Saunders, Richard M.; Bernard, Kenneth W.; MacDonald, Bruce W.
Cc: @LEGAL - Legal Advisor; Orfini, Michael H.; @HEALTH - International Health Affairs; @OSTP - Office Science Tech; Clarke, Richard A.
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Comments/Edits please.
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This is also being given to DPC for their input. The goal is to have one EOP memo to the President.

Let's try to keep this to three pages, so please look for cuts if you want to add language.

TRANSLATED_ATTACHMENT Omnibus Crime Bill -- Bioterrorism Provisions.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: SAMUEL BERGER
BRUCE REED
NEAL LANE
RON KLAIN

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[IMOPRTATANT MAKE THE FOLLOWING BOLD - EMPHASIZES THE AGREEMENT PART - I DOUBT THE PRESIDNET WILL WANT TO CHOSE ONE OR THE OTHER IF HE DOESN'T THINK THERE IS SOME AREA OF AGREEMENT] Therefore, there is interagency agreement that the proposed Omnibus Crime Bill would include new provisions establishing criminal penalties for:

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provisions with responsible representatives of the scientific community over a 60 day period, after which the Administration would advise Congress concerns any changes found to be appropriate. The Justice Option is supported by NSC.

HHS Option. HHS believes the provisions in the Justice Option would chill vital scientific endeavors. [MAKE THIS A BULLET TO BE PARALLEL WITH JUSTICE. IT IS THE ONLY INITIATIVE AS COMPARED TO THE COMPLAINTS BELOW] HHS would instead set a Presidential deadline for consultations with the scientific community to propose measures to address the training of scientists, safe procedures for handling, storage and security of biocontaminants, civil fines and penalties, and the question of what personal characteristics or events in an individual's history could legitimately support exclusion from research on select agents.

HHS opposes the criminalization of "reckless handling" [NO THEY DON'T. THEY OBJECT TO THE DEFINITION OF RECKLESS HANDLING. AS YOU'VE USED THE TERM, IT SOUNDS GENERIC. OF COURSE, NO ONE OBJECTS TO CRIMINALIZATION OF REAL RECKLESS HANDLING] of selected biological agents because it would necessarily cover inadvertent accidents or relatively minor oversights that occur even in the best biomedical laboratories, perhaps due to simple lapses in memory or errors in foresight. Criminalizing this behavior would not enhance national security but would stifle scientific research and damage relations between the Administration and the scientific community. [response to fact that similar laws exist for other sensitive materials?]

HHS also objects to the requirement for background checks because the limiting factors will cover minor offenses that are unlikely to be associated with terrorist proclivities. For instance, the provision covers misdemeanor convictions, which could include domestic violence; addiction to controlled

substances, which could include prescription medicines; or hospitalization for mental conditions, which could include SIMPLE depression. Although the Justice provision allows for exceptions, HHS believes that in practice employers would not be willing to accept the risk of requesting such a waiver, and therefore qualified scientists with minor offensives will be effectively excluded from the profession. The HHS Option is supported by OSTP.

RECOMMENDATION

That you decide between the two options above.

Justice Option _____

HHS Option _____

3

XXXX

cc: Vice President
Chief of Staff