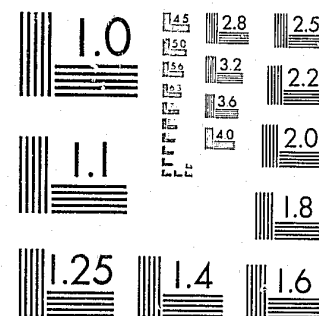


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Addresses

Terrorism

The Government's Response Policy

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*Excerpts from testimony before the
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Committee of the U.S. House of
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As an overview, I would like to assure the committee, and the citizenry, of two fundamental points:

1. The Government's capabilities to meet the kinds of terrorist acts *likely* to occur inside the United States are sound and they are sufficient; and
2. The plans and procedures for meeting and effectively handling such incidents do not involve any infringement, dilution, or disregard of civil and constitutional rights.

In assessing the capabilities of the Federal Government, it is well to remind ourselves that under the Constitution and laws of the United States, the protection of life and property and the maintenance of public order are primarily the responsibilities of State and local government. The Federal

Government has authority to assume these responsibilities only in certain limited circumstances.

Acts constituting "terrorism," as we define it, are crimes already proscribed by State statutes. Most major acts are also violations of Federal criminal statutes. They include:

1. Assassination (Murder),
2. Hijacking,
3. Kidnaping,
4. Hostage Holding,
5. Bombing,
6. Arson,
7. Armed Attack, and
8. Extortion.

Since most major acts of terrorism are violations of both State and Federal law, concurrent criminal jurisdiction is the rule. Accordingly, the Federal Government can either act or defer to State jurisdiction and action, depending on the nature of the incident and the capabilities of local authorities. I might add that even where State jurisdiction prevails, the Federal Government provides law enforcement

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assistance and support to local authorities upon request. Conversely, where Federal jurisdiction is exercised, State and local agencies provide assistance.

Federal antiterrorism capabilities have recently been reviewed. Shortly after President Carter's inauguration, the National Security Council (NSC) initiated a detailed study to assess our abilities both to develop consistent policies for dealing with terrorism and to handle specific terrorist incidents which might occur. That study confirmed the need for an extremely flexible, antiterrorism program at the Federal level that would take into account the changeable nature of the contemporary terrorist threat and the wide range of resources that would have to be marshaled to meet all likely contingencies. The administration therefore developed a program based upon the concept of organizing and coordinating existing Federal capabilities and agencies within a clearly defined command and control structure, linking field operations with policy level officials in the Justice Department for domestic incidents and the State Department for foreign incidents.

The program has four basic aspects:

1. Reaction—Antiterrorism operations in response to specific major acts of terrorism;
2. Deterrence—Prosecution and protection and security efforts of the public and private sectors to discourage terrorist acts;
3. Prevention—International initiatives to discourage any country from condoning or permitting terrorism and to encourage sanctions to make terrorism unattractive as a form of political action;

4. Prediction—Intelligence efforts, which in the United States are undertaken only under strict guidelines, to support the other three aspects of the program.

At the Presidential level, the Special Coordination Committee of the National Security Council is the crisis management mechanism. It also provides oversight for the U.S. Government's antiterrorism program. Other essential entities for developing anti-terrorist measures are the Executive Committee for Combating Terrorism and the Working Group to Combat Terrorism, within the Special Coordination Committee of the National Security Council. The working group and its executive committee are responsible for development of Government-wide policies to deal with terrorism and for coordination among agencies involved in responding to particular terrorist incidents.

The Executive Committee for Combating Terrorism (ECCT) consists of officials from the Departments of State, Defense, Justice, Treasury, Transportation, Energy, the Central Intelligence Agency, and the National Security Council staff. It is chaired by the representative of the State Department; the deputy chairman is the representative of the Department of Justice. Agencies have assigned as ECCT members officials with experience and special training in the coordination and control of complex military or law enforcement operations or in policy analysis and development.

