

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	To Kathi Whalen from Meredith Cabe. Subject: FACA. (1 page)	07/27/1994	P5 7201
002. draft	Memorandum For Kathleen Whalen from Meredith Cabe. Subject: Status of the President's Foreign Intelligence Advisory Board. (3 pages)	07/27/1994	P5 7202
003. memo	Nina Stewart to C. Boyden Gray, re: Conflict of Interest Exemptions for Members of President's Foreign Intelligence Advisory Board (5 pages)	08/13/1990	Personal Misfile
004. list	Report of Financial Interests and Associations. (8 pages)	07/29/1993	P4/b(4), P5, P6/b(6)
005. list	Report of Financial Interests and Associations. (6 pages)	07/29/1993	P4/b(4), P5, P6/b(6)
006. memo	[duplicate of 003] (5 pages)	08/13/1990	Personal Misfile
007. memo	For Bernard Nussbaum from Beth Nolan. Subject: Conflict of Interest Waivers. (2 pages)	10/25/1993	P5 7018
008. memo	For Bernard Nussbaum from Eugene Yeats. Subject: Conflict of Interest Waivers. (8 pages)	10/25/1993	P5 7019

COLLECTION:

Clinton Presidential Records
Counsel's Office
Kathleen Whalen
OA/Box Number: CF 817

FOLDER TITLE:

PFIAB

2006-0995-F

vz818

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

7.27.94

7201

Kathi,

I'm sorry I was unable to reach you to speak with you directly so I could show you what I found on FACA.

I think PFIAB may not be covered after all - airtels advising the CIA aren't covered, & PFIAB seems to me to advise the CIA.

I wasn't sure what direction I should take at this point. Clearly, PFIAB fits in the definition of types of groups included in FACA, so one would think PFIAB folks are eligible for 208(b)(3) waivers.

But they're not subject to FACA's "sunshine" provisions b/c of the CIA.

I unfortunately am not going to be able to discuss this with you before Monday, as I'm getting on a plane to go to Little Rock. I'll check in with you when I return to see what ~~at~~ your sense of it is & where you'd like me to go from here.

In case you haven't spoken with Claisser, I think Jeff Ross is available if you need interim help tomorrow & Friday (you might double-check with her in case anything's changed since she & I spoke).

Attached is a complete copy of FACA as requested.

Me. Realist.

MEMORANDUM

DRAFT

7207

TO: Kathleen Whalen

FR: Meredith Cabe

DT: July 27, 1994

RE: Status of the President's Foreign Intelligence Advisory Board (PFIAB) under the Federal Advisory Committee Act (FACA)

Issue

Does PFIAB qualify as an "advisory committee" under FACA for purposes of limited conflict-of-interest waivers pursuant to 18 U.S.C. §208(b)(3)?

Short Answer

Yes, PFIAB should qualify as an "advisory committee" under FACA. However, if PFIAB is considered to be "utilized by the Central Intelligence Agency," FACA does not apply.

Discussion

Under 18 U.S.C. 208(b)(3), limited conflict-of-interest waivers are available to special Government employees serving on an advisory committee within the meaning of FACA.

I. Groups Advising CIA Excluded from FACA

PFIAB is probably not subject to FACA. FACA specifically excludes advisory committees which are established or utilized by the Central Intelligence Agency. 5 U.S.C.S. App. § 4(b)(1). Section 1.4 of the Executive Order creating PFIAB specifically provides that PFIAB will "advise and make recommendations to the Director of Central Intelligence [and] the Central Intelligence Agency." Executive Order 12863, 58 Fed. Reg. 48,441 (1993).

If PFIAB is for some reason not covered by this exclusion, an analysis of the coverage of FACA, both by its terms and by judicial interpretation, follows.

II. Statutory Requirements of FACA

PFIAB should qualify as an advisory committee under FACA. FACA provides, in pertinent part:

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the term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof which is . . . established or utilized by the President . . . in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.

5 U.S.C.S. App. § 3(2). PFIAB must thus meet three statutory requirements to be considered an "advisory committee" for purposes of FACA: it must be among the above-listed types of groups, it must be established or utilized by the President, and it must exist to advise the President, or one or more agencies or officers of the Federal Government.

PFIAB meets these requirements. First, as is obvious from its title, it is a board.

Second, it was established by the President. PFIAB was created by the President with Executive Order 12863.

Third, it was established in the interest of obtaining advice or recommendations for the president. The Executive Order creating PFIAB states that the board "shall report directly to the President and advise him concerning the objectives, conduct, management and coordination of the various activities of the agencies of the Intelligence Community." Executive Order 12863 § 1.3.

III. Judicial Interpretations of FACA

The definition of "advisory committee" under FACA has been judicially interpreted to exclude some groups from coverage. None of these interpretations, however, indicate that PFIAB would be excluded.

The following are examples of decisions which have excluded particular types of groups from coverage:

Courts have held that groups with no established structure or defined purpose will not fall under FACA. Nader v. Baroody, 396 F. Supp. 1231 (D.C. Cir. 1975). The Executive Order establishing PFIAB lays out a very definite structure and purpose for the group. See §§ 1.1 - 1.4.

Groups providing advice to agencies pursuant to a contractual relationship are not covered. Lombardo v. Handler, 397 F. Supp. 792, (D.D.C.), aff'd without op., 546 F.2d 1043, cert. denied, 431 U.S. 932 (1975). PFIAB is not providing advice pursuant to a contract.

When the advice flows from the agency to the group in question, rather than vice versa, the group is not an advisory committee under FACA. Consumers' Union of United States, Inc. v.

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Dept. of Health, Education & Welfare, 409 F. Supp 473 (D.D.C.), aff'd without op., 551 F.2d 466 (1976). PFIAB exists to advise the President, and not the other way around. See Executive Order 12863.

If a group does not provide direct advice to the President or an agency, the group does not fall under FACA. National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control, 557 F. supp. 524 (D.D.C.), aff'd, 711 F.2d 1071 (1983) (holding that a committee which advised the Executive Committee of a Presidential Commission was not an advisory committee for FACA purposes). The Executive Order creating PFIAB provides that the board will advise the President directly. Executive Order 12863 § 1.3.

If a group performs a primarily operational, rather than advisory function, the group is not covered by FACA. HLI Lordship Industries, Inc. v. Committee for Purchase from Blind & Other Severely Handicapped, 615 F. Supp. 970 (D.Va.), rev'd on other grounds, (4th Cir. 1985). Again, PFIAB's advisory purpose and function are explicit under Executive order 12863.

Groups composed of or headed by Federal employees are not considered "advisory committees" for FACA purposes. 5 U.S.C.S. App. § 3(2)(iii); see also Association of American Physicians & Surgeons v. Clinton, 997 F.2d 898 (D.C. Ct. App 1993). PFIAB is composed of "citizens outside the Government." Executive Order 12863 § 1.1.

PFIAB does not fall under any of the above exclusions and therefore should be covered by FACA.

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7018

THE WHITE HOUSE

WASHINGTON

October 25, 1993

MEMORANDUM FOR BERNARD W. NUSSBAUM
COUNSEL TO THE PRESIDENT

FROM: BETH NOLAN
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Conflict of Interest Waivers for Members of the
President's Foreign Intelligence Advisory Board

Attached is a request from Eugene F. Yeates, Executive Director of the President's Foreign Intelligence Advisory Board ("PFIAB"), for limited conflict of interest waivers for PFIAB Members.

Section 208(a) of Title 18 prohibits an Executive branch employee (including a special Government employee such as a Member of PFIAB) from participating personally and substantially in a particular matter in which, to the employee's knowledge, he or she has a financial interest. Absent a waiver, a PFIAB Member is barred from personal and substantial participation in a particular matter the resolution of which, to the Member's knowledge, would have a direct and predictable effect on his or her financial interests.

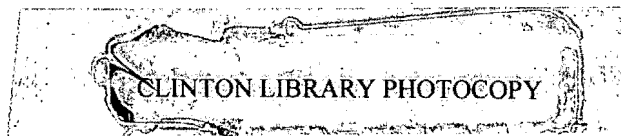
Under 18 U.S.C. § 208(b)(3), an individual's appointing official may grant a waiver upon a determination that "the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved," based on the individual's disclosure of the financial interests at issue. As Counsel to the President, you have been delegated, through Executive Order 12731, the authority to grant waivers of the prohibitions in 18 U.S.C. 208(a) to Presidential appointees to boards established by the President.

Notwithstanding this limited waiver of the prohibitions of 18 U.S.C. § 208(a), Members are otherwise fully subject to applicable ethics laws and regulations. For example, as to any particular matter involving specific parties in which a Member is personally and substantially involved during his or her government services: that Member is precluded from receiving compensation for representational services (18 U.S.C. § 203); is prohibited from acting as an agent or attorney for a private party against the United States (18 U.S.C. § 205); and following government service, is barred from representing any other party before the United States (18 U.S.C. § 207(a)).

Members are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635), which, among other things, forbid the use of an individual's public office for his or her private gain or that of any other person or entity, including a client. Moreover, under Executive Order 12731, Members are required to receive mandatory annual ethics training.

Additionally, each Member of the Board is required by the Executive Order creating the Board to execute an agreement never to reveal classified information obtained by virtue of his or her Board service except to the President or the President's designees. In addition, Board Members sign further non-disclosure agreements as a precondition to receiving top secret security clearances.

After reviewing the memorandum from Mr. Yeates and the supporting documentation, I believe that the need for each PFIAB Member's service outweighs the potential for any conflicts of interest created by their financial interests. Therefore, I recommend that you grant the requested waivers.



7019

THE WHITE HOUSE

WASHINGTON

October 25, 1993

MEMORANDUM FOR BERNARD W. NUSSBAUM
COUNSEL TO THE PRESIDENT

FROM: EUGENE F. YEATES
EXECUTIVE DIRECTOR, PRESIDENT'S FOREIGN
INTELLIGENCE ADVISORY BOARD

SUBJECT: Conflict of Interest Waivers for Members of the
President's Foreign Intelligence Advisory Board

Pursuant to 18 U.S.C. § 208(b)(3), I am writing to request that you grant limited conflict-of-interest waivers to the Members of the President's Foreign Intelligence Advisory Board ("PFIAB"). Under 18 U.S.C. § 208(b)(3), an individual's appointing official may determine that "the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved" based on the individual's disclosure of the financial interests at issue. You have been delegated this authority by Executive Order 12731, as to Presidential appointees to boards established by the President.

It is my understanding that a Federal statute prohibits an Executive branch employee (including a special Government employee such as a PFIAB Member) from participating personally and substantially in a particular matter in which, to the employee's knowledge, he or she has a financial interest. 18 U.S.C. § 208(a). Therefore, absent a waiver, a PFIAB Member would be barred from personal and substantial participation in a particular matter the resolution of which, to the Member's knowledge, would have a direct and predictable effect on his or her financial interests or financial interests attributable to him or her.

As determined by Executive Order 12863, PFIAB's responsibility is to "assess the quality, quantity, and adequacy of intelligence collection, of analysis and estimates, and of counterintelligence and other intelligence activities." In carrying out this task, the Board has the authority to review the performance of Federal intelligence agencies, including the adequacy of management, personnel and organization. The Board is to report directly to the President and advise him concerning the objectives, conduct, management and coordination of agencies in the intelligence community, and make appropriate recommendations for the improvement and enhancement of intelligence efforts. The Board is a vital component of the country's national security policy and provides invaluable assistance to the President.

