

Department of Justice
Washington, D.C. 20530

cc: Simms
Wilkinson
Hull ✓
Retrieval
Files

5 FEB 1980

MEMORANDUM FOR PAUL R. MICHEL
Acting Deputy Attorney General

Re: Possible Use of the Armed Forces in
the Event of Terrorist Activity at
the Lake Placid Olympics

Not Covered
2-25

This responds to your oral request for advice concerning the legality of using special elements of the Armed Forces to respond, if necessary, to terrorist activity, including hostage-taking, directed at the visiting Olympic athletes while they are in the United States for the Lake Placid Winter Olympics. In the event of the need, there is adequate statutory authority to use the Armed Forces for such a purpose. We have also attached a memorandum discussing principles applicable to the use of information collected by electronic surveillance in these circumstances.

The Posse Comitatus Act, 18 U.S.C. 1385 prohibits the use of the Army or the Air Force to execute the laws "except in cases and under circumstances expressly authorized by . . . Act of Congress." When the victims are "official guests" of the Government of the United States under 18 U.S.C. 1116(b) (6), 18 U.S.C. 112(f), 1116(d), and 1201(f) provide specific congressional authority for the Attorney General to request assistance from "any Federal . . . agency, including the Army, Navy, and Air Force" to enforce the felony provisions of their parent sections, "any statute, rule, or regulation to the contrary notwithstanding." The members and personnel of the visiting Olympic athletic teams that will compete at Lake Placid have been designated "official guests" of the Government of the United States. */ Thus, were terrorist activity

*/ Conversation of January 31, 1980 between Mr. Stephen Wilkinson of this Office and the Protocol Office of the Department of State.

The Department of State's designation of the members and personnel of the Olympic teams as "official guests" of the Government of the United States was clearly within statutory authority of 18 U.S.C. 1116(b) (6). The legislative history of § 1116 (6) (b), which was added in the wake of the terrorist attack on the Israeli team at the Munich Olympics, establishes beyond doubt that Congress intended that visiting athletes, particularly Olympic athletes, may be designated "official guests." See S. Rep. 1105, 92d Cong., 2d Sess. 9 (1972).

directed against the athletes to fall within the criminal activity prohibited by 18 U.S.C. §§ 112(a), 1116, or 1201(a)(4), the Attorney General could seek the assistance of any unit of the Armed Forces he deemed necessary to enforce those provisions of law. The Posse Comitatus Act would not stand as a bar.

In relevant part §§ 112(a), 1116, and 1201 provide:

§ 112. Protection of foreign officials, official guests, and internationally protected persons

(a) Whoever assaults, strikes, wounds imprisons, or offers violence to a foreign official, official guest, or internationally protected person or makes any other violent attack upon the person or liberty of such person, or, if likely to endanger his person or liberty, makes a violent attack upon his official premises, private accommodation, or means of transport or attempts to commit any of the foregoing shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

* * * * *

§ 1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons

(a) Whoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished as provided under sections 1111, 1112, and 1113 of this title, except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

* * * * *

§ 1201. Kidnaping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when:

* * * * *

(4) The person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title, shall be punished by imprisonment for any term of years or for life.

It seems to us a certainty that terrorist activity directed against the visiting Olympic athletes would be in violation of one or more of these provisions of law.

Were the Attorney General to use the power given him by §§ 112(f), 1116(d), or 1201(f) to call for the assistance of the Armed Forces, there would be no legal requirement for Presidential involvement in the form of either a proclamation or an Executive order.

You have asked, as an incidental question, whether wire or oral communications intercepted pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 USC 2510 et seq., could be disclosed to members of a special unit of the Armed Forces which the Attorney General might call upon to respond to terrorist activity directed against the Olympic athletes. We believe that disclosure could be made under 18 U.S.C. 2517(2). That section reads:

Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

We have previously opined that "use" in § 2517(2) may, in the proper case, include disclosure. OLC Memorandum, "Use of Materials Obtained Through Electronic Surveillance," of February 18, 1975 (attached). We reached that conclusion notwithstanding that § 2517(1) specifically authorizes disclosures only to "investigative or law enforcement officers" (as defined in § 2510(7)). In our opinion "it is not reasonable to read the word 'use' as being in contradistinction to disclosure, so that subsection (1) would treat disclosure and subsection (2) other means of employing the information." We continue to believe, in the words of our earlier opinion, "that subsection (2) permits disclosure to persons other than law enforcement officers, so long as that disclosure is made in connection with the disclosing officer's 'official duties.'"

As we understand the situation, the primary reason that the Attorney General would call upon the special unit of the Armed Forces would be to utilize the special expertise that it has to save the lives of hostages. To save the lives of official guests of the United States who are being held hostage is clearly within the official duties of the Attorney General. To accomplish this objective he could, under § 2517(2), disclose information obtained pursuant to Title III to the members of the special unit and other members of the Armed Forces, as necessary, even though they might not fit the definition of "investigative or law enforcement officer." */

Larry L. Simms
Deputy Assistant Attorney General
Office of Legal Counsel

*/ We have been advised by Phil Wilens, Director, Office of Enforcement Operations, Criminal Division, that in an ongoing hostage situation the Criminal Division would imply consent to intercept on the part of the terrorists and would proceed accordingly. We would suggest that to proceed, if possible, under Title III as if consent had not been obtained would be more appropriate for policy reasons. We should point out, in this regard, that Title III has only a very limited exigent circumstances exception to its normal warrant requirement. See 18 U.S.C. 2518(7).