

PHOTOCOPY
PRESERVATION

THE PRESIDENT HAS SEEN

10-18-99

CRIME -

Rustern

THE WHITE HOUSE

WASHINGTON

October 14, 1999

990011342106

MEMORANDUM FOR THE PRESIDENT

FROM: KAREN TRAMONTANO
BRUCE REED

CC: JOHN PODESTA
SANDY BERGER
NEAL LANE
JACK LEW
CHARLES BURSON
BETH NOLAN

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Mury
Done

copied
Tramontano
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Podesta
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Burson
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SUBJECT: Proposed biological terrorism provisions in the Omnibus Crime Bill

Purpose

To finalize the Administration's position on the proposed biological terrorism provisions of the Omnibus Crime Bill, so that the legislation can be sent to Congress.

Executive Summary

This memo is to inform you of the consensus recommendations reached within EOP regarding the bioterrorism provisions of our crime bill. As you know, there has been a great deal of interagency contention over provisions that would bar certain categories of individuals from possessing select biological agents. Through a meeting last month and follow-up discussions, we have brokered a compromise upon which all interested EOP offices (DPC, NSC, OSTP, OMB, OSTP, and WH Counsel) can agree. John Podesta has approved the compromise agreement detailed below. We will now move forward to incorporate the recommendations into our crime bill unless you express any concerns.

Background

It is widely agreed that serious gaps exist in current law regulating possession and transfer of select biological agents. In contrast to chemical, nuclear or radiological weapons, there are currently few laws in place designed to limit the availability of hazardous biological materials to the general public. While current laws are adequate to punish perpetrators after they unleash biological agents, they are not designed to ensure that these substances are kept out of the wrong hands in the first place. Additionally, bioterrorism is a growing concern in Congress and we believe that many on both sides of the aisle will be watching to see if the Administration will produce a draft bill with a strong law enforcement focus before introducing their own proposals.

THE PRESIDENT HAS SEEN

10-18-99

The Department of Justice goal in proposing legislation is to ensure that potentially hazardous biological materials do not fall into the wrong hands. HHS agrees with this goal, but has raised concerns that some of the proposed restrictions could chill vital scientific research that may be necessary to safeguard public health, and may cause concern within the medical and scientific community. With these dual concerns in mind, there is interagency agreement that the proposed Crime Bill include new provisions establishing criminal penalties for: possession of biological agents not justified by a peaceful purpose; unsafe handling of harmful biological agents; unregistered possession and unauthorized transfer of selected biological agents; and knowingly perpetrating a hoax regarding the use of biological agents.

Issues for Resolution

Transmittal of the Crime Bill has been held up since May by an interagency dispute over the categories of individuals who would be prohibited from possessing dangerous select biological agents, unless they received a waiver.

In order to address safety and security concerns, Justice believes that it is necessary to enact provisions which would criminalize the possession of dangerous biological agents by certain classes of individuals. The categories proposed by DOJ are similar to those that are applied to firearms, including individuals who are: (1) convicted of a felony crime; (2) under indictment for a felony crime; (3) unlawful users or addicts of any controlled substance; or (4) adjudicated as mentally defective or committed to a mental institution. DOJ believes that these provisions, which permit employer waivers to be issued in most circumstances, would be only minimally intrusive on the legitimate research community.

While HHS accepts the principle of prohibiting categories of "restricted individuals" from working with select biological agents, it believes that the DOJ provisions are too restrictive and could chill valid scientific research. HHS supports a narrower definition of "restricted individual" that it believes will sufficiently limit access to dangerous agents while proving less disruptive to the nation's research institutions.

The agencies also disagree over the waiver provisions. Under the Justice proposal, the employer would be permitted to grant waivers for individuals in the prohibited categories in most circumstances. HHS believes that employers would be reluctant to grant waivers for fear of incurring liability for waived individuals. HHS prefers that a Federal agency – that you would designate after the bill passes – determine the waiver policy, including whether waivers should be granted by a government agency or whether employers should make waiver determinations.

The most contentious issue has been DOJ's proposal to prohibit any non-permanent resident alien from handling select biological agents unless the U.S. Government provided a waiver. This would include many visiting students and scientists admitted under temporary visas. HHS strongly opposed the proposal over concern that it could cast suspicion over foreign nationals in general, and diminish our ability to continue to attract world-class scientists to this field of research. While the agencies disagreed over the breadth of the proposal, both agencies agreed it is appropriate for a federal agency to provide waivers for this category of individuals.

could
also be
by
agency

Consensus Recommendations

On September 9, we held a meeting to resolve the areas of disagreement. In addition to the Departments of Justice and Health and Human Services, many interested EOP offices also attended including DPC, NSC, OMB, WH Counsel, OSTP, OVP, and the Chief of Staff's Office. During the meeting, the EOP offices reached a compromise position on the prohibited persons categories. Based on follow up discussions led by OMB, we have also arrived at consensus positions on the visiting foreign nationals and waiver issues that have the agreement of all interested EOP offices.