To carry out these responsibilities fully, Members collectively need experience in a range of areas, including direct experience in the intelligence community and with national security issues, familiarity with intelligence collection needs and intelligence analysis, and technological expertise relevant to intelligence collection efforts. The President has appointed twelve Members to serve on PFIAB so as to provide a balance of the necessary expertise. In my judgment, each of these twelve individuals contributes uniquely, as described below, to the deliberations of the Board.

Lew Allen, Jr.. Dr. Lew Allen, who is currently Chairman of the Board of the Charles Stark Draper Laboratory, was Vice President of the California Institute of Technology and Director of the Jet Propulsion Laboratory from 1982 to 1991. Throughout a 40 year career in the armed forces Dr. Allen has served as a physicist and science advisor in the Air Force, and as Air Force Chief of Staff and a member of the Joint Chiefs of Staff. He has extensive experience in the intelligence field, having served as Deputy Director of the Central Intelligence Agency and Director of the National Security Agency. Dr. Allen's scientific expertise, military background and direct experience in the intelligence fields make him uniquely qualified for service on PFIAB. Moreover, as a member of PFIAB since 1990, Dr. Allen's ongoing presence on the Board provides valuable continuity.

Zoe E. Baird. Ms. Baird is currently Senior Vice President and General Counsel of Aetna Life and Casualty Co., prior to which she was Counsellor and Staff Executive of General Electric Company, a major developer of defense technology. As a board member of Southern New England Telephone Company and Southern New England Telecommunications Corporation and Science Park Development Corp., she is experienced in telecommunications. Ms. Baird has international expertise, as a member of the Council on Foreign Relations from 1981-1986, and as a partner at the law firm of O'Melveny & Myers, dealing with a variety of foreign firms and entities. PFIAB benefits from Ms. Baird's experience in the defense industry, communications and international arenas.

Ann Z. Caracristi. Ms. Caracristi is currently a consultant to the National Security Agency Scientific Advisory Board. She assumed this role after over 40 years of service to the National Security Agency and its predecessor agencies. From 1982 to 1988, following a tenure as Deputy Director, she was an Advisory Board Member and Consultant to the National Security Agency. Among other roles in the intelligence field, she has served as President of the Association of Former Intelligence Officers and as chair of the Director of Central Intelligence Task Force on Intelligence Community

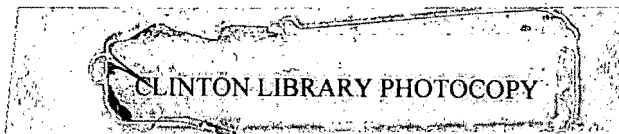
Training. Ms. Caracristi is eminently qualified for board membership on the basis of her knowledge of and experience in the national security and intelligence fields.

Admiral William J. Crowe. Admiral Crowe served in the United States Navy from 1942 to 1989, and as Chairman of the Joint Chiefs of Staff from 1985 to 1989. Prior to his appointment as chairman, he served as Commander in Chief, U.S. Pacific Command, and Commander in Chief, Allied Forces Southern Europe. Admiral Crowe holds a Ph.D. in Politics from Princeton. Since his retirement from the Navy, Admiral Crowe has served a Counselor at the Center for Strategic and International Studies in Washington, D.C., and professor of geopolitics at the University of Oklahoma. Admiral Crowe's unparalleled experience in defense and national security makes him eminently qualified for service on PFIAB.

Sidney David Drell. Dr. Drell is a physicist and arms control specialist. He is currently Professor and Deputy Director of the Stanford Linear Accelerator Center at Stanford University. Since 1960 he has been active as a national security and defense technical advisor to the Executive and Legislative branches, including the National Security Council, the U.S. Arms Control and Disarmament Agency, and the Congressional Office of Technology Assessment. In addition, he has been chairman of the Panel on Nuclear Weapons Safety of the House Armed Services Committee and the Technology Review Panel of the Senate Select Committee on Intelligence, and a member of the President's Science Advisory Committee. Dr. Drell's experience in the national security and defense technical areas make him a valuable Member of PFIAB.

Honorable Thomas F. Eagleton. Former United States Senator Eagleton served three terms in the Senate, where he was Ranking Minority Member of the Senate Governmental Affairs Committee and on the Senate Foreign Relations and Intelligence Committees. Since his retirement in 1987 he has been a partner in the St. Louis law firm of Thompson & Mitchell, and University Professor of Public Affairs at Washington University. Mr. Eagleton contributes to the Board through the government and intelligence experience he brings with him, particularly as a member of the Senate Intelligence Committee.

Anthony S. Harrington. Mr. Harrington is a partner in the international law firm of Hogan and Hartson, where his practice since 1968 has been focused on technology companies. Mr. Harrington has been or is currently a board member of a variety of organizations, including SouthernNet, Inc., Southeastern Metal Products, Inc., SouthernTel, Inc., the National Alliance to End Homelessness, Duke Law School,



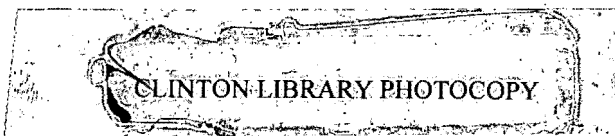
and the Center for Democracy. In addition he has served as General Counsel of the Democratic National Committee. Mr. Harrington brings a valuable world view to the Board.

Robert J. Hermann. Dr. Hermann is currently Senior Vice President, Science and Technology, for United Technologies Corporation. Earlier, he served for 20 years with the National Security Agency, with assignments in research and development, operations and NATO. He has also served as principal Deputy Assistant Secretary of Defense for Communications, Command, Control and Intelligence; Assistant Secretary of the Air Force for Research, Development and Logistics; and Special Assistant for Intelligence to the Under Secretary of Defense for Research and Engineering. Dr. Hermann's expertise in the field of electrical engineering, and his experience in national security, defense and intelligence, make him eminently qualified to serve as a PFIAB Member.

Harold William Pote. Mr. Pote is a founding partner of The Beacon Group, a private investment firm in New York, and PBS Properties, a real estate investment and management company. From 1991 to 1993 he was a principal of The Brooke Group, a company with a diversified group of businesses in the United States and Russia. From 1972 through 1988 he held various positions at First Fidelity Bancorporation of Philadelphia, and served as CEO from 1984 to 1988. Mr. Pote is a director of the Norfolk Southern Railroad Corporation and Turecamo Maritime, Inc., and a trustee of the Pennsylvania Convention Center Authority, the Albert Einstein Healthcare Foundation and Drexel University. Mr. Pote's acumen is an asset to the Board.

Lois D. Rice. Lois Rice is currently a Guest Scholar in the Economic Studies Program of The Brookings Institution, where she is involved in science and technology policy, education policy research, and corporate governance issues. From 1981 to 1991 she was Senior Vice President for Government Affairs for Control Data Corporation, where she worked on science and technology policies, trade, human resource, tax and export control and banking issues. Her career has spanned both the non-profit and corporate communities, including thirty years with the College Board, direction of the Joint Center for Political and Economic Studies, and membership on the board of the Center for Naval Analysis. She is also a member of the Technology Subcouncil of the Council on Competitiveness. As an expert in science and technology policy, Ms. Rice is eminently qualified to be a PFIAB Member.

Honorable Warren B. Rudman. After serving two terms as U.S. Senator from New Hampshire, former Senator Rudman became a

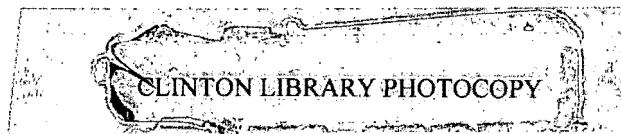


partner in the international law firm of Paul, Weiss, Rifkind, Wharton and Garrison. In the Senate he chaired the Ethics Committee, and served on the Intelligence Committee, the Appropriations Committee, the Governmental Affairs Committee, and the Permanent Subcommittee on Investigations. In 1986 he was appointed to serve as Vice-Chairman of the Senate Select Committee investigating arms transfers to Iran. Recently he helped form the Concord Coalition. Former Senator Rudman's experience in the Senate, particularly in the areas of intelligence and national security, make him an invaluable addition to the Board.

Maurice Sonnenberg is an industrial development, international trade and financial consultant, with clients world-wide. Throughout a career of service in business, politics and the arts, Mr. Sonnenberg has served in a variety of foreign policy advisory roles, including advisor to senior officials on the Enterprise for the Americas Initiative, as an election observer in Nicaragua and El Salvador, and as a member of both the Task Force on International Trade of the White House Conference of Small Business and the President's Export Council. He has also served at the Industrial/Market Advisor to the U.S. Commission on the Status of Puerto Rico and as Special U.S. Representative to the Economic Commission for Europe. He is currently chairman of the Executive Committee of the Democratic House and Senate Council and a Member of the Democratic Leadership Council Advisory Board. He has published and spoken extensively on economics, politics, and foreign affairs. He contributes to the Board through his experience in foreign policy, and his international outlook.

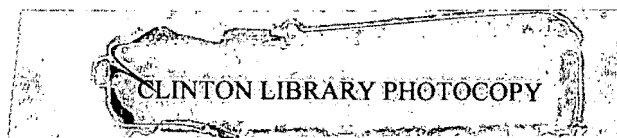
Because Members are expected to work on PFIAB matters for fewer than 60 days during a calendar year and do not receive compensation (other than expenses) for service, they are special Government employees and are required to file annual confidential financial disclosure reports (SF-450s). The financial interests of the twelve Members are listed on the SF-450s attached to this memorandum.

It is not entirely clear which, if any, particular matters in which PFIAB Members will participate is likely to have a direct and predictable effect on their outside financial interests. This is especially true because all of the topics on which the Board will work have not yet been determined. Nonetheless, I am seeking this waiver so that Members may freely fulfill their Board duties without concern that a particular matter may later be found to have had a direct and predictable effect on an entity in which they have a financial interest.



This waiver would not cover any participation by Members in any particular matters involving specific parties in which one of the parties is an entity in which the Board Member has a financial interest. Therefore, Members will be required to recuse themselves should any such matter arise, or, if appropriate, the Member or I may seek a further waiver permitting the Member to participate.

Accordingly, I am requesting you to determine, in accordance with 18 U.S.C. § 208(b)(3), that the need for each individual's services in particular matters that may come before the Board (other than matters involving specific parties) outweighs the potential for conflicts of interest created by the financial interests disclosed by the Member in his or her confidential financial disclosure report. I also ask that this waiver cover other financial interests the Members may acquire during their service, provided that a Member acquiring new financial interests discloses the new interests in writing to your office at least one week in advance of participation in any particular matter that may affect them and provided that you do not determine, based upon the disclosure, that the waiver should not apply.



DECISION

Waiver granted or denied, as indicated below, based on the determination, in accordance with 18 U.S.C. § 208(b)(3), whether the need for the individual's services on the President's Foreign Intelligence Advisory Board outweighs the potential for a conflict of interest created by the individual's financial interests, under the terms and conditions described above.

	<u>Waiver Granted</u>	<u>Waiver Denied</u>
Lew Allen, Jr.	_____	_____
Zoe E. Baird	_____	_____
Ann Z. Caracristi	_____	_____
William J. Crowe	_____	_____
Sidney David Drell	_____	_____
Thomas F. Eagleton	_____	_____
Anthony S. Harrington	_____	_____
Robert J. Hermann	_____	_____
Harold William Pote	_____	_____
Lois D. Rice	_____	_____
Warren B. Rudman	_____	_____
Maurice Sonnenberg	_____	_____

Bernard W. Nussbaum

Date

interest." Such certification has been opposed by the Office of Legal Counsel in DOJ in past administrations.

