

THE FOLLOWING DOCUMENTS
ARE ATTACHED:
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ER 0111x - 88

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SUBJECT:

ROUTING SLIP

TO:

		ACTION	INFO	DATE	INITIAL
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3	EXDIR				
4	D/ICS				
5	DDI		✓		
6	DDA				
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8	DDS&T				
9A	Chm/NIC		✓		
10	GC				
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13	D/OCA				
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16	D/Ex Staff				
17	NIO/NARC		X		
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20	ER		X		
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SUSPENSE _____

Date

Remarks

Executive Secretary

13 Jan '88

Date

3637 (10-81)

STAT



421 Aviation Way, Frederick Municipal Airport, Frederick, MD 21701, Telephone (301) 695-2000/Telex 89-3445

December 31, 1987

Mr. William Webster
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Webster:

The Aircraft Owners and Pilots Association (AOPA), on behalf of its 260,000 members, vehemently opposes the National Drug Policy Board (NDPB) Issue Paper #3 (see attachment), which would authorize the United States Customs Service (USCS) and the United States Coast Guard (USCG) to use deadly force in the apprehension of aircraft suspected of illegal drug trafficking.

This proposal clearly violates a 1984 amendment to the Convention on International Civil Aviation treaty which states that governments "must refrain from resorting to the use of weapons against civil aircraft in flight and that in case of interception the lives of persons on board and the safety of aircraft must not be endangered."

In addition, AOPA believes there are applicable provisions of due process clauses and potential civil rights infringements which this suggested policy treats with contempt. Recognizing this, it is important to note that, according to a recent article in the Washington Post, both the Department of Transportation (DOT) and the Federal Bureau of Investigation (FBI) are opposed to Issue Paper #3 as are all civil users of the airspace.

While we support all reasonable legislation aimed at reducing the flow of illegal drugs into the United States, we strongly object to any policy that fails to protect the innocent. Issue Paper #3 lacks adequate direction to ensure the safety of innocent people on or near a suspect aircraft. This proposal does not provide direction which would ensure the safety of undercover federal agents, hostages on a suspect aircraft or persons navigating in waters below the aircraft. It does not consider the potential for mistaken aircraft identification under emergency or unique situations.

In accordance with Federal Aviation Regulation 91.13, it is lawful to drop objects from an aircraft as long as "reasonable precautions are taken to avoid injury or damage to persons or property." Wildlife and ocean research often entail the dropping of nets, sonar, and other equipment into the water. Aircraft aiding commercial fisherman drop marking equipment such as dyes and buoys. In view of these few examples, it is unrealistic to automatically

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assume that objects being dropped from an aircraft contain drugs or illegal contraband.

We doubt that placing final authority to fire with a higher command outside the apprehending aircraft is sufficient to ensure the safety of persons on-board or near a suspect aircraft. In fact, we believe this recommendation to be totally impracticable for three main reasons. First, communications from low altitudes out over the water may be impossible. Secondly, communications required to obtain permission to fire on suspect aircraft would be detailed and lengthy and still could not ensure positive aircraft identification to avoid a potentially fatal mistake. Thirdly, USCS Headquarters has denied several recommendations to increase efficiency and effectiveness because the suggestions required additional funds or manpower which were reportedly unavailable. Creating additional command positions to provide the authority to fire on suspect aircraft will further tax Customs's limited resources.

While we believe drug traffickers must be dealt with harshly, we are concerned that the firing of airborne weapons against suspected drug traffickers may initiate or escalate the use of weaponry by such elements against federal agents and even the civilian public. It is conceivable that persons involved in the business of illegal trafficking will be willing to return gun fire with comparable or heavier weaponry. They may also undertake threatening innocent aircraft flying nearby if perceived to be law enforcement aircraft because of their proximity.

We support procedures and requirements that will help the USCS and the USCG identify and capture drug traffickers. Present rules require aircraft entering the U.S. to:

1. Communicate with air traffic control in accordance with ICAO rules.
2. Receive a discreet transponder code from air traffic control.
3. File a DVFR or an IFR flight plan.
4. Provide one-hour prior notice to border crossing.
5. Land at the first airport of entry when arriving from points south of 30 degrees latitude.