A. Prohibited persons categories

Within the prohibited persons categories, we agreed that the legislation should include:

- Individuals convicted of a felony crime or dishonorably discharged from the military.
- Individuals under indictment for any felony crime.
- Individuals who are unlawful users of any controlled substance. We agreed to drop language which would have also prohibited individuals who are "addicted to" any controlled substance.

We also agreed to exclude individuals who have been adjudicated as mental defective or committed to mental institutions from the list of prohibited persons.

B. Waivers

While at the 9-9 meeting we discussed an option to allow employers to grant waivers with the assistance of HHS guidance, we have since reached a new consensus position negotiated by OMB. The new compromise position would specify that a federal agency (designated by you after the bill's passage) will determine the waiver policy, including whether waivers should be granted by the government or whether employers should make waiver determinations, with or without government guidance.

C. Foreign nationals admitted under temporary visas

As an alternative to DOJ's original proposal to generally bar *any* non-permanent resident alien from handling select biological agents absent a federal government waiver, we agreed upon a narrower provision that would focus on the countries with which we have the greatest national security concerns. The compromise provision would require federal government waivers for non-permanent resident aliens from any country designated by the State Department as a state sponsor of terrorism (7 countries). This provision will address national security concerns, with no significant impact on legitimate research activities.

MEMORANDUM FOR JOHN PODESTA

FROM: KAREN TRAMONTANO
BRUCE REED

CC: SANDY BERGER
NEAL LANE
JACK LEW
CHARLES BURSON
BETH NOLAN

Craw -
Biom

SUBJECT: Proposed biological terrorism provisions in the omnibus crime bill

Purpose

To finalize the Administration's position on the proposed biological terrorism provisions of the Omnibus Crime Bill, so that the legislation can be sent to Congress.

Executive Summary

This memo is to inform you of the consensus recommendations reached within EOP regarding the bioterrorism provisions of our crime bill. As you know, there has been a great deal of interagency contention over provisions that would bar certain categories of individuals from possessing select biological agents. Through a meeting earlier this month and follow-up discussions, we have brokered a compromise that has the support of all interested EOP offices (DPC, NSC, OSTP, OMB, OSTP, and WH Counsel). We will now move forward to incorporate the recommendations into our crime bill unless you express any concerns.

Background

It is widely agreed that serious gaps exist in current federal bioterrorism laws. In contrast to chemical, nuclear or radiological weapons, there are currently few laws in place designed to limit the availability of hazardous biological materials to the general public. While current laws are adequate to punish perpetrators after they unleash biological agents, they are not designed to ensure that these substances are kept out of the wrong hands in the first place. Additionally, bioterrorism is a growing concern in Congress and we believe that many on both sides of the aisle will be watching to see if the Administration will produce a draft bill with a strong law enforcement focus before introducing their own proposals.

The Department of Justice goal in proposing legislation is to ensure that potentially hazardous biological materials do not fall into the wrong hands. HHS agrees with this goal, but has raised concerns that some of the proposed restrictions could chill vital scientific research into these agents that may be necessary to safeguard public health, and may cause concern within the medical and scientific community. With these dual concerns in mind, there is interagency agreement that the proposed Crime Bill include new provisions establishing criminal penalties

for: possession of biological agents not justified by a peaceful purpose; unsafe handling of harmful biological agents; unregistered possession and unauthorized transfer of selected biological agents; and knowingly perpetrating a hoax regarding the use of biological agents.

Issues for Resolution

Transmittal of the Crime Bill has been held up since May by an interagency dispute over the categories of individuals who would be prohibited from possessing dangerous select biological agents, absent some form of waiver.

In order to address safety and security concerns, Justice believes that it is necessary to enact provisions which would criminalize the possession of dangerous biological agents by certain classes of individuals. The categories proposed by DOJ are similar to those that are applied to firearms, including individuals who are: (1) convicted of a felony crime; (2) under indictment for a felony crime; (3) unlawful users or addicts of any controlled substance; or (4) adjudicated as mentally defective or committed to a mental institution. DOJ believes that these provisions, which permit employer waivers to be issued in most circumstances, would be only minimally intrusive on the legitimate research community.