4. General 208(b)(3) waiver policy of the prior Administration:

During the Bush Administration, Board Members were given a general 208(b)(3) waiver by the Counsel to the President under the delegated authority of Executive Order 12674 § 402. This waiver states that the services of Board Members outweighs the potential for conflict of interest created by the financial interests disclosed by the Members (and attached to the waiver request).

The rationale for the waiver is that it is not clear which, if any, particular matters in which the Members would participate would have a direct and predictable effect on their outside interests or associations. The agenda for the Board is not predictable. They may be faced with particular matters which may be found later to have a direct and predictable effect on an entity in which they have a financial interest.

Such a waiver was granted by the C. Boyden Gray to six new members of the Board on April 16, 1990.

[002]

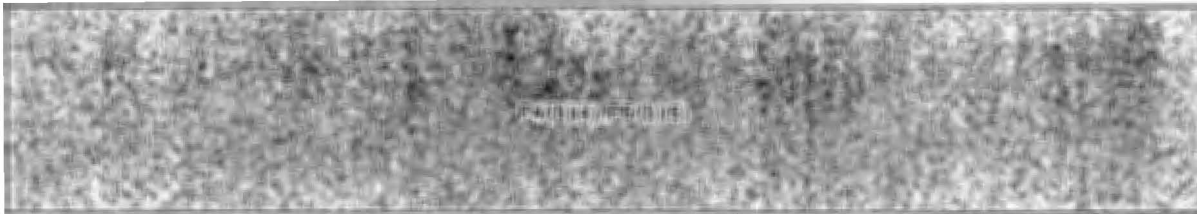
I discussed this matter with Steve McCleary in OGE. Mr. Cleary stated that OGE would be happy to review the general waiver request and its attached documents. From my discussion of the previous waiver document, Mr. Clearly stated that it was likely that general basis for having such a waiver would be acceptable to OGE. He talked with Gary David who stated that the candidates SF-450 forms should be acceptable as backup documents to the general waiver request.

5. Recusal requirements for Board Members still required:

Even though Board Members receive a general 208(b)(3) waiver, they are still required to recuse themselves from particular matters involving specific parties in which one of the actual parties is an entity in which they have a financial interest. The Board's Executive Director monitors this process.

6. Review of the Members' Financial Interests & Organizational Associations

A. Ann Caracristi's Interests:



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	For the President from Samuel Berger. Subject: PFIAB Report. Record ID: 9730078. (10 pages)	03/27/1997	P1/b(1)
001b. memo	For Samuel Berger from George Tenet. Subject: PFIAB Report. Record ID: 9730058. (7 pages)	02/27/1997	P1/b(1)
002a. memo	For Samuel Berger from Elisa Harris. Subject: Interagency Review of PFIAB Report. Record ID: 9730058. (5 pages)	03/17/1997	P1/b(1)
002b. note	To Samuel Berger from Rand Beers. Record ID: 9730058. (1 page)	03/1997	P1/b(1)
002c. memo	Duplicate of 001b. (7 pages)	02/27/1997	P1/b(1)
003. letter	To Rand Beers from Lacy Suiter, Federal Emergency Management Agency. (4 pages)	03/24/1997	P1/b(1)
004a. memo	For Samuel Berger from James Baker. Subject: Draft Press Guidance. Record ID: 972025. (2 pages)	03/24/1997	P5
004b. draft	Letter from Warren Rudman to the Chair, Senate Select Committee on Intelligence. (2 pages)	03/24/1997	P5 7020
004c. draft	Press Guidance. (1 page)	03/24/1997	P5
005a. memo	Duplicate of 002a. (2 pages)	03/17/1997	P1/b(1)
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005c. note	Duplicate of 002b. (4 pages)	03/1997	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Intelligence Programs (Rand Beers)
OA/Box Number: 2634

FOLDER TITLE:

PFIAB, 1997 [4]

2006-0995-F

vz772

RESTRICTION CODES

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- b(7) Release would disclose information compiled for law enforcement
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- b(8) Release would disclose information concerning the regulation of
financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information
concerning wells [(b)(9) of the FOIA]

7020

DRAFT

March 24, 1997

Dear Mr. Chairman:

Thank you for your letter of March 12 requesting that the President's Foreign Intelligence Advisory Board (PFIAB) answer a series of questions so as to assist the Committee in its deliberations on the nomination of Anthony Lake to serve as DCI. ~~Of course, with the withdrawal of Mr. Lake's nomination, the occasion for your request seems no longer to exist.~~ *Notwithstanding the* However, we are responding to the extent appropriate, in order to remove any misimpressions that you or your Committee might otherwise have had regarding the Board.

The Board did conduct, at the President's request, a review of US intelligence performance associated with military operations in Somalia. That review, conducted under the leadership of Admiral Crowe before he departed from the Chairmanship of the PFIAB to become Ambassador to the Court of Saint James, was begun in late 1993 and was completed in April of 1994. It covered various issues regarding intelligence support to policy makers and to US operational forces.

Because the PFIAB directly advises the President, we submit all reports prepared for the President to him. As a matter of courtesy and long-standing practice dating back to at least the Reagan Administration, the Board nearly always has submitted its reports to the President through his National Security Advisor.

In April of 1994, the Board's Somalia report was submitted *in toto* to the President, through the National Security Advisor. After receiving the report, the President approved recommendations aimed at resolving issues identified by the report. We know that the President and Admiral Crowe discussed the report.

The Board takes very seriously and is extremely proud of its unblemished, historical role as an independent and objective advisory panel to the President. At no time were any changes to the review undertaken at the request of the National Security Advisor or any member of his staff.

You requested a copy of the Board's Somalia report. We trust that with Mr. Lake's withdrawal, the request is no longer relevant. In any event, we cannot provide the report. ~~Not only has the White House Counsel advised against doing so, but to provide the report would alter the PFIAB's historical and proper role, and seriously and unnecessarily damage the effectiveness of the Board's advisory mission.~~ Just as we trust that you consider the confidentiality of communications from your staff essential, we believe you would agree that the goal of effective

Presidential advising is best served when senior advisors to the President are able to provide frank and forthright advice and information to the President, without restraint. Without a reliable expectation of confidentiality, Board members might not be as free in their comments to the President; witnesses also would no doubt be more hesitant to speak openly to the Board; and Administration officials probably would be less willing to seek the Board's advice. Taking these considerations into account, the White House Counsel has advised

[Fortunately, here, there is no need to do violence to the Presidential advisory process or to the line of separation between the Congress and the President. As noted above, it appears that whatever supposed nexus, if any, there might have been between the report and the deliberations on Mr. Lake, there is now clearly none at all. Moreover, the same documents and witnesses that the Board examined for its Somalia review also would appear to be available to your Committee, so that you can direct any requests to the pertinent agencies and officials. Thus, your Committee could inquire into the matter as it sees fit.]

against
our
providing
the
report.

We trust that we can continue to have constructive cooperation between the Board and the Congressional oversight committees and to accommodate your needs and concerns within the context of the Constitutional separation of powers. Chairman Foley, who is traveling abroad, has read and approved this letter.

Sincerely,

Warren B. Rudman
Vice Chairman

The Honorable Richard C. Shelby
Chairman, Senate Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

cc: The Honorable J. Robert Kerrey

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	For John Podesta from James Baker. Subject: Application of FOIA to Intelligence Roles and Mission Commission. Record ID: 9407276. (1 page)	09/10/1994	P5 7021
001b. memo	For Anthony Lake from Georget Tenet and James Baker. Subject: Roles and Missions Study. Record ID: 9407267. (3 pages)	09/09/1994	P5 7022
001c. draft	Language on the Establishment of the Commission on the Roles and Capabilities. (12 pages)	09/13/1994	P5 7023
002a. memo	For the President from Anthony Lake. Record ID: 9430129. (4 pages)	05/26/1994	P1/b(1), P5
002b. memo	To William Crowe, Jr. from POTUS. (1 page)	05/26/1994	P1/b(1)
003. memo	For Anthony Lake from George Tenet. Record ID: 9430147. (2 pages)	06/03/1994	P1/b(1), P5
004a. memo	For Secretary of State, Secretary of Defense, Director of Central Intelligence, and Chairman, Joint Chiefs of Staff from William J. Crowe, Jr. Subject: UN Operations. (1 page)	05/05/1994	P1/b(1)
004b. paper	Terms of Reference, PFIAB Study. (1 page)	05/05/1994	P1/b(1)
005. list	[partial] [CIA Act] (2 pages)	02/10/1994	P3/b(3)
006a. memo	For George Tenet from Eugene Yeats. Subject: PFIAB Actions. (1 page)	02/09/1994	P1/b(1)
006b. letter	To the President from Bobby Ray Inman. Subject: Camouflage. (1 page)	10/15/1992	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Intelligence Programs (George Tenet)
OA/Box Number: 2504

FOLDER TITLE:

PFIAB [2]

2006-0995-F

vz798

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

7267

7021

September 10, 1994

NOTE FOR JOHN PODESTA

FROM: JAMES BAKER, NSC LEGAL

SUBJECT: Application of FOIA to Intelligence Roles and
Missions Commission

Attached is a memo to Tony Lake advancing Les Aspin's proposed compromise to language Senator Warner included in the Senate intelligence authorization bill directing an Executive-congressional study of the roles and missions of the intelligence community. PFIAB has consulted with Lloyd Cutler and with NSC staff on Aspin's proposal, and in part at our urging, included language excepting the Commission from FOIA and the Federal Advisory Committee Act. As the memo notes in greater detail, we feel the Commission and its mission are sui generis and that safeguards exist in the PFIAB proposal to ensure that the public is informed of the Commission's work (e.g., to the extent feasible, the Commission is required to make its report available to the public and is required to provide its report with classified annexes to Congress). In addition, such exceptions will relieve the Commission of potential administrative burdens and encourage the intelligence community to be forthcoming.

Nonetheless, an explicit FOIA exemption is exceptional, if not unprecedented, and we wanted to make sure you were comfortable with the approach and rationale before we advanced the proposal to Tony. Please let me, or the PFIAB's Counsel Dave Wesley (5-3338), know if you have any questions. Les Aspin is anxious to discuss his proposal with Senator Warner and others as soon as possible next week.

Thank you.

7022

September 9, 1994

ACTION

MEMORANDUM FOR ANTHONY LAKE

FROM: GEORGE TENET/JAMES BAKER

SUBJECT: Roles and Missions Study

As you know, Les Aspin would like to broker a compromise text with Senator Warner regarding SSCI legislation directing an Executive-congressional study of the roles and missions of the intelligence community. The Warner proposal was adopted by unanimous vote in the Senate intelligence bill, but there is no comparable House provision. As discussed in our earlier memo, Aspin is concerned that the House conferees will ultimately accept the Warner proposal, and therefore is inclined to advance a modified bill that would utilize a PFIAB core with Congressional augmentation to undertake the study and would better protect Presidential prerogatives.

Based on input from you, Lloyd Cutler, and NSC staff, the PFIAB has revised its proposal and is prepared, with your approval, to advance the text with Congressional conferees first thing next week. We understand that the DCI is supportive of a PFIAB led review and is opposed to the Warner language. It is Aspin's and our judgment that, at this stage, the bill's proponents would not accept an executive order alternative; in any event, it is not clear that an E.O. would better protect Presidential interests than appropriately drafted legislation.

The revised PFIAB text differs substantively from the Warner text as follows.

First, where the Warner draft calls for a commission of 17, including eight Members of Congress, the revised draft establishes a 16 member commission all appointed by the President; with 12 of those members appointed from private life. The expectation is that the President would appoint the twelve current members of the PFIAB, who would serve in a capacity independent from their PFIAB duties. The remaining four slots would be filled by Members of Congress recommended by the congressional leadership.