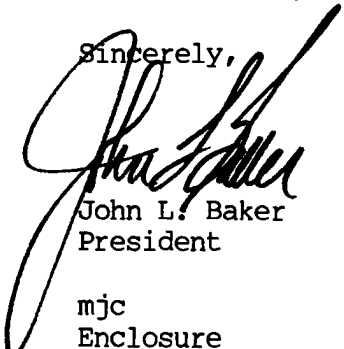
The USCS apparently believes that these requirements are not sufficient to accomplish their assigned mission. Instead, they have elected to recommend the use of deadly force in lieu of examining other options. We suggest that Customs work more closely with the FAA air traffic control managers in developing airspace routes, corridors, and specific reporting points. These requirements will make identification of all aircraft easier for USCS and the

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USCG. In addition, the present aerostat and automation programs coupled with the present FAA transponder-on rule will provide identification of any aircraft not on the prescribed routes.

We support the use of appropriate force in the the apprehension of suspected drug smugglers. However, we cannot support Issue Paper #3 which would allow the USCS and the USCG to shoot at and into civilian aircraft. We urge you to consider alternative actions for the apprehension of drug traffickers.

Sincerely,



John L. Baker
President

mjc
Enclosure

National Drug Policy Board (NDPB) Issue Paper #3

1. Issue

Should the NDPB endorse a legislative proposal that would provide the U.S. Customs and Coast Guard with the authority to use appropriate force to compel airborne drug traffickers to comply with instructions to land their aircraft?

2. Discussion

The Interdiction Implementation Plan (TIC) sets forth a proposal which would provide the Customs Service and the Coast Guard the authority to use appropriate force to compel a suspected smuggling aircraft to comply with instructions to proceed to a designated landing site. Such authority would authorize the firing of weapons as a warning and, if necessary, to fire into the aircraft to ensure compliance.

Currently smugglers are conducting air drops or brief landings to transfer narcotics to boats or vehicles. On most occasions, apprehension is not possible because the aircraft ignores orders to land, and the aircraft eludes arrest by returning to safe-haven countries. As a result, the smugglers are able to operate with virtual immunity from apprehension.

Proposed guidelines for implementation would include criteria similar to those currently used for international maritime apprehensions, for example:

- o A public announcement to advise private aircraft operators who fly across our borders of the requirement to obey the instructions of U.S. law enforcement air crews to land their aircraft where directed. This announcement would further delineate the use of force to ensure compliance.
- o A requirement to verify the aircraft as U.S.-registered or a stateless aircraft observed dropping or transferring bundles (presumed to be narcotics or other contraband).
- o Stringent policies and procedures for exercising this authority with the firing of weapons to occur only when all other means of compelling compliance have been exhausted.
- o A requirement that the final authority to fire rests with a higher authority (outside the apprehending aircraft).
- o A requirement that the smuggling aircraft be over water prior to the use of deadly force.

The Department of Transportation and FBI have objected to the implementation of such a policy. Transportation notes that the alleged illegal act falls well short of a imminent threat to national security or to the lives of law enforcement officers and therefore does not justify actions which could result in the downing of an aircraft and the death of its occupants. The FBI also objects, noting that the use of deadly force should be reserved for self-defense and the defense of others and that the use of force against aircraft exceeds existing standards.


Notwithstanding these objections, the State Department, the Defense Department, as well as the customs Service and the Coast Guard have indicated their support, noting that the very existence of the authority would be a major deterrent to smugglers and that the actual firing of weapons would be a rare event.

The Law Enforcement Coordinating Group would be responsible for the preparation of an NDPB Policy Directive and the specific legislation for final NDPB approval.

3. Options

- A. The NDPB supports this legislative proposal and directs the Interdiction Committee through the Enforcement Coordinating Group to finalize language for referral to OMB and eventually to the Congress.
- B. The NDPB does not support the use of appropriate force against airborne smugglers.