While HHS accepts the principle of prohibiting categories of “restricted individuals” from working with select biological agents, it believes that the DOJ provisions are too restrictive and could chill valid scientific research. HHS supports a narrower definition of “restricted individual” that it believes will sufficiently limit access to dangerous agents while proving less disruptive to the nation’s research institutions.

The agencies also disagree over the waiver provisions. Under the Justice proposal, the employer would be permitted to grant waivers for individuals in the prohibited categories in most circumstances. HHS believes that employers would be reluctant to grant waivers for fear of incurring liability for waived individuals. HHS instead would prefer that DOJ provide the waiver, instead of employers. DOJ does not object to a federal agency role in granting waivers, but would prefer that the agency be left to Presidential designation.

The most contentious issue has been DOJ’s proposal to prohibit any non-permanent resident alien from handling select biological agents unless the U.S. Government provided a waiver. This would include many visiting students and scientists admitted under temporary visas. HHS strongly opposed the proposal over concern that it could cast suspicion over foreign nationals in general, and diminish our ability to continue to attract world-class scientists to this field of research. While the agencies disagreed over the breadth of the proposal, both agencies agreed it is appropriate for a federal agency to provide waivers for this category of individuals.

Consensus Recommendations

On September 9, we held a meeting to resolve the areas of disagreement. In addition to the Departments of Justice and Health and Human Services, many interested EOP offices also attended including DPC, NSC, OMB, WH Counsel, OSTP, OVP, and the Chief of Staff’s Office. During the meeting, the EOP offices reached a consensus position on the prohibited persons

categories and disputed waiver provisions. Based on follow up discussions led by OMB, we have also arrived at a position on the visiting foreign nationals issue that has the support of all interested EOP offices.

A. Prohibited persons categories

Within the prohibited persons categories, we agreed that the legislation should include:

- Individuals convicted of a felony crime or dishonorably discharged from the military.
- Individuals under indictment for any felony crime.
- Individuals who are unlawful users of any controlled substance. We agreed to drop language which would have also prohibited individuals who are “addicted to” any controlled substance.

We also agreed to exclude individuals who have been adjudicated as mental defective or committed to mental institutions from the list of prohibited persons.

B. Waivers

To address employer liability concerns about waivers for the above listed prohibited persons, we agreed that HHS should issue guidance on how to grant waivers to the relevant scientific community. HHS has existing relationships with the scientific community and can work with DOJ to draft the best practices guidance. Although HHS still has qualms about this approach, we believe it is preferable to giving DOJ waiver authority (as HHS had suggested doing).

C. Foreign nationals admitted under temporary visas

As an alternative to DOJ’s original proposal to generally bar *any* non-permanent resident alien from handling select biological agents absent a federal government waiver, we agreed upon a narrower provision that would focus on the countries with which we have the greatest national security concerns. The compromise provision would require federal government waivers for non-permanent resident aliens from any country designated by the State Department as a state sponsor of terrorism (7 countries). This provision will address national security concerns, with no significant impact on legitimate research activities.

MEMORANDUM FOR JOHN PODESTA

FROM: SANDY BERGER
BRUCE REED
JACK LEW
KAREN TRAMANTANO

Leanne, Eric -
Let's wrap
this up. Thanks -
BR

SUBJECT: Proposed biological terrorism provisions in the omnibus crime bill

Purpose

To determine the Administration's position on the proposed biological terrorism provisions of the Omnibus Crime Bill, so the legislation can be sent to Congress.

Background

There is consensus within the Administration that serious gaps exist in current federal bioterrorism laws. In contrast to chemical, nuclear or radiological weapons, there are currently few laws in place designed to limit the availability of hazardous biological materials to the general public. While current laws are adequate to punish perpetrators after they unleash biological agents, they are not designed to ensure that these substances are kept out of the wrong hands in the first place. Additionally, bioterrorism is a growing concern in Congress and we believe that many on both sides of the aisle will be watching to see if the Administration will produce a draft bill with a strong law enforcement focus before introducing their own proposals.

The Department of Justice (DOJ) goal in proposing legislation is to ensure that potentially hazardous biological materials do not fall into the wrong hands. HHS agrees with this goal, but has raised concerns that some of the proposed restrictions could chill vital scientific research into these agents that may be necessary to safeguard public health, and may cause concern within the medical and scientific community. With these dual concerns in mind, there is interagency agreement that the proposed Crime Bill include new provisions establishing criminal penalties for:

- Possession of biological agents not justified by a peaceful purpose.
- Unsafe handling of harmful biological agents.
- Unregistered possession and unauthorized transfer of selected biological agents.
- Knowingly perpetrating a hoax regarding the use of biological agents.

make this one sentence
w/semi-colons

Issues for Resolution

~~While there was relatively early agreement among the agencies on the above provisions, there~~

Transmittal of the Crime Bill has been held up since May ~~over~~^{by} an interagency dispute over the ~~has been longstanding disagreement over one remaining set of issues. Disagreement over these provisions has resulted in significant delay in the transmittal of the Crime Bill to Congress.~~ In general, the provisions in dispute addresses categories of individuals who would be prohibited from possessing dangerous select biological agents, absent some form of waiver.