Second, we would exempt the commission from the provisions of the Federal Advisory Committee Act (FACA), which inter alia requires

open meetings, and the Freedom of Information Act (FOIA). FACA already contains an exemption for advisory committees "utilized" by the CIA. Our language removes all doubt.

A FOIA exemption is more provocative, particularly in light of the ongoing Armstrong litigation. While we would not necessarily favor such an exemption in other contexts (we know of no other explicit legislative exemption), we recommend such an exemption in this instance and do not believe it will set a bad precedent. The mission of this commission is sui generis and such an exemption will encourage more forthcoming discussion with the commissioners. As a practical matter, the majority of commission documents would be exempt under FOIA's deliberative and national security exemptions in any event. The historical value of commission records, however, would be preserved by making such records subject to the Federal Records Act. This means that when they are no longer needed by the Executive branch, they will be scheduled for transfer to the National Archives where they will subsequently be subject to FOIA. Finally, the Commission is required, to the extent feasible, to make its report publicly available.

Third, the Warner bill would grant the commission access to "any information that the commission considers necessary." We have struck "any" to bring this language in line with interpretive practice: without requirement to so specify, legislative authority to access Executive branch information is construed in a manner consistent with Constitutional authorities pertaining to the President's executive privileges, including the state secrets and deliberative process privileges. While the commission may benefit from accessing deliberative materials, in our view, the value of PFIAB, and similar entities that advise the President, derives from their ability to give candid assessments, which in turn depends upon full cooperation from the agencies. Such cooperation could be chilled if we establish the precedent of sharing PFIAB documents outside the Executive branch, particularly if such a decision is made after information has already been provided.

This memorandum has been coordinated with the Staff Secretary, the White House Counsel's Office, and with PFIAB staff.

Concurrences: Bill Leary

RECOMMENDATION

That you authorize Les Aspin to negotiate with the SSCI and HPSCI based on the attached text, subject to your concurrence in any subsequently agreed text.

Approve _____

Disapprove _____

Attachment

Tab I PFIAB Mark-up of Warner Provision

Draft as of 1338 pm, September 13, 1994

COMMISSION ON THE ROLES AND ~~CAPABILITIES~~ MISSIONS OF THE UNITED STATES INTELLIGENCE COMMUNITY

SEC. 01. ESTABLISHMENT.

There is established a commission to be known as the Commission on the Roles and ~~Capabilities~~ Missions of the United States Intelligence Community (hereafter in this title referred to as the "Commission").

SEC. 02. COMPOSITION AND QUALIFICATIONS.

(a) MEMBERSHIP.

(1) The Commission shall be composed of ~~17~~ *not more than 16* members, as follows:

(A) ~~Nine members shall be appointed by the President from private life, no more than four of whom shall have previously held senior leadership positions in the Intelligence community. The President shall appoint the members of the Commission. Twelve members shall be chosen from private life, all of whom may be members of the President's Foreign Intelligence Advisory Board (PFIAB) (hereafter in this title referred to as the "PFIAB"). The remainder of the Commission will be appointed by the President, upon his review of nominees submitted in accordance with subsections (B) through (E) of this section.~~

B) ~~Two~~ One members, who shall be a member of the Senate Select Committee on Intelligence, shall be ~~appointed~~ nominated by the Majority Leader of the Senate. ~~of whom one shall be a Member of the~~

~~Senate and one shall be from private life.~~

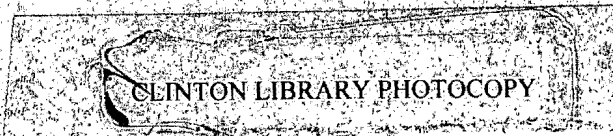
(C) ~~Two~~ *One* members, *who shall be a member of the Senate Select Committee on Intelligence*, shall be ~~appointed~~ *nominated* by the Minority Leader of the Senate. ~~of whom one shall be a member of the Senate and one shall be from private life.~~

(D) ~~Two~~ *One* members, *who shall be a Member of the House of Representatives Permanent Select Committee on Intelligence*, shall be ~~appointed~~ *nominated* by the Speaker of the House of Representatives. ~~of whom one shall be a Member of the House and one shall be from private life.~~

(E) ~~Two~~ *One* members, *who shall be a Member of the House of Representatives Permanent Select Committee on Intelligence*, shall be ~~appointed~~ *nominated* by the Minority leader of the House of Representatives. ~~of whom one shall be a member of the House and one shall be from private life.~~

(2) ~~The members of Commission appointed from private life under paragraph (1) shall be persons of demonstrated ability and accomplishment in government, business, law, academe, journalism, or other profession, who have a substantial background in national security matters.~~

(b) CHAIRMAN. The President shall designate one of the members appointed from private life to serve as Chairman of the Commission *and one of the members appointed from private life to be Vice Chairman of the Commission.*



(c) PERIOD OF APPOINTMENT; VACANCIES. Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers but it shall be filled in the same manner as the original appointment.

(d) DEADLINE FOR APPOINTMENT. The appointments required by subsection (a) shall be made within 45 days after the date of enactment of this Act.

(e) MEETINGS.

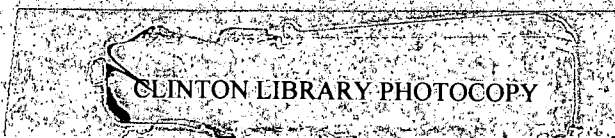
(1) The Commission shall meet at the call of the Chairman.

(2) The Commission shall hold its first meeting not later than four months after the date of enactment of this Act.

(f) QUORUM. Nine members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings, take testimony, or receive evidence.

(g) SECURITY CLEARANCES. Appropriate security clearances shall be required for members of the Commission who are private United States citizens, *for all staff members, and for consultants of the Commission.* Such clearances shall be processed and completed on an expedited basis by appropriate elements of the executive branch of Government and shall, in any case, be completed within 90 days of the date such members are appointed.

(h) *In light of the extraordinary and sensitive nature of its deliberations, the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), and the regulations prescribed by the Administrator of General Services pursuant to that Act, shall not apply to the Commission. Further, the provisions of the Freedom of Information Act (5 U.S.C. 552), shall not apply to the Commission; however, records of the*



Commission shall be subject to the Federal Records Act and, when transferred to the National Archives and Records Agency, shall no longer be exempt from the provisions of the Freedom of Information Act.

SEC. 03. DUTIES OF THE COMMISSION.

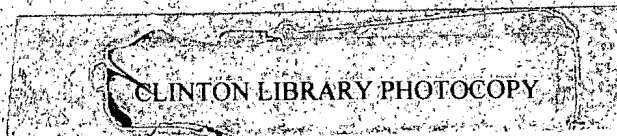
(a) IN GENERAL-It shall be the duty of the Commission-

(1) to determine what the roles and missions of the United States intelligence community should be in the post-Cold War global environment, and to that end, to review the efficacy and utility of current activities of the national and tactical components (NFIP and TIARA) of the intelligence community; and (2) to prepare and draft the reports described in section 04.

(b) IMPLEMENTATION. In carrying out subsection (a), the Commission shall specifically consider the following:

- (1) What should be the roles and missions of the intelligence community in terms of providing support to the defense and foreign policy establishment.
- (2) Whether the roles and missions of the intelligence community should extend beyond the traditional areas of providing support to the defense and foreign policy establishments, and, if so, what areas should be considered for intelligence collection and analysis, and whether such areas should include for example, economic issues, environmental issues, and health issues.
- (3) What functions, if any, should continue to be assigned the ~~Central Intelligence Agency~~ *organizations of the intelligence community* and what capabilities should ~~it~~ *they* retain for the future.

- (4) Whether the existing organization and management framework of the ~~Central Intelligence Agency~~ *organizations of the intelligence community* provide the optimal structure for the accomplishment of ~~its~~ *their* mission.
- (5) Whether existing principles and strategies governing the acquisition and maintenance of intelligence collection capabilities should be retained and what collection capabilities should the Government retain to meet future contingencies.
- (6) Whether intelligence analysis, as it is currently structured and executed adds sufficient value to information otherwise available to the Government to justify it's continuation, and, if so, at what level of resources.
- (7) Whether the existing system of intelligence analysis results in significant waste or duplication, and, if so, what can be done to correct these deficiencies.
- (8) Whether the existing arrangement for allocating available resources to accomplish the roles and missions assigned to intelligence agencies are adequate.
- (9) Whether the existing network for coordinating among intelligence agencies with respect to intelligence collection and analysis and other activities, including training and operational activities, provides an optimal structure for such coordination.
- (10) Whether current personnel policies and practices of intelligence agencies provide an optimal work force to satisfy the needs of intelligence consumers.
- (11) Whether resources for intelligence activities should continue to be



allocated as a part of the defense budget or be treated by the President and Congress as a separate budgetary program.

(12) Whether the existing levels of resources allocated for intelligence collection or intelligence analysis, or to provide a capability to conduct covert actions are seriously at variance with United States needs.

(13) Whether there are areas of redundant or overlapping activity or areas where there is evidence of serious waste, duplication, or mismanagement.

(14) To what extent, if any, should the budget for United States intelligence activities be publicly disclosed.

(15) To what extent, if any, should the United States intelligence community collect information bearing upon private commercial activity and the manner in which such information should be controlled and disseminated.

(16) Whether counterintelligence policies and practices are adequate to ensure that employees of intelligence agencies are sensitive to security problems and whether intelligence agencies themselves have adequate authority and capability to address perceived security problems.

(17) The manner in which the size, missions, capabilities, and resources of the United States intelligence community compare to those of the Governments of the United Kingdom, Canada, Australia, France, Israel, Russia, and Germany.

(18) *The collaborative arrangements between the United States and foreign countries in the area of intelligence cooperation to assess the general value of such arrangements and to recommend whether such arrangements should be*

expanded to provide for increased burdensharing.

(19) Whether existing arrangements for sharing intelligence with multinational organizations in support of mutually-shared objectives are adequate.

SEC. 04. REPORTS.

(a) **INITIAL REPORT.** Not later than two months after the first meeting of the Commission, the Commission shall transmit to the *President and to the* congressional intelligence committees a report setting forth its plan for the work of the Commission.

(b) **INTERIM REPORTS.** Prior to the submission of the report required by subsection (c), the Commission may issue such interim reports as it finds necessary and desirable.

(c) **FINAL REPORT.** *Not later than 12 months after its first meeting, but in any event,* No later than March 1, 1996, the Commission shall submit to the President and to the congressional intelligence committees a report setting forth the activities, findings and recommendations of the Commission, including any recommendations for the enactment of legislation that the Commission considers advisable. To the extent feasible, such report shall be unclassified and made available to the public. Such report shall be supplemented as necessary by a classified report or annex, which shall be provided separately to the President and the congressional intelligence committees.

SEC. 5 POWERS

(a) **HEARINGS.** The Commission or, at its direction, any panel or member of the Commission, may, for the purpose of carrying out the provisions of this section, hold hearings, sit and act at times and places, take testimony, and receive evidence.

(b) **INFORMATION FROM FEDERAL AGENCIES.** The Commission may secure

directly from any intelligence agency or any other Federal department or agency any information that the Commission considers necessary to enable the Commission to carry out its responsibilities under this section. Upon request of the Chairman of the Commission, the head of any such department or agency shall furnish such information expeditiously to the Commission.