The Working Group to Combat Terrorism (WGCT) meets, usually at frequent intervals, to exchange information, discuss jurisdictional issues,

and coordinate antiterrorism activities of the various agencies. WGCT members are generally managers, planners, or coordinators of antiterrorism operations for their respective agencies.

The responsibility for overseeing the Federal response to major acts of terrorism occurring in the United States rests with the Attorney General, who has delegated it to the Deputy Attorney General. The Deputy Attorney General makes major policy decisions during a terrorism crisis. In carrying out this responsibility, the Justice Department would, of course, consult with other Federal agencies as appropriate in each case.

If a terrorist incident of unusually great magnitude occurred, the President of the United States might choose to participate in the handling of the incident. The NSC Special Coordination Committee is the mechanism he would utilize. In most instances, however, we would assume that the response would be under the direction of the Department of Justice.

The lead agency for the management of terrorist incidents is the FBI. The initial, tactical response to such incidents is made by the FBI Special Agent in Charge at the scene, under the supervision of the Director of the FBI. Judge Webster and the FBI are also responsible for ongoing operations to contain and resolve the incident. The Deputy Attorney General and his immediate staff are responsible for policy decisions and for legal judgment relating to such resolution. The Department is linked through its 24-hour a day emergency programs center to the FBI operations command center in Washington which, in turn, is in continuous communication with Agents at the scene.

In addition to FBI Agents, the Department also has available specially trained officers of the U.S. Marshals Service. The Department could also draw on other Federal agencies for specialized personnel and equipment, as well as the resources of State and local agencies. The antiterrorism program thus provides considerable flexibility in responding to a wide range of possible domestic terrorism incidents.

It is conceivable, however, that a very large terrorism incident might exceed the capabilities of available civil police forces and that the use of specially trained and equipped military forces might be necessary in order to effectively restore order and preserve human life. In such a situation, assuming the legal conditions are met, the President has the option, under the provisions of 10 U.S.C. 332 and 333(2), to direct Federal military forces to respond. He would act on the recommendation of the Attorney General.

It should be noted that the FBI and other civil authorities have substantial capacity to deal with terrorism incidents. Use of military forces would be necessary only in unusual incidents, such as ones involving highly sophisticated, paramilitary terrorist groups.

The effectiveness of our response, of course, depends in part on what information is available not only from the scene of an incident, but from preexisting sources. Therefore, there is a continuing program of intelligence collection and processing on terrorists and their potential targets. Responsibility for the collection and dissemination of intelligence on the foreign aspects of international terrorism rests with the intelligence agencies under Executive Order 12036. Within the United States and its territories, the Federal Bureau of Investigation collects and disseminates intelligence on both foreign-directed and domestic groups which engage in or plan acts of terrorism, here or abroad.

A complete discussion of terrorism and intelligence requires an acknowledgment that apart from the direct threat to lives and property posed by terrorists, there is the subtle threat that

concerned people may urge, or investigators may feel under pressure to take, what might be called "constitutional shortcuts." This possibility could pose a danger of more lasting harm to the country than individual terrorists acts. To guard against this danger, the Justice Department has adopted guidelines which control the collection of intelligence and the conduct of preventive investigations relating to terrorism. The guidelines are designed to ensure that the focus remains on violent or criminal activity, not on the exercise of first amendment rights. They carefully restrict the investigative efforts which may be directed at groups suspected of terrorism until such time as there is a sound factual basis for believing the group, or individuals, are actually engaging in terrorist acts or are plainly planning such acts.

At the same time, the guidelines recognize that the Government's response to terrorism will, of necessity, vary with the situations presented. The nature and magnitude of a particular threat, its likelihood and immediacy, as well as the danger to privacy and free expression of ideas which an investigation of ideologically motivated crimes may present, all must be weighed. The Government's response must be reasonable under the circumstances—the concept embodied in the text of the fourth amendment and in the Supreme Court's interpretation of the first amendment.¹ For example, ordering the entire population of a city to evacuate their homes might be entirely reasonable in the event of a nuclear terrorist incident, but would almost certainly be unreasonable where there is only a general suspicion of a conventional bombing somewhere in the city. Airport security screening to prevent hijacking has been upheld as reasonable, but no doubt, the courts would find impermissible the same type of screening on city streets.