In order to address safety and security concerns, Justice believes that it is necessary to enact provisions which would criminalize the possession of dangerous biological agents by certain classes of individuals. The categories proposed by DOJ are similar to those that are applied to firearms, including individuals who are: (1) convicted of a felony crime; (2) under indictment for a felony crime; (3) unlawful users or addicts of any controlled substance; or (4) adjudicated as mentally defective or committed to a mental institution. DOJ believes that these provisions, which permit employer waivers to be issued in most circumstances, would be only minimally intrusive on the legitimate research community.

While HHS accepts the principle of prohibiting categories of "restricted individuals" from working with select biological agents, it believes that the DOJ provisions are too restrictive and could chill valid scientific research. HHS supports a narrower definition of "restricted individual" that it believes will sufficiently limit access to dangerous agents while proving less disruptive to the nation's research institutions.

The agencies also disagree over the waiver provisions. Under the Justice proposal, the employer would be permitted to grant waivers for individuals in the prohibited categories in most circumstances. HHS believes that employers would be reluctant to grant waivers for fear of incurring liability for waived individuals. HHS instead would prefer that DOJ provide the waiver, instead of employers. DOJ does not object to a federal agency role in granting waivers, but would prefer that the agency ~~is~~^{be} left to Presidential designation.

~~The most contentious issue has been DOJ's proposal. Finally, the most difficult area of disagreement emerged over the DOJ proposed provision to prohibit any non-permanent resident alien from handling select biological agents unless the U.S. Government provided a waiver. This would include many visiting students and scientists admitted under temporary visas. HHS strongly opposed the proposal over concern that it could cast suspicion over foreign nationals in general, and diminish our ability to continue to attract world-class scientists to this field of research. While the agencies disagreed over the breadth of the proposal, both agencies agreed it is appropriate for a federal agency to provide waivers for this category of individuals.~~

Consensus ~~Positions~~ Recommendation

On September 9, we held a ~~deputies~~^{deputies} meeting to resolve the areas of disagreement. In addition to the Departments of Justice and Health and Human Services, many interested EOP offices also attended including DPC, NSC, OMB, WH Counsel, OSTP, OVP, and the Chief of Staff's Office. During the meeting, the EOP offices reached a consensus position on the prohibited persons categories and disputed waiver provisions. Based on follow up discussions led by OMB, we have also arrived at a position on the visiting foreign nationals issue that has the support of all interested EOP offices.

A. Prohibited persons categories

← Within the prohibited persons categories, we agreed that the legislation should include:

- Individuals convicted of a felony crime or dishonorably discharged from the military.
- Individuals under indictment for any felony crime.
- Individuals who are unlawful users of any controlled substance. We agreed to drop language which would have also prohibited individuals who are “addicted to” any controlled substance.

We also agreed to exclude individuals who have been adjudicated as mental defective or committed to mental institutions from the list of prohibited persons.

B. Waivers

To address employer liability concerns about waivers for the above listed prohibited persons, we agreed that HHS should issue guidance on how to grant waivers to the relevant scientific community. HHS has existing relationships with the scientific community and can work with DOJ to draft the best practices guidance. We believe this is preferable to giving DOJ waiver authority, as suggested by HHS.

?? [If HHS continues to strongly object to this compromise, we could require federal agency waivers for these provisions as well. We could draft the proposal to allow the President to designate the appropriate agency upon passage of the legislation. Based on informal conversations we have had during this process, HHS, DOJ and other EOP offices would likely be amenable to this compromise.]

C. Foreign nationals admitted under temporary visas

As an alternative to DOJ’s original proposal to generally bar *any* non-permanent resident alien from handling select biological agents absent a federal government waiver, we agreed upon a narrower provision that would focus on the countries with which we have the greatest national security concerns. The compromise provision would require federal government waivers for non-permanent resident aliens from any country designated by the State Department as a state sponsor of terrorism (7 countries). ~~It was determined that this would effect only a small fraction of the total number of students and scientists admitted under temporary visas, and should not have a significant impact on current~~ ^{legitimate} research activities.