(c) POSTAL SERVICES. The Commission may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) SUBCOMMITTEES. The Commission may establish panels composed of less than the full membership of the Commission for the purpose of carrying out the Commission's duties. The actions of each such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

(e) AUTHORITY OF INDIVIDUALS TO ACT FOR COMMISSION. Any member or agent of the Commission or its staff may, if authorized by the Commission, take any action which the Commission is authorized to take under this title.

SEC. 06. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS. Each member of the Commission who is a private United States citizen shall, *if requested*, be paid at a rate to the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during

which the member is engaged in the performance of the duties of the Commission.

All members of the Commission who are members of Congress shall serve without compensation in addition to that received for their services as Members of Congress.

(b) TRAVEL EXPENSES. Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.

(1) IN GENERAL. The Chairman of the Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint a staff director and such additional personnel as may be necessary to enable the Commission to perform its duties. The appointment of a staff director shall be subject to the approval of the Commission. ~~No member of the staff shall be a current officer or employee of the intelligence community.~~ *The Commission may utilize the staff currently assigned to the PFIAB, under salary and benefit arrangements currently in effect for those employees. The Chairman may also, without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service, appoint such additional personnel as may be necessary to enable the Commission to perform its duties. In addition, the Chairman may use paid and/or unpaid temporary consultants as required. To the extent*

practicable, the Chairman will endeavor to select additional staff personnel from outside the intelligence community.

(2) COMPENSATION. The Chairman of the Commission may fix the pay of ~~the staff director and other~~ personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule payment, except that, the rate of pay fixed under this paragraph for the staff director and deputy staff director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title and the rate of pay for other personnel may not exceed the maximum rate payable for grade GS-15 of the General Schedule.

(d) DETAIL OF GOVERNMENT EMPLOYEES. Upon request of the Chairman of the Commission, the head of any Federal department or agency may detail, on a non-reimbursable basis, any personnel of that department or agency to the Commission to assist it in carrying out its administrative and clerical functions. ~~except that no person shall be detailed to the staff of the Commission who is an officer or employee of an intelligence agency.~~

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES. The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of Title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

(f) ADMINISTRATIVE AND SUPPORT SERVICES. The Director of Central Intelligence shall furnish the Commission, on a non-reimbursable basis, any administrative and support services requested by the Commission consistent with this title.

SEC 07. PAYMENT OF COMMISSION EXPENSES.

Over and above funds already available to the PFIAB that can be made available for this effort, The compensation, travel expenses, per diem allowances of members and employees of the Commission, and other expenses of the Commission shall be paid out of funds available to the Director of Central Intelligence for the payment of compensation, travel allowances, and per diem allowances, respectively, of employees of the Central Intelligence Agency.

SEC 08. TERMINATION OF THE COMMISSION.

The Commission shall terminate one month after the date of the submission of the report required by section 04(c).

SEC. 09. DEFINITIONS.

For Purposes of this title-

- (1) the term, "intelligence agency" means any agency, office, or element of the intelligence community;
- (2) the term "intelligence community" shall have the same meaning as set forth in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)); and
- (3) the term "congressional intelligence committees" refers to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the

House of Representatives.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	For Samuel Berger from James Baker. Subject: Draft Press Guidance on Recusal of Jim Hamilton from PFIAB Business and SSCI Request for PFIAB Report. Record ID: 9702025. (2 pages)	03/24/1997	P5
001b. draft	Letter to Chairman, Senate Select Committee on Intelligence from Warren Rudman. (2 pages)	03/24/1997	P5
001c. draft	Press Guidance. (1 page)	03/24/1997	P5
002a. memo	For Anthony Lake from James Baker. Subject: Senator Specter's Request for the Interim IOB Report. (2 pages)	10/13/1995	P5 7024
002b. draft	Letter to Senator Specter. (1 page)	10/13/1995	P5 7025
003a. memo	For Anthony Lake and Lloyd Cutler from Alan Kreczko and Gina Genton. Subject: Roles and Missions Study. Record ID: 9407094. (2 pages)	09/02/1994	P5 7026
003b. draft	Legislation Providing for a Commission on the Roles and Missions of the United States Intelligence Community. (11 pages)	08/30/1994	P5

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary DeRosa)
OA/Box Number: 3081

FOLDER TITLE:

PFIAB/PIOB 1993 Alan Kreczko [5]

2006-0995-F

vz2584

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

October 13, 1995

7024

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ALAN KRECZKO AK

FROM: JAMES E. BAKER

SUBJECT: Senator Specter's Request for the Interim IOB Report

In response to the Administration's decision not to provide the SSCI the IOB's interim Guatemala report, Sen. Specter requested a memorandum explaining the legal basis for doing so. Ab Mikva has approved and supports the attached response because he is convinced that releasing this report will inevitably undermine the President's ability to withhold future reports and thereby undermine the future utility of the IOB to the President.

While the letter is not a legal memorandum, it is clearly grounded in the precepts of executive privilege: the document is a confidential presidential communication from an immediate adviser and the executive has made serious effort to accommodate Congress's legitimate legislative interests in the content of the document. (In the absence of an actual invocation of executive privilege by the President, however, the attached draft indicates the basis for the Administration's position without arguing the law of executive privilege.)

Tony Harrington has seen the letter and objects. He continues to believe we should give the SSCI the IOB's report and the letter should be amended with one additional sentence saying so. He agrees in principle with executive privilege, he argues the President can waive privilege over this document, without legal prejudice to his ability to assert privilege over future documents. Tony also believes this case is sui generis and easily distinguished from other IOB reviews. The IOB has never, and may never again, conduct a broad public inquiry like this. Moreover, where the issue is reporting to the Congress, the legislative interest in seeing the full document could not be stronger. Most importantly, Tony argues that the credibility of the IOB's review is at stake. Specter and Kerrey are likely to request that Justice open a criminal inquiry into CIA's failure to keep it currently and fully informed of intelligence activities and unless they see the full IOB report they are not

likely to accept the IOB's conclusion that a criminal referral is unwarranted.

We continue to favor withholding. The President has fewer and fewer sources of confidential internal advice. PFIAB/IOB reports have never been released. Disclosure of the report will undermine the President's ability to withhold future IOB reports as a political matter. Should the President not provide an IOB report in the future, Congress may more quickly reach the conclusion that he is "hiding something" rather than simply upholding an important principle. While Tony Harrington fairly identifies aspects of this report that may make it possible to argue it is not a precedent for future releases, it is always easier to explain a bright-line test -- we never provide PFIAB reports -- than to explain why we did once but will not again. Finally, we agree on the importance of Congress understanding the IOB's conclusions so that this Administration and the country can put events in Guatemala behind us. However, if that is Specter's interest, it should be satisfied through thorough briefing.

Concurrence by: Randy Beers

RECOMMENDATION

That you concur in the attached draft response to Senator Specter from Ab Mikva.

Approve _____ Disapprove _____

That we draft a memorandum to the President requesting his decision on whether to provide the Congress the IOB's interim report.

Approve _____ Disapprove _____

Attachments

Tab I Draft Response

7025

THE WHITE HOUSE
WASHINGTON

Dear Chairman Specter:

You asked the basis for the Administration's view that Intelligence Oversight Board (IOB) reports to the President should not be provided to the Congress. Your question arose in the context of a briefing of the IOB's interim report to the President on Guatemala, which addresses among other matters, CIA's compliance with congressional reporting requirements.

As a matter of principle, this administration like previous administrations, has taken the view that confidential communications from the IOB to the President should not be shared with the Congress. This view is rooted in the separation of powers between the branches and an understanding that the confidentiality of the IOB's communications to the President is essential to the operation of the Board.

The IOB advises and assists the President regarding intelligence oversight. Toward this end, the Board is located directly within the Executive Office of the President. As Congress relies on the confidential input of its staff, the President relies on the IOB to advise him of intelligence oversight issues of which he should be aware and to address any questions he or his senior advisers might ask. The President needs the most candid views, advice and recommendations that the Board can give him. This candor might not exist if Board members had to worry that their views would be evaluated by other parties. In other words, it is fundamental to the operation of the Board that its communications to the President be held in confidence and that those who report to the Board understand this to be the case.

This position is taken without regard to the individual content of this or any other IOB product, as a matter of principle. At the same time we have done our best to accommodate legislative interests by providing both an oral briefing from IOB Chairman Harrington and a written summary of the Board's conclusions.

Sincerely,

Abner J. Mikva
Counsel to the President

The Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

September 2, 1994

7026

MEMORANDUM FOR ANTHONY LAKE
LLOYD CUTLER

FROM: ALAN KRECZKO/GINA GENTON

SUBJECT: Roles and Missions Study

Les Aspin intends to raise with each of you next week a revised Administration approach to legislation directing an Executive-congressional study of roles and missions of the intelligence community.

Background

At Senator Warner's initiative, the Senate version of the Intelligence Authorization Act contains a section mandating a study of the future roles and missions of the intelligence community. The section would establish a mixed commission with some members appointed by the Congressional leadership, including four sitting Members of Congress, and some appointed by the President.

No parallel provision exists in the House Intelligence Authorization. The Administration has informed the conferees that we oppose the Senate version. We have taken the position that PFIAB should lead the study. Aspin should be given the ability to augment the PFIAB with outside consultants to ensure he has the right mix of people to address the issues, and that Congress should be consulted in the process.

The Warner proposal was adopted by the Senate in mid-August as an amendment to the Intelligence Authorization Act by a unanimous vote of 99 yeas. Given the Senate vote, the overall dissatisfaction with CIA and the intelligence community generally, the bipartisan sponsorship of the Presidential Commission (Senators DeConcini and Bob Graham were principal proponents), and the fact that this is "only a study," Aspin is concerned that the House conferees will ultimately accept the Warner proposal. Aspin is, therefore, inclined to consider a modified Warner version (PFIAB draft attached). It establishes a commission of 16 members. Twelve would be appointed by the President; the expectation is the President would appoint the 12 current PFIAB members. The remaining four members, to be appointed by congressional

leadership, must be Members of Congress drawn from Intelligence Oversight Committees. The PFIAB draft would also make CIA funds available to hire additional staff so the commission would not be wholly dependent upon intelligence community personnel.

PFIAB staff have consulted Alan on the legal issues related to a mixed Executive-congressional commission. After consulting Justice, Alan responded that such commissions were not unprecedented and did not cross the Constitution's separation of powers lines provided they had strictly recommendatory authority (The PFIAB draft respects this line.) Alan also said that it was important that any such commission be a new commission, and not compromise PFIAB's existing status as a body which exclusively advises the President. In that context, he has advised that if PFIAB documents (e.g., the Somalia study) are made available to the new commission, the privileged status of the PFIAB documents would be lost.

Whether we modify our prior approach and now accept a joint commission is the primary issue Aspin will want to discuss with each of you. For institutional reasons, we would prefer a PFIAB led study. We are particularly concerned about having sitting Members of Congress on a joint commission, and about its extremely broad charter. However, Mr. Aspin will have the best sense of what can be accomplished in conference. We think he should have the leeway to accept a modified version of Warner's proposal, perhaps with some modification of the PFIAB staff draft.

If you agree with Aspin to a joint commission, we recommend you emphasize that in legal theory and practice it should be kept separate from PFIAB, and its prior documents. This would not preclude people who are PFIAB members being selected by the President to serve on this commission, or even PFIAB staff from supporting the Commission. However, PFIAB's documents should not be shared with the commission, and the staff should carefully segregate its work in support of the new commission. In our view, PFIAB's value to the President derives from its ability to give candid assessments, which in turn depends upon full cooperation from the agencies. Such cooperation will diminish in the future if we establish the precedent of sharing PFIAB documents outside the Executive branch.