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AOPA
AIRCRAFT OWNERS & PILOTS ASSOCIATION
421 Aviation Way,
Frederick, MD 21701
714



Mr. William Webster
Director
Central Intelligence Agency
Washington, D.C. 20505



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Remarks

STAT

Executive Secretary

19 Jan '88

Date



Executive Registry

88-0111X/1

1200 Eighteenth Street NW
Washington, DC 20036
Telephone: (202) 783-9000
Telex: 904-186

January 7, 1987

The Honorable Edwin Meese, III
Attorney General of the United States
United States Department of Justice
10th and Constitution Avenue
Washington, D.C. 20530

Dear Mr. Attorney General:

The National Business Aircraft Association (NBAA) represents business aviation in the U.S. and is comprised of 2900-plus member companies that operate more than 5100 aircraft to provide American business with air transportation services. These organizations' inturn provide aviation services to another 2500 of their affiliate and subsidiary organizations -- this totals over 5400 U.S. firms. Within the membership is found eight-five percent of the Fortune 500 industrial companies. A significant number of the total membership also operate internationally to the direct benefit of the U.S. balance of trade.

We are terribly concerned by the proposals contained in the National Drug Policy Board Issue Paper #3, that would authorize the use "appropriate force to compel airborne drug trafficker to comply with instructions to land their aircraft."

It is reprehensible that the United States government could deem as "appropriate force" the authorization of any federal agency to use "deadly force" even to interdict drug smugglers.

We firmly support all reasonable efforts (commensurate with the crime) to interdict illegal narcotics, but are becoming increasingly concerned by the questionable approaches being utilized. At times there efforts exceed what is reasonable.

In May, 1984, the Assembly of the International Civil Aviation Organization (ICAO) drafted a protocol, in the wake of the shooting down of Korean Airlines Flight 007, that referenced the "elementary considerations of humanity...safety and the lives of persons on board a civil aircraft..." in an effect to amend the Chicago Convention on International Civil Aviation. The "Article 3 bis", paragraph (a) stated in part "...every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the of safety of aircraft must not be endangered..." We strongly support this.

The ongoing lack of dependable communications links at all levels within and between U.S. Customs/U.S. Coast Guard and the civil aviation community is but one of the many problems envisioned with the proposals. They also overlook the psychology of the parties involved - both the smuggler and the interdictor. The proposals also overlook the fact that the great and vast majority of flights crossing U.S. borders are totally legitimate and those that are not would only be inspired to use "deadly force" in return.

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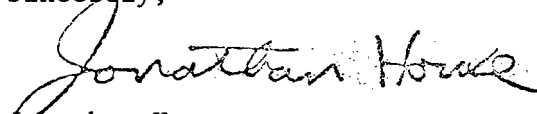
The proposal would place the judgement of guilt upon a less than impartial participant of the interdiction effort and be counter to our basic rights of being presumed innocent until proven guilty.

We support Customs present efforts as they apply to the southern border, but would point out that they have yet to publish many of changes in procedure and law initiated in the past two years in such a manner as to make it available in print either to the user community or in some cases their own representatives. During this time we have supported additional budget for the Service so that it might better implement its regulations, but have met with resistance. Hence, we doubt that their resources would be able to accommodate the additional high level of management required even if those efforts were reasonable - which they are not.

Finally, and on a parallel subject, we wish to record our strenuous objection to U.S. Customs proposal to mark U.S. Passports of non-convicted smugglers of drugs. It's basic assumption is flawed in that it assumes that most major smuggling efforts intentionally stop to clear custom inbound and secondly that our judicial system should use "branding" of passports as a punishment - neither is the case.

We offer to assist in the development of rational approaches to the U.S. drug problem, but cannot accept proposals that endanger the innocent or brand those whom have not had the full protection of the law.

Sincerely,



Jonathan Howe
President, NBAA

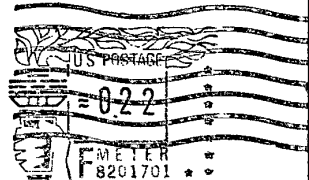
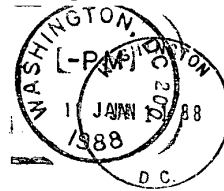
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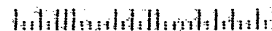


**NATIONAL
BUSINESS AIRCRAFT
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1200 Eighteenth Street NW
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Mr. William H. Webster
Director
Central Intelligence Agency
Washington, DC 20505



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