This provision will address national security concerns, with no

THE WHITE HOUSE
WASHINGTON

DOMESTIC POLICY COUNCIL

FACSIMILE FOR: Eric LiuDATE: 8-31

TELEPHONE: _____

FAX: 62878

FACSIMILE FROM: LEANNE SHIMABUKURO

TELEPHONE: (202) 456-5574

FAX: (202) 456-7028

NUMBER OF PAGES (INCLUDING COVER): 2

COMMENTS: Devorah got this from OSTP.
Looks like we've had process breakdown...



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20503

August 13, 1999

Copied:

CC: NSIA Staff

MEMORANDUM FOR THE PRESIDENT

FROM: NEAL LANE *Neal Lane*
CC: JOHN PODESTA
SUBJECT: OSTP WEEKLY REPORT

Lane
Podesta
cc: Berger
pg. 1
Burkhardt
for letter, p. 1

99 AUG 13 PM 5:55

Discriminatory Provisions In Draft Bioterrorism Bill

HE MAKES A
GOOD CASE

Discussions within the White House on the bioterrorism portion of your Crime Bill have resumed after being dormant for several weeks. I strongly oppose draft provisions that would restrict a wide range of foreign nationals from working with certain biological organisms. Since foreign nationals form a significant fraction of the research workforce, such restrictions will disrupt the unclassified biomedical research you have called for to defend against bioterrorism. At the same time, such restrictions would provide little or no security benefit. Such restrictions – compounding the aspersions that have been cast against foreign researchers and visitors at the DOE labs – would send a terrible signal internationally, and would threaten our scientific enterprise. Restrictions on foreign researchers would do little to prevent other nations from acquiring dangerous biological agents, since with few exceptions these agents are naturally occurring or are maintained in laboratories around the world. Although I agree with the intent of this provision, which is that we must do everything we can to keep these agents out of terrorist hands, there is no reason to believe that legitimate foreign researchers are more likely to be terrorists than their American colleagues.

Asian Pacific Americans Value Your Statement of Support

Responses have been very positive to your statement of July 29 on the valuable contributions of Asian Pacific American Scientists and Engineers to our nation. In the wake of the espionage concern at the national labs, many in the Asian American community have felt that their patriotism has been questioned. Your statement, which was issued on the occasion of the swearing in of former U.C. Berkeley Chancellor Chang Lin Tien to the National Science Board, has received broad circulation in the Asian Pacific American community. Laura Efurd, your Deputy Assistant for Public Liaison, delivered the statement at the national convention of the Organization of Chinese Americans that weekend in Dallas, and reported a widespread sense of appreciation. We have been in touch with scientists and engineers, including Dr. Charlie Sie who discussed this issue with you in the Cabinet Room on June 7, as well as community and professional organizations who have also expressed their thanks for the clarity of your support.

OSTP Associate Director for Environment Earns Top Climate Protection Award

Rosina Bierbaum, my Associate Director for Environment, has been selected to receive the EPA's 1999 Climate Protection Award. Dr. Bierbaum is one of 10 individuals and organizations internationally to receive this honor in recognition of exemplary efforts and achievements in protecting the global climate.

DO CONGRATS NOTE

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THE WHITE HOUSE
WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: JOHN PODESTA

FROM: SAMUEL BERGER, ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS

BRUCE REED, ASSISTANT TO THE PRESIDENT FOR
DOMESTIC POLICY AND DIRECTOR OF THE DOMESTIC
POLICY COUNCIL

NEAL LANE, ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF THE OFFICE OF SCIENCE AND
TECHNOLOGY

RON KLAIN, ASSISTANT TO THE PRESIDENT AND CHIEF
OF STAFF AND COUNSELOR TO THE VICE PRESIDENT

JACK LEW, DIRECTOR, OFFICE OF MANAGEMENT AND
BUDGET

CHARLES RUFF, COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Biological Terrorism Provisions in the
Omnibus Crime Bill

Purpose

To determine the Administration's position on proposed
biological terrorism provisions of the Omnibus Crime Bill.

Background

There is consensus within the Administration that serious gaps
exist in current federal bioterrorism laws. In contrast to
chemical, nuclear or radiological weapons, there are currently
few laws in place designed to limit the availability of
hazardous biological materials to the general public. While
current laws are adequate to punish perpetrators after they
unleash biological agents, they are not designed to ensure that

cc: Vice President
Chief of Staff

these substances are kept out of the wrong hands in the first place. Additionally, bioterrorism is a growing concern in Congress and we believe that many on both sides of the aisle will be watching to see if the Administration will produce a draft bill with a strong law enforcement focus before introducing their own proposals.