Attachment

Tab I PFIAB Mark-up of Warner Provision

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft	Legislation Establishing the Roles and Missions of the United States Intelligence Community. (12 pages)	09/13/1994	P5
002. memo	For John Podesta from James Baker. Subject Intelligence Roles and Missions Legislation. Record ID: 9407267. (1 page)	09/13/1994	P5 7027
003. memo	For John Podesta from James Baker. Subject: Application of FOIA to Intelligence Roles and Missions Commission. Record ID: 9407267. (1 page)	09/10/1994	P5
004a. memo	Duplicate of 003. (1 page)	09/10/1994	P5
004b. memo	For Anthony Lake from George Tenet and James Baker. Subject: Roles and Missions Study. Record ID: 9407267. (3 pages)	09/09/1994	P5
005a. memo	For Anthony Lake and Lloyd Cutler from Alan Kreczko and Gina Genton. Subject: Roles and Missions Study. Record ID: 9407094. (2 pages)	09/02/1994	P5
005b. draft	Legislation Establishing the Roles and Missions of the United States Intelligence Community. (11 pages)	08/30/1994	P5
006. memo	re: Proposed Legislation for PFIAB/Congressional Review. (1 page)	09/06/1994	P1/b(1)
007. draft	Legislation Establishing the Roles and Missions of the United States Intelligence Community. (11 pages)	09/09/1994	P5
008. draft	Legislation Establishing the Roles and Missions of the United States Intelligence Community. (11 pages)	09/10/1994	P5

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary DeRosa)
OA/Box Number: . 3081

FOLDER TITLE:

PFIAB/PIOB 1993 Alan Kreczko [6]

2006-0995-F

vz917

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

7027

September 13, 1994

94 SEP 13 P3:49

INFORMATION

MEMORANDUM FOR JOHN PODESTA

FROM: JAMES BAKER⁸, NSC LEGAL

SUBJECT: Intelligence Roles and Missions Legislation

On Saturday, I sent you for clearance a memorandum for Tony Lake discussing Les Aspin's compromise text regarding an Executive-congressional study of the roles and missions of the intelligence community. Given the Commission's unique mission and requirement to report to Congress and the public, the PFIAB proposal would exempt the Commission from the Federal Advisory Committee Act and FOIA.

I understand that Les Aspin has already advanced the text to the Senate and House Intelligence Committees. Therefore, if you do object to the approach taken it is important that we know soon so that we can advance the memorandum to Tony and keep the PFIAB's position consistent with the Administration's position.

Thank you.

Attachments

Tab I Note to John Podesta 9/10
Tab II Draft Memorandum for Tony Lake

KAT

via
NSC

Told Baker that
I had no problem
with legislative language
but rejected the phrasing
he wanted. He said he would
amend the memo.
JDP

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. letter

Warren Rudman to Janet Reno. (1 page)

04/30/1999

P5

7029

COLLECTION:

Clinton Presidential Records

NSC Records Management

[PFIAB]

OA/Box Number: 2728

FOLDER TITLE:

9903564

2006-0995-F

vz2587

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THE WHITE HOUSE
WASHINGTON

7029

President's
Foreign Intelligence
Advisory Board

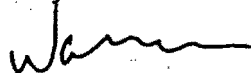
April 30, 1999

Dear General Reno:

Obviously, there are people in your Department who are playing their own games. As I'm sure you know, any information that is given to me will not be shared with, 'The White House.' Someone in your Department deserves a swift kick, but it will be impossible to find out who (or whom).

Thanks.

Sincerely



Warren B. Rudman
Chairman

The Honorable Janet Reno
Attorney General of the United States
Department of Justice
Tenth and Constitution Avenue, N.W.
Washington, DC 20530

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For Anthony Lake from George Tenet. Subject: Meeting with Gene Yeates, Executive Director of the PFIAB. Record ID: 9330085. (3 pages)	05/11/1993	P1/b(1)
002. memo	Duplicate of 001. (3 pages)	05/11/1993	P1/b(1)
003a. draft	Memorandum for Jim Woolsey from William Crowe, Jr. Subject: PFIAB Initiatives. (2 pages)	1993	P1/b(1)
003b. note	Personal [partial] (1 page)	05/06/1993	P6/b(6)
004a. note	Eugene Yeates to George Tenet. (1 page)	03/11/1993	P5 7030
004b. memo	For Stephen Neuwirth from Eugene Yeates. Subject: Prohibited Contacts with Agencies. (1 page)	03/11/1993	P5 7031
005. note	To Mack McClarty from James Thompson. [with Clinton marginalia] (1 page)	02/08/1993	P5 7032
006. letter	To the President from William Crowe, Jr. Subject: [PFIAB and PIOB] (2 pages)	02/12/1993	P1/b(1)
007. note	Duplicate of 005. (1 page)	02/08/1993	P5

COLLECTION:

Clinton Presidential Records
National Security Council
Intelligence Programs (George Tenet)
OA/Box Number: 2504

FOLDER TITLE:

PFIAB [4]

2006-0995-F

vz800

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

7030

THE WHITE HOUSE
WASHINGTON

PF189

11 March 93

To: George Tenet

Re: Prohibited Contacts with Agencies

I was puzzled by the 2 recent memos on this subject from the White House Counsel, but I could not get Steve McEwitt to return my telephone calls so I thought I'd write him a memo.

Do you have any thoughts?

J
Eure

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

7031

President's
Foreign Intelligence
Advisory Board

March 11, 1993

MEMORANDUM FOR STEPHEN R. NEUWIRTH
ASSOCIATE COUNSEL TO THE PRESIDENT

FROM: EUGENE F. YEATES *E. F. Y.*
EXECUTIVE DIRECTOR

RE: Prohibited Contacts with Agencies

I am writing with regard to your two memorandums on the above subject dated February 22 and March 9, 1993.

Each of those memos makes reference to contacts with agencies in the Intelligence Community and states in part that "These agencies should not be contacted directly without coordinating first with the Assistant for National Security Affairs".

I wish to ask for your assistance in interpreting that language as it applies to the President's Foreign Intelligence Advisory Board (PFIAB).

Operating under Executive Order 12537 dated October 28, 1985 (as amended on January 6, 1988), the PFIAB is an organization within the White House Office, Executive Office of the President charged with assessing the quality, quantity, and adequacy of intelligence collection, of analysis and estimates, of counterintelligence, and other intelligence activities. The PFIAB reports directly to the President and has the authority to continually review the performance of all agencies of the Federal government that are engaged in the collection, evaluation, or production of intelligence or the execution of intelligence policy. Further, the PFIAB has access to the full extent permitted by applicable law to all information necessary to carry out its duties in the possession of any agency of the Federal government.

To carry out its assigned functions the PFIAB has, since its formation in 1956, had unfettered and direct access to the Director of Central Intelligence, to all agencies and organizations of the Intelligence Community, and to any other executive branch agency or organization which may have information bearing on its mission. We assume that you did not intend to change the Board's authorities in either of the referenced memorandums, but we wanted to make sure. Could you please advise us?

cc: William J. Crowe, Jr., ADM USN (Ret.), Chairman, PFIAB
George J. Tenet, Special Assistant to the President for Intelligence Programs, NSC

THE WHITE HOUSE
WASHINGTON

NOT HAS SEEN

7032

Feb 8, 1993

Dear Mack -

I sent this to the President
at the Mannin in Little Rock
after the election, but I doubt he
ever saw it. I thought you
should. If I can help, follow

Mack
Post

W. J. Thompson

Mack

He should be de-briefed
on FEMA - also someone
in Rubin shop should ask
about his Infrastructure idea
Tony should advise me
about the Foreign Policy
Board - He's my
friend, an excellent
governor.

Mack

We should be de-briefed
on FEMA - also someone
in Rubin shop should ask
about his Infrastructure idea
Tony should advise me
about the Foreign Policy
Board - He's my
friend, an excellent
governor.

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft	Letter to Chairman, Senate Select Committee on Intelligence from Warren Rudman. Record ID: 0002346. (1 page)	04/14/2000	P5 7034
002. memo	For Samuel Berger from James Baker. Subject: SSCI Request for PFIAB Report on Deutch. Record ID: 0002346. [with Berger marginalia] (3 pages)	04/05/2000	P5 7035

COLLECTION:

Clinton Presidential Records
NSC Records Management
[PFIAB]
OA/Box Number: 4085

FOLDER TITLE:

0002346

2006-0995-F

vz2588.

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

DRAFT

1310 pm

7034

April 14, 2000

Dear Chairman Shelby:

Thank you for your letter of March 28, 2000 regarding the PFIAB's review of the Deutch computer security matter. I regret that this reply is somewhat tardy, but I believe we are now in a much better position to clarify the issues involved.

As you know, DDCI John Gordon on February 8, 2000 requested the PFIAB to review and comment on the findings and recommendations of a report by a CIA accountability board regarding the professional conduct and accountability of CIA officials involved in the investigation of alleged mishandling of classified information by former DCI John Deutch. Because the PFIAB is an advisory body to the President, I informed the President of our intent to respond to General Gordon's request.

The PFIAB sub-panel that I selected to conduct this review is nearing completion of its report. Shortly, we shall be submitting it to the President and the DDCI for their consideration and possible action. Throughout our deliberations, the sub-panel has been very mindful that because we have no statutory authority to adjudicate accountability or render discipline within the Executive Branch, we shall be offering our findings and recommendations to the President and DDCI strictly within our traditional *advisory* role. It remains for the President and the DDCI, of course, to determine whether and how our advice will be implemented. In addition, there are several privacy issues that come into play with regard to releasing our report beyond the intentionally restricted list of White House and CIA recipients. In sum, the accountability aspect of the CIA's investigation into the Deutch matter remains very much *a work in progress*.

I fully appreciate your interest in and concern about this important matter. However, at this point I regret that I am not in a position to respond immediately to your request. Once the report is complete and appropriate actions taken, I will be better situated to respond to your request and accommodate your interest in appropriate fashion.

Best regards

Warren B. Rudman
Chairman

Honorable Richard C. Shelby
Chairman, Select Committee on Intelligence
United States Senate
Washington, DC 20510-6475

Cc: Honorable Porter J. Goss, Chairman
Permanent Select Committee on Intelligence

DRAFT

PHOTOCOPY

Rudman

2346

① Send POTUS, NSA,
XDCI;

April 5, 2000

7035

② ~~keep~~ wait until
ACTION Brian decides
what to do

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM:

JAMES BAKER

SUBJECT:

SSCI Request for PFIAB Brief on Deutch

SUBJECT: SSCI Request for PFIAB Brief on Deutch

③ write letter to Hill - not in position to respond at this time; after DDCI acts, cooperate w/ Hill in Warren Rudman has asked for your views on how he should respond to a SSCI request to brief the "results of the PFIAB's Deutch review." I think you have identified the two available options

appropriate
Asher

1. Say no. As you state, it is important that we maintain the PFIAB's position as the President's eyes and ears on intelligence oversight.
- To the extent the PFIAB is perceived by executive employees as a conduit to the Congress, employees may be chilled from raising concerns to the PFIAB, or chilled in the manner in which they do so.
 - Further, the President and his immediate senior advisors may be less likely to ask the PFIAB questions, if they know that at the end of each such question will come a Congressional fight over access to internal discussions.
 - Third, for the same reasons we have identified in the Principals Committee context, the PFIAB itself may consciously or subconsciously modify the manner in which it presents issues to the President or his senior advisers if they believe they will then need to defend those same judgments on the Hill.
 - Finally, we are wary of the PFIAB being enlisted into one side or another of a charged Congressional debate, which could undermine the PFIAB's longstanding tradition of non-partisan objectivity.