It is impossible to state with precision all the various measures which the Government may have to take to deal with different terrorist situations. Indeed it is the genius of the Constitution that it does not attempt to articulate specific rules for law enforcement, but

rather establishes broad principles, such as reasonableness, permitting a balancing of rights and responsibilities based on the particular facts at hand. The guidelines also follow this approach. We believe the guidelines are sound, permitting sufficient freedom of action to the FBI, and still guaranteeing civil rights effectively.

Regarding the subject of media coverage of crisis situations and whether restrictions on news coverage might be necessary, I want to stress that restrictions imposed by Government on media coverage in such situations are neither appropriate nor possible. Terrorist incidents are legitimately newsworthy. We recognize that under the first amendment, the Government has no right to prohibit or limit coverage of a newsworthy event. We have no plans or intentions of attempting anything of the kind.

We may, however, seek voluntary media cooperation in minimizing risks to life. We may suggest that certain media actions might exacerbate a dangerous situation. But that is basically the extent of our proper role. Our judgment, based on our experience, is that the mutual cooperation and understanding of law enforcement officials and the newsmen can and must be worked out on the spot in each situation. Generally, this approach has worked satisfactorily in the past.

Problems of course can arise and they can be serious. Officials charged with responsibility for handling an incident will be concentrating primarily on resolving it with minimum risk to life and property, and under pressure, they may find it distracting to deal with press inquiries or cameras focused on them. At the same time, they recognize the right of the media to cover the situation as it evolves and the need for information on what is happening. We have found that the best way to secure media cooperation and, on occasion, even active media assistance, is to be as forthcoming as possible with the information the media needs and

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wants. In previous incidents, the Justice Department has helped meet media needs, while at the same time relieving law enforcement officials from additional pressures, by assigning a public information officer to the scene of the incident. Where the public information officer has been kept well informed, he has been able to reduce friction between law enforcement and media personnel.

In rare cases, media coverage of incidents can pose severe problems for law enforcement and increase risk to life. This occurs most often in protracted hostage-taking situations where the very length of the incident increases pressures on the media to come up with new stories. Media attempts to talk directly with the hostage-taker may interfere with law enforcement communications with him or may excite him in a manner directly contrary to the efforts of the negotiators. On the other hand, where publicity is his primary goal, such direct communication with the media may prove helpful to law enforcement.

In the final analysis, hard and fast rules which would effectively deal with all these situations cannot be established in advance, even by the media itself. Voluntary efforts by the news organizations themselves to develop guidelines for reporting during terrorist incidents are nevertheless commendable. Through Government contacts with news media representatives, suggestions regarding how media coverage can assist or impede the handling of difficult situations have been made. All suggestions along these lines have, of course, been advisory in nature and questions of their adoption have been left entirely up to the discretion of the media personnel and organizations. To sum up:

1. We are continually working to strengthen our antiterrorist capabilities by refining contingency plans for dealing with foreseeable incidents of domestic terrorism. Our basic mechanisms and procedures have been established. Our plans appear to be adequate. But they can be improved, and they are being improved.

2. We believe that, given the current level of the threat, the United States is prepared to respond effectively should such incidents occur. The Government presently has sufficient resources and a sufficient variety of resources, including SWAT teams, specially trained psychologists, intelligence analysts, and potentially, military teams, as well as special equipment. Some upgrading may be needed, but generally the necessary resources are available.

3. We are satisfied that the Government can deal with the threat of terrorism without affecting those constitutional rights and protections that are the birthright of our citizens and the essence of our Government under law.

FBI

Footnote

¹*Cf. Cox v. New Hampshire*, 312 U.S. 569 (1941); *Feiner v. New York*, 340 U.S. 315 (1951); *Yates v. United States*, 354 U.S. 298 (1957); *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

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