DOJ's goal in proposing this legislation is to ensure that potentially hazardous biological materials do not fall into the wrong hands. HHS agrees with this goal, but is concerned that some of the proposed restrictions could chill vital scientific research into these agents that may be necessary to safeguard public health, and may cause concern within the medical and scientific community. With these dual concerns in mind, there is interagency agreement that the proposed Omnibus Crime Bill include new provisions establishing criminal penalties for:

- **Possession of biological agents not justified by a peaceful purpose.** Under this provision, whether possession is justified would be determined by type, quantity and purpose for possessing the agent.
- **Unsafe handling of harmful biological agents.** This provision would criminalize the actions of those who, with conscious disregard for public health and safety, handle select biological agents in a manner that grossly deviates from accepted norms.
- **Unregistered possession and unauthorized transfer of selected biological agents.** This provision 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 additional 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 biological agents.** This provision is necessary given the recent spate of such hoaxes as the rash of anthrax scares around the United States.

The Administration will submit to Congress a statement indicating that we will review the bill's provisions with representatives of the scientific community over a 60 day

period, after which the Administration will advise Congress of any proposed changes deemed necessary.

Remaining Issues for Resolution

There is interagency disagreement on one remaining set of issues that addresses categories of individuals who would be prohibited from possessing dangerous select biological agents. Justice believes it is necessary to enact a provision which would, absent a waiver, criminalize the possession of dangerous biological agents by certain categories of "restricted individuals". The categories Justice suggests are nearly identical to those that are applied to firearms. Justice believes that this provision, which permits waivers to be issued in most circumstances, will be only minimally intrusive on the legitimate research community. NSC and DPC agree with DOJ.

HHS accepts the principle of prohibiting categories of "restricted individuals" from working with select biological agents. However, it believes that the provision as drafted is far too restrictive and would chill valid scientific endeavors; thus HHS proposes a more narrow definition of "restricted individual" which it believes will sufficiently limit access to these dangerous agents while protecting the privacy interests of the individuals involved and proving less disruptive to the nation's research institutions. HHS also proposes a different system for waivers and proposes to make clear that employers are not required to investigate employees to determine whether they fall into one of the restricted categories. OMB, White House Counsel and OSTP agree with HHS.

The different views with respect to the categories of individuals to be restricted are outlined below. Under each category, waivers would be available.

1. Individuals under indictment

DOJ believes that, absent a waiver, an individual under indictment for any felony should be restricted from handling harmful biological agents because he or she may pose either a safety or security concern. HHS believes inappropriate to restrict access to select agents to anyone who has yet to be convicted of any crime.

_____ Option 1: Restrict access, absent a waiver, for any individual under indictment for any felony.

_____ Option 2: Restrict access, absent a waiver, for any individual under indictment for any felony crime involving the use or attempted use of force against another person or use of controlled substances where the maximum penalty is not less than five years, or bribery or espionage.

_____ Option 3: Do not restrict access to individuals who are under indictment but have not been convicted of any crime.

2. Individuals convicted of a felony crime or dishonorably discharged from the military

DOJ believes that, absent a waiver, an individual who is convicted of any felony or dishonorably discharged for any reason from the military should be restricted from handling select biological agents because they may pose either a safety or security concern. DOJ notes that convicted felons lose many other rights, including their right to vote. HHS believes that the Justice language is not adequately tailored to capture those individuals who might pose a security risk or a danger.

_____ Option 1: Restrict access, absent a waiver, for an individual convicted of any felony.

_____ Option 2: Restrict access, absent a waiver, for any individual under indictment for any felony crime involving the use or attempted use of force against another person or use of controlled substances where the maximum penalty is not less than five years, or bribery or espionage.

3. Individuals who are unlawful users of or are addicted to any controlled substance

DOJ believes that individuals who are either addicted to or who are unlawful users of controlled substances should be restricted from handling biological agents because they may pose either a safety or security concern. HHS does not object to a restriction on unlawful users of controlled substances, but believes that this provision would capture individuals such as abusers of prescription pain medicine who are unlikely to pose safety or security risks. Moreover, it is difficult to independently verify this factor.

_____ Option 1: Restrict individuals are using or are addicted to any controlled substance.

_____ Option 2: Restrict individuals who are unlawfully using any controlled substance.

4. Individuals who have been adjudicated as mental defective or committed to a mental institution

DOJ believes that an individual who has been adjudicated as a mental defective or who has been committed to a mental institution could pose a security or safety threat. HHS believes it is inappropriate to exclude a scientist for a mental illness the treatment of which included hospitalization. Mrs. Gore, as your mental health advisor strongly agrees with the HHS position.

_____ Option 1: Restrict individuals, absent a waiver, who have been adjudicated as mentally defective or have been committed to any mental institution.