What this is not about is Congressional notification. There are ample mechanisms, statutory and executive, to ensure the Congress is informed of intelligence oversight issues, which

exist solely independent of the PFIAB. Moreover, the present case is in many ways the least compelling for a Congressional briefing because the SSCI has had access and can have access to all the same witnesses as the PFIAB. Contrast this with the Bosnia report, where the IOB had a unique understanding and access regarding a matter of legislative oversight concern.

A decision not to brief would ultimately depend on the President's willingness to assert privilege. As a matter of law, the President would have a compelling case to do so. Under longstanding Justice guidance regarding the separation of powers, senior advisers to the President cannot be compelled to appear before the Congress and based on prior informal discussions regarding the IOB, the Chairman of the PFIAB would be considered such an advisor.

2. Offer a briefing to the Chairman and Ranking Member only.

The existence of an appropriate privilege does not necessitate its use, although as a practical matter it may be harder to assert privilege later over a comparable scenario if we agree to a briefing. As you note, this case is qualitatively different from some of the past cases in which we have been prepared to assert privilege because the question presented to the PFIAB came from the DDCI, not the President. There are two advantages of such a position.

- A briefing will interject the temperate and objective voice of the PFIAB into a charged issue.
- It avoids a Congressional confrontation. However, I believe this is a distinction that will ultimately be lost on those persons who might be chilled in their dealings with the PFIAB as described above.

3. Defer Decision. You should also know that aside from Sen. Rudman's request for input from the White House, there is no immediate need for the PFIAB to respond to the SSCI. The PFIAB's report will not be concluded for two weeks and PFIAB has already told the SSCI Sen. Rudman would not be able to brief until May, if he were to do so. The advantage of this position is that it allows decisions regarding the exercise of the President's privilege to be made with specific knowledge of the underlying documents.

Concurrence by: Mary McCarthy and Mark Talvarides

RECOMMENDATION

That you advise Sen. Rudman that based on the arguments presented in Section 1 you believe he should decline the SSCI's invitation to brief.

Approve _____ Disapprove _____

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	For Samuel Berger from James Baker. Subject: SSCI's Request for PFIAB Deutch Report. 0003228. (1 page)	06/13/2000	P5
001b. memo	For the President from Samuel Berger and Beth Nolan. Subject: SSCI Request for the PFIAB Deutch Report. Record ID: 0003228. (3 pages)	06/16/2000	P5
001c. draft	Memo for Samuel Berger from James Baker. Subject: Response to SSCI's Request for the PFIAB Report. (1 page)	05/24/2000	P5
001d. draft	Duplicate of 001b. (4 pages)	n.d.	P5
001e. draft	Duplicate of 001b. (3 pages)	n.d.	P5
001f. draft	Duplicate of 001b. (3 pages)	n.d.	P5
001g. draft	Duplicate of 001b. (4 pages)	n.d.	P5
002. draft	Memorandum for the President from Frank Fountain. Subject: Kennedy Assassination Records--Presidential Confidentiality. (5 pages)	09/1998	P1/b(1); P5
003a. memo	For Samuel Berger from James Baker. Subject: SSCI Request for PFIAB Brief on Deutch. Record ID: 0002346. (3 pages)	04/05/2000	P5 7036
003b. memo	For Samuel Berger and Beth Nolan from Warren Rudman. Subject: Request from Senate Select Committee on Intelligence (SSCI) for PFIAB Briefing. [with Berger marginalia] (1 page)	03/31/2000	P5 7037
004a. memo	Duplicate of 001a. (1 page)	06/13/2000	P5

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary DeRosa)
OA/Box Number: 3081

FOLDER TITLE:

PFIAB/PIOB 1993 Alan Kreczko [1]

2006-0995-F

vz806

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

April 5, 2000

7036

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM:

JAMES BAKER ^{JB}

SUBJECT:

SSCI Request for PFIAB Brief on Deutch

Warren Rudman has asked for your views on how he should respond to a SSCI request to brief the "results of the PFIAB's Deutch review." I think you have identified the two available options.

1. Say no. As you state, it is important that we maintain the PFIAB's position as the President's eyes and ears on intelligence oversight.
- To the extent the PFIAB is perceived by executive employees as a conduit to the Congress, employees may be chilled from raising concerns to the PFIAB, or chilled in the manner in which they do so.
- Further, the President and his immediate senior advisors may be less likely to ask the PFIAB questions, if they know that at the end of each such question will come a Congressional fight over access to internal discussions.
- Third, for the same reasons we have identified in the Principals Committee context, the PFIAB itself may consciously or subconsciously modify the manner in which it presents issues to the President or his senior advisers if they believe they will then need to defend those same judgments on the Hill.
- Finally, we are wary of the PFIAB being enlisted into one side or another of a charged Congressional debate, which could undermine the PFIAB's longstanding tradition of non-partisan objectivity.

What this is not about is Congressional notification. There are ample mechanisms, statutory and executive, to ensure the Congress is informed of intelligence oversight issues, which

exist solely independent of the PFIAB. Moreover, the present case is in many ways the least compelling for a Congressional briefing because the SSCI has had access and can have access to all the same witnesses as the PFIAB. Contrast this with the Bosnia report, where the IOB had a unique understanding and access regarding a matter of legislative oversight concern.

A decision not to brief would ultimately depend on the President's willingness to assert privilege. As a matter of law, the President would have a compelling case to do so. Under longstanding Justice guidance regarding the separation of powers, senior advisers to the President cannot be compelled to appear before the Congress and based on prior informal discussions regarding the IOB, the Chairman of the PFIAB would be considered such an advisor.

2. Offer a briefing to the Chairman and Ranking Member only. The existence of an appropriate privilege does not necessitate its use, although as a practical matter it may be harder to assert privilege later over a comparable scenario if we agree to a briefing. As you note, this case is qualitatively different from some of the past cases in which we have been prepared to assert privilege because the question presented to the PFIAB came from the DDCI, not the President. There are two advantages of such a position.

- A briefing will interject the temperate and objective voice of the PFIAB into a charged issue.
- It avoids a Congressional confrontation. However, I believe this is a distinction that will ultimately be lost on those persons who might be chilled in their dealings with the PFIAB as described above.

3. Defer Decision. You should also know that aside from Sen. Rudman's request for input from the White House, there is no immediate need for the PFIAB to respond to the SSCI. The PFIAB's report will not be concluded for two weeks and PFIAB has already told the SSCI Sen. Rudman would not be able to brief until May, if he were to do so. The advantage of this position is that it allows decisions regarding the exercise of the President's privilege to be made with specific knowledge of the underlying documents.

Concurrence by: Mary McCarthy and Mark Talvarides

RECOMMENDATION

That you advise Sen. Rudman that based on the arguments presented in Section 1 you believe he should decline the SSCI's invitation to brief.

Approve _____ Disapprove _____

7037

THE WHITE HOUSE
WASHINGTON

President's
Foreign Intelligence
Advisory Board

March 31, 2000

MEMORANDUM FOR: SAMUEL R. BERGER
ASSISTANT TO THE PRESIDENT
FOR NATIONAL SECURITY AFFAIRS

BETH NOLAN
COUNSEL TO THE PRESIDENT

FROM: WARREN B. RUDMAN
CHAIRMAN

SUBJECT: REQUEST FROM SENATE SELECT COMMITTEE ON CIA
INTELLIGENCE (SSCI) FOR PFIAB BRIEFING *requested PFIAB*

Attached is a letter we received recently from the SSCI requesting a briefing on this Board's forthcoming report on CIA management accountability re: the Deutch computer security matter. *what do you think?*

You will recall that in early February of this year DDCI John Gordon requested the PFIAB to review and make recommendations on a proposed report by a CIA panel convened to adjudicate management performance accountability in the computer security case of former DCI John Deutch. The PFIAB is winding up its deliberations on this matter and we expect to submit our report to the President and DDCI Gordon soon. *what do you think?*

I am requesting guidance regarding the SSCI request. Traditionally, PFIAB reports always have been treated with great care. Given our special and confidential advisory relationship with the President, the Board as a general policy has steadfastly declined to share its reports with Congress. To our knowledge, on only one occasion has PFIAB actually released a report to Congress: our review last year of security and counterintelligence issues at the Energy Department, which the President opted to make public in this initial tasking to us. On rare occasion, PFIAB has, with the President's concurrence, agreed to brief members of Congress on an issue judged to be extremely special, such as the Intelligence Oversight Board's report on CIA activities in Guatemala.

We already have informed the SSCI staff director that we will not brief this matter to his Committee unless and until the White House decides that the nature of the Deutch matter warrants it. In light of the high degree of interest and public reporting in this matter, the Chairman feels that a decent compromise would allow the Chairman to give the Committee a briefing at a closed session without providing a copy of the report. There is precedent for this. In any case, our report will not be completed for another two weeks.

I would be pleased to discuss this matter with you in more detail.

CLINTON LIBRARY PHOTOCOPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. talking points	Points to be Made for Telephone Call with Senator Rudman. [with Clinton marginalia] Record ID: 9901924. (1 page)	03/18/1999	P5
002. draft	Points to be Made for Telephone Call with Senator Rudman. Record ID: 9901924. (1 page)	03/1999	P5
003. list	Mailing List. [partial] [CIA Act] (1 page)	06/09/1998	P3/b(3)
004. resume	Randy Deitering Bio. (1 page)	06/1998	P6/b(6)
005. memo	For Samuel Berger and Charles Ruff from Warren Rudman and Anthony Harrington. Subject: Release of PFIAB Report to Congressional Commission. (2 pages)	06/19/1998	P5 7038
006. memo	Duplicate of 005. (2 pages)	06/19/1998	P5 Dup
007. list	PFIAB Staff, 1989-Present. [CIA Act] [National Security Act] [10 U.S.C. §424] (3 pages)	04/10/1998	P3/b(3)

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National Security Council
Legal Advisor (Mary DeRosa)
OA/Box Number: 3081

FOLDER TITLE:

PFIAB/PIOB 1993 Alan Kreczko [3]

2006-0995-F

vz916

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

7038

President's
Foreign Intelligence
Advisory Board

June 19, 1998

MEMORANDUM FOR: SAMUEL R. BERGER
ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS

CHARLES RUFF
COUNSEL TO THE PRESIDENT

FROM: WARREN B. RUDMAN *WR*
CHAIRMAN

ANTHONY S. HARRINGTON *ast*
VICE CHAIRMAN

SUBJECT: RELEASE OF PFIAB REPORT TO CONGRESSIONAL
COMMISSION

In his capacity as Chairman of the recently established "Weapons of Mass Destruction Commission" (formally, the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction), John Deutch has requested that the PFIAB release to his Commission our November 1996 report to the President regarding US intelligence performance on the international BW/CW threat. Deutch would like all of his Commissioners (and presumably the staff) to have the opportunity to read the report in its entirety.

We declined Deutch's request to release a copy of the document to his Commission, citing separation of powers concerns and the longstanding PFIAB policy against such releases. Rather, we offered to have the report briefed *verbally, but comprehensively*, to the Commission by Dr. Sidney Drell, the principal PFIAB Member involved in its preparation. We are happy to fully inform the Commission regarding the PFIAB's work in this area, but see no need to break with well-founded precedent by releasing to the Commission our report to the President. Deutch did not find our solution acceptable, reiterating that he wants it available for reading by all of his Commissioners. He also indicated that he may appeal our decision to the President.