_____ Option 2: Do not restrict such individuals.

5. Alien other than an alien lawfully admitted for permanent residence

DOJ believes that this provision is necessary for security reasons. HHS believes that given the international collaborative research that occurs in our labs, the provision is overly-broad and will cast a broad brush of suspicion over foreign nationals in general, diminishing our ability to continue attracting world-class scientists to this field of research.

_____ Option 1: Restrict access of only persons who are citizens of countries designated by the Secretary of State as sponsors of terrorism.

_____ Option 2: Restrict access of non-permanent resident aliens who are citizens from countries other than NATO and major non-NATO allies (as defined in the Foreign Assistance Act).

There are also disagreements over how the waiver provisions should be handled. Under the Justice provision, the employer may grant waivers in most circumstances. However, waiver requests for non-permanent resident aliens require approval, with consultation with the Attorney General, from an Agency designated by you. HHS agrees that waivers should be available, but believes that employers will be reluctant to grant waivers for fear of incurring liability should the waived individual

later be shown to be associated with illicit activity. To alleviate these concerns, HHS proposes that DOJ, not the employer, be responsible for granting waivers. While DOJ does not object to a government role in granting waivers, it believes that the agency or agencies involved should be left to Presidential designation.

Concur with HHS Option on waivers _____

Concur with DOJ Option on waivers _____

Finally, HHS would like to make it sufficient for the employer to inquire on the job application form whether an individual qualifies as a "restricted individual" in order to meet their responsibility under the law. Specifically, HHS would like to add the following sentence: "Nothing in this section shall be construed to imply an obligation on the part of the employer to conduct a background investigation." DOJ has agreed in principle that no such obligation is intended for the employer.

Concur with HHS language _____



Jose Cerda III

08/11/99 05:53:17 PM

Record Type: Record

To: Karen Tramontano/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Bioterrorism Dispute/Crime Bill Introduction

Karen, et.al.:

As all of you know, an internal dispute on the scope of the bioterrorism provision in the crime bill has prevented us from forwarding the President's legislation to the Hill for several months now. It was bad enough that we couldn't formally forward our crime bill during the debate on the recent juvenile crime and gun bills, but -- at this point -- it's become downright embarrassing and -- more importantly -- drawn the attention of Senator Kyle and Rep. Bliley, whose committees are specifically awaiting our recommendation on this issue. In fact, just this week Rep. Bliley fired off an angry letter to the AG (I believe his third to date) demanding to know who was holding up our crime bill and bioterrorism legislation.

Although we long ago came to agreement on most of the substantive issues, there is still disagreement between DOJ and HHS (and some of us internally) on one key provision: what individuals should be restricted from handling select biological agents. To try and get this resolved, I'd like to make both a substantive and process recommendation:

1. Compromise position. There is, I believe, a natural compromise that reflects where the majority of WH staff are on this issue, and we should consider it immediately. That position is:

(a) Restrict access to select biological agents by:

- All persons under indictment (DOJ position). DPC, OMB, NSC, and OVP all strongly support this position. Counsel, OSTP and HHS would not restrict indicted persons from handling biological agents, or at least narrow the restriction to persons indicted for certain serious felonies, bribery, or espionage.

- All convicted felons (DOJ position). DPC, OMB, NSC, and OVP. Again, Counsel, OSTP and HHS support a narrower restriction that applies to certain serious felonies, bribery, or espionage.

- Unlawful users of drugs and drug addicts (DOJ/HHS position). It is my understanding that, if decoupled from the proposed restriction for persons adjudicated mental defective, no one is opposed to this provision.

- Non-permanent resident aliens from the 40-50 countries that are not NATO or major non-NATO allies, unless waived by the employer (DOJ position). This is the most controversial of the restrictions. DPC, NSC, OVP, and OMB strongly support it. Counsel, OSTP and HHS strongly oppose it, and instead recommend limiting access only to non-resident aliens from the 6 countries that sponsor terrorism. NSC points out that such a limitation would render the restriction meaningless, since we don't have no formal relations with these 6 countries.

live def
to NSC
HHS

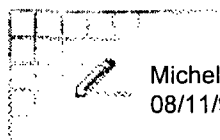
(b) Do not restrict access to select biological agents by persons who are adjudicated mentally defective (HHS position). Although DPC, NSC and OMB support keeping this restriction, which already applies to all gun purchasers, we would defer to OVP's strong opposition to this categorical restriction.

2. Internal White House Meeting. Although I do not believe any more meetings on this issue are required, if you think it would be helpful, I'd recommend simply sitting down with senior staff from the WH offices, and starting with a discussion of the compromise proposed above. Any issues that could not be resolved and taken off the table during the meeting could then be forwarded to the President for decision. Although we (DPC) have thought it irresponsible and unnecessary to buck so many of these issues to the President for decision, I don't know what else to recommend at this point if WH folks can't come to agreement. Also, I don't think there's anything to be gained from another interagency meeting on this topic. We've gone over and over this with HHS and DOJ, with different WH offices siding with them on different issues. We simply need to let them know what the final decisions are.

Jose'

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Caroline R. Fredrickson/WHO/EOP@EOP
Broderick Johnson/WHO/EOP@EOP
Michelle Peterson/WHO/EOP@EOP
Lisa Gordon-Hagerty/NSC/EOP@EOP



Michelle Peterson
08/11/99 06:39:03 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Re: Bioterrorism Dispute/Crime Bill Introduction 

As you may know, this was an issue that Chuck Ruff felt very strongly about and asked me to follow up on after his departure. The most serious concerns Counsel's Office has are, as Jose outlined, those related to the categories of individuals who should be restricted from possession biological agents. On a fundamental level, Counsel's Office believes these are issues that would be better dealt with in a regulatory setting rather than by amending the criminal code. That said, our specific concerns are as follows:

1. "Under Indictment": We do not believe you should restrict access to individuals who have not been convicted of any crime, but would support a compromise under which those individuals who are under indictment for crimes that could have an arguable nexus to a safety or security concern (e.g., use of force, bribery espionage, etc.).
2. We do not oppose the restriction for individuals who are unlawful users of any controlled substance, but object to the inclusion of the term "addicted to" because that would include people who have become addicted to lawfully prescribed painkillers, etc. It would be virtually impossible for an employer to determine whether someone is addicted to a substance they have been lawfully prescribed.
3. We share the OVPs strong opposition to the mental illness restriction.
4. We share the concerns raised by OSTP and DHS on the restriction for non-permanent resident aliens, and believe the security risk can be minimized by restricting access to individuals who are citizens of countries designated as sponsors of terrorism or otherwise designated by the Secretary of State as inappropriate for handling such agents.

Although I am certain I would not do so as eloquently as Chuck, I am available to discuss this further as necessary.

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Jose Cerda III

08/11/99 05:53:17 PM

Crime -
Bioterrorism

Record Type: Record

To: Karen Tramontano/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Bioterrorism Dispute/Crime Bill Introduction

Karen, et.al.:

As all of you know, an internal dispute on the scope of the bioterrorism provision in the crime bill has prevented us from forwarding the President's legislation to the Hill for several months now. It was bad enough that we couldn't formally forward our crime bill during the debate on the recent juvenile crime and gun bills, but -- at this point -- it's become downright embarrassing and -- more importantly -- drawn the attention of Senator Kyle and Rep. Bliley, whose committees are specifically awaiting our recommendation on this issue. In fact, just this week Rep. Bliley fired off an angry letter to the AG (I believe his third to date) demanding to know who was holding up our crime bill and bioterrorism legislation.

Although we long ago came to agreement on most of the substantive issues, there is still disagreement between DOJ and HHS (and some of us internally) on one key provision: what individuals should be restricted from handling select biological agents. To try and get this resolved, I'd like to make both a substantive and process recommendation:

1. Compromise position. There is, I believe, a natural compromise that reflects where the majority of WH staff are on this issue, and we should consider it immediately. That position is:

(a) Restrict access to select biological agents by:

- All persons under indictment (DOJ position). DPC, OMB, NSC, and OVP all strongly support this position. Counsel, OSTP and HHS would not restrict indicted persons from handling biological agents, or at least narrow the restriction to persons indicted for certain serious felonies, bribery, or espionage.
- All convicted felons (DOJ position). DPC, OMB, NSC, and OVP. Again, Counsel, OSTP and HHS support a narrower restriction that applies to certain serious felonies, bribery, or espionage.
- Unlawful users of drugs and drug addicts (DOJ/HHS position). It is my understanding that, if decoupled from the proposed restriction for persons adjudicated mental defective, no one is opposed to this provision.
- Non-permanent resident aliens from the 40-50 countries that are not NATO or major non-NATO allies, unless waived by the employer (DOJ position). This is the most controversial of the restrictions. DPC, NSC, OVP, and OMB strongly support it. Counsel, OSTP and HHS strongly oppose it, and instead recommend limiting access only to non-resident aliens from the 6 countries that sponsor terrorism. NSC points out that such a limitation would render the restriction meaningless, since we don't have no formal relations with these 6 countries.

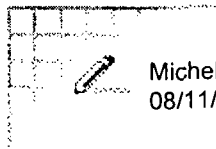
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