As you will recall, over the last several years we have received requests from Congressional committees, other bodies and the press for release of PFIAB and IOB reports and similarly have declined; but, we have, as here proposed, voluntarily briefed Congressional committees on the substance and recommendations in some reports. We have successfully resisted threatened subpoenas and contempt citations. The Weapons of Mass Destruction Commission is a Congressionally-mandated body (created by the 1997 Intelligence Authorization Act), whose Vice Chairman is Senator Specter. Half of the membership was appointed by Congress; the other half by the President. The Act stipulates that the Commission will report its findings, conclusions and recommendations to Congress.

We strongly believe that releasing our BW/CW report to the Commission would directly contradict the PFIAB's long standing policy against releasing its reports to Congress and Congressional entities. Historically, no White House has ever released a PFIAB report to the Congress, and the Congress has accepted this practice. We strongly believe that doing so in this case would establish a precedent that would be difficult to overcome in dealing with any future Congressional requests for PFIAB and IOB communications to the President. We stand by our offer, which we believe is reasonable and has met Congressional needs in the past, to have the report briefed verbally. Further insistence by Chairman Deutch on access to our report, we believe, ignores the fact that nothing of substance will be denied Congress and needlessly disregards the important underlying principles involved. If there is an appeal from Deutch, it should be rejected.

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Mailing List. [partial] [CIA Act] (1 page)	11/19/1997	P3/b(3)
002. list	Duplicate of 001. (1 page)	11/19/1997	P3/b(3)
003. list	Duplicate of 001. (1 page)	11/19/1997	P3/b(3)
004. note	To James Baker from Frank Fountain. Subject: IOB and White House Contacts Policy. (1 page)	02/09/1998	P5 7039
005. list	Duplicate of 001. (1 page)	11/19/1997	P3/b(3)
006. memo	For Anthony Harrington from Abner Mikva. Subject: White House Policy on Contacts with Third Agencies. (3 pages)	12/02/1994	P5 7040
007. memo	For Lloyd Cutler from Janet Reno. Subject: White House Contacts. (2 pages)	09/29/1994	P5 7041
008. memo	For Frank Fountain from James Baker. Subject: White House Contacts. (1 page)	02/23/1998	P5 7200
009. email	To Joan Hunerwadel from WAVES Operations Center. [partial] (1 page)	12/23/1997	P6/b(6), b(7)(C), b(7)(E)
010a. memo	For Samuel Berger from James Baker. Subject: Draft Press Guidance on Recusal of Jim Hamilton from PFIAB Business and SSCI Request for PFIAB Report. [with Berger maginalia] Record ID: 9702025 (2 pages)	03/24/1997	P5
010b. draft	Letter to Chairman, Senate Select Committee on Intelligence from Warren Rudman. (2 pages)	03/24/1997	P5

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National Security Council
Legal Advisor (Mary DeRosa)
OA/Box Number: 3081

FOLDER TITLE:

PFIAB/PIOB 1993 Alan Kreczko [4]

2006-0995-F

vz808

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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010c. draft	Press Guidance. (1 page)	03/24/1997	P5
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National Security Council
Legal Advisor (Mary DeRosa)
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FOLDER TITLE:

PFIAB/PIOB 1993 Alan Kreczko [4]

2006-0995-F

vz808

RESTRICTION CODES

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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

February 9, 1998

File

7039

Jamie,

Thanks for the return call Friday night. Sorry I wasn't here to receive it - I had to leave at about 8:45 to rescue my car from the parking garage. In an effort to be a bit more efficient and to avoid phone tag, I've decided to send you this note (you might consider it a kind of "virtual email"). Here are the other two points as well as an offer of assistance:

1. Regarding the USA Today reporter's inquiry about intelligence reorganization at DoE, Tony Harrington asked me to let you know (again, I think) that the IOB is in the midst of a review of intelligence oversight practices and procedures, including those at DoE. Agency reps will be meeting with the IOB this Wednesday to discuss their replies to the Board's November 1997 letter (a copy of which I've attached). DoE is the only agency that has not yet replied, but is scheduled to attend. Within the context of this meeting and related discussion, the Board will probably inquire into the status of this reorganization, unless you think it should not. In addition, the Board would probably be willing to comment on the reorganization in light of its review and oversight responsibilities, if you think such might be helpful and appropriate. Please let me know what you think.

2. Senator Rudman and Tony are interested in obtaining an exception to the White House Contacts policy so that the PFIAB may contact DoJ concerning policy matters related to PFIAB responsibilities and reviews without first notifying Counsel's office on a case-by-case basis. This exception would be along the lines of the exception granted to the IOB concerning contacts with IG's and GC. For convenience, I've attached a copy of that memorandum. Please let me know what you think.

3. With regard to the efforts you've agreed to undertake concerning personnel issues discussed with Glyn Davies last week, I'd be happy to assist in doing background research or in any other way you might think appropriate.

Thanks,

Frank Fountain
6-2353

Attachments as described

THE WHITE HOUSE
WASHINGTON

December 2, 1994

MEMORANDUM FOR ANTHONY S. HARRINGTON
CHAIRMAN
INTELLIGENCE OVERSIGHT BOARDFROM: ABNER J. MIKVA *ajm*
COUNSEL TO THE PRESIDENT

SUBJECT: White House Policy on Contacts with Third Agencies

You asked how the White House policy on "Contacts with Agencies and Departments Regarding Investigations, Enforcement Actions, and Adjudications" (Tab 1) applies to the work of the Intelligence Oversight Board (IOB) and how the policy relates to Executive Order 12863 pertaining to the IOB. Among other things, the White House policy provides that "contact with any Executive Branch department or agency concerning any investigation, enforcement action or adjudication -- whether civil or criminal - should be undertaken only by the Counsel's Office."

This memorandum memorializes our discussion of November 18 regarding IOB contacts with agency general counsel and inspectors general, referrals to the Department of Justice, and contact concerning pending law enforcement matters. It applies to the IOB and the PFIAB. This memorandum does not affect the IOB's substantive reporting relationship with the President under the Executive Order or with the Assistant to the President for National Security Affairs.

Contacts with Agency General Counsel and Inspectors General: As part of its charge from the President, the IOB reviews the practices and procedures of the Inspectors General and General Counsel of the Intelligence Community for discovering and reporting intelligence activities that may be unlawful or contrary to Executive order or Presidential directive. The Board also receives quarterly reports, and when necessary ad hoc reports, from agencies concerning intelligence activities that may be unlawful or contrary to Executive order or directive. The IOB reviews these reports, and where appropriate, makes further inquiries, with a view toward determining whether subsequent action is warranted such as an IOB meeting, an informal report to the President's national security advisors, a report to the President, or referral to the Department of Justice. The heads of departments and agencies of the Intelligence Community are tasked, to the extent permitted by law, to provide the IOB with

all information that the IOB deems necessary to carry out its responsibilities.

With respect to this practice, this memorandum serves as a general exception from the White House policy on contacts with third agencies. In addition, contacts from third parties need not be reported to the Counsel's office unless it is your intent to refer the matter to Department of Justice.

Referrals to the Department of Justice: Executive Order 12863 requires the IOB to "forward to the Attorney General reports received concerning intelligence activities that the IOB believes may be unlawful or contrary to Executive Order or Presidential directive." Consistent with both the Executive order and the White House policy on contacts, the White House Counsel should be advised at the time a referral is made to the Justice Department. This will ensure that the Counsel and Chairman of the IOB are both kept currently informed of ongoing law enforcement matters and will avoid the possibility that White House contacts could in some manner disrupt an investigation. In addition, in accordance with the Attorney General's guidelines on communications with the White House, initial contacts should be made directly to the Attorney General, Deputy Attorney General or Associate Attorney General.

Communications with the Department of Justice Concerning Pending Civil or Criminal Law Enforcement Matters: Subsequent communications between the White House (including the IOB) and the Department of Justice concerning pending law enforcement matters, except those communications initiated by the Department of Justice/FBI necessary to the conduct of an investigation, should only occur with the concurrence of the White House Counsel. This is to avoid even the possible appearance, or misperception, that the White House is seeking to set or define Justice priorities and procedures with respect to particular matters, unless it is the President's intent, pursuant to his constitutional responsibilities, that such direction be provided. As a matter of practice, the White House Counsel and Department of Justice will, where appropriate, establish specific procedures for direct communications between White House and Justice entities concerning specific matters. Similar procedures would be established for the IOB when called for.

As with the White House staff generally, these procedures are intended to regularize and facilitate appropriate communications between the White House and investigative and law enforcement agencies. If at any time, you have a question regarding these procedures, the White House policy on contacts, or their relationship to the IOB's mission please let me know and I will immediately make time available. I also urge the IOB to continue

to work with the Legal Adviser to the National Security Council who works closely with me on intelligence matters and is charged with keeping me informed of any issues you may raise with his office.

The President and the Attorney General, I know, value the IOB's insights and the special role it plays in Executive branch oversight of intelligence activities. I look forward to continuing to work with you in making the IOB an effective oversight mechanism.

Attachments:

- Tab 1 White House Contacts with Agencies and Departments
 Regarding Investigations, Enforcement Actions, and
 Adjudications, November 10, 1994.
- Tab 2 Letter from the Attorney General to Special
 Counsel to the President, Lloyd Cutler, September
 29, 1994.



Office of the Attorney General
Washington, D. C. 20530

7041

September 29, 1994

Lloyd N. Cutler, Esq.
Special Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Cutler:

You have asked for my views on the subject of communications between the Department of Justice and the White House concerning matters pending in the Department. These are the principles and procedures I think we should follow.

In order to ensure the President's ability to perform his constitutional obligation to "take care that the laws be faithfully executed," the Justice Department will advise the White House concerning pending civil or criminal law enforcement matters, where important for the performance of the President's duties and where appropriate from a law enforcement perspective.

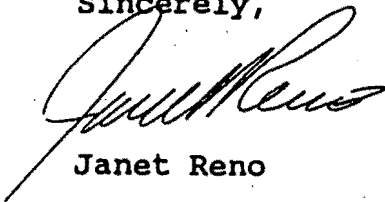
Consistent with this principle, since May 1993 the Department has followed procedural rules governing communications with the White House concerning pending Department investigations or criminal or civil cases. Initial communications between the White House and the Justice Department regarding any pending Department investigation or criminal or civil case should involve only the White House Counsel or Deputy Counsel (or the President or Vice President), and the Attorney General or Deputy or Associate Attorney General. If continuing contact is required on a particular matter, the White House Counsel's Office and the senior Department official with whom it is dealing design and monitor that continuing contact.

This process does not apply to communications regarding matters of policy, appointments, legislation, budgets, public relations and other similar matters, as to which the White House staff should deal with whomever is appropriate in the Department.

In addition, from time to time the Department establishes specific procedures for communications between particular entities. For example, the White House Counsel's Office deals directly with the Office of Legal Counsel on matters in which it is seeking the opinion of the Department, and directly with the Office of the Solicitor General regarding the status of Supreme

Court cases. Particularized procedures have also been applied to communications with the Pardon Attorney and the National Security Council.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno", written in dark ink.

Janet Reno

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20504

February 23, 1998

7200

MEMORANDUM FOR FRANK FOUNTAIN

FROM: JAMES E. BAKER ^{JB}

SUBJECT: White House Contacts

REFERENCE: Your Memorandum dated February 9, 1998

I have discussed your question regarding the applicability of the White House Contacts Policy, as restated on January 16, 1996, with the Counsel to the President. He has confirmed that, consistent with Judge Mikva's earlier guidance, the PFIAB and IOB need not consult with the Office of White House Counsel or NSC/Legal prior to contacting the Department of Justice on policy matters.

COPY