

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. memo	memorandum for the President from Jack Quinn. Subject: Executive Privilege and the IOB Report. (8 pages)	04/23/1996	P5	706 S
002a. note	Note from Todd to Leon. [Typed cover note concerning Executive Privilege and the IOB report] (1 page)	04/19/1996	P5	706 6
002b. memo	Memorandum for the President from Jack Quinn. Subject: Executive Privilege and the IOB Report. (8 pages)	n.d.	P5	
003. memo	[Draft with handwritten notes] memorandum for the President from Jack Quinn. Subject: Executive Privilege and the IOB Report. (1 page)	n.d.	P5	
004a. note	Note from Phil Caplan to Leon. [Typed cover note concerning Intelligence Oversight Board report] (1 page)	04/18/1996	P5	
004b. memo	Memorandum for the President from Jack Quinn. Subject: Executive Privilege and the IOB Report. (7 pages)	04/18/1996	P5	

COLLECTION:

Clinton Presidential Records
WHORM - Subject Files - CF
FE002-01
OA/Box Number: CF 1683

FOLDER TITLE:

162437SS

2006-0996-F

bm752

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]

THE PRESIDENT HAS SEEN

4/23/96

Yln. President,

THE WHITE HOUSE

WASHINGTON

For your review
and approval.

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM:

JACK QUINN

SUBJECT:

Executive Privilege and the IOB Report

Purpose

To identify considerations in determining whether (1) to accede, at this time, to Congressional demands that we turn over the IOB's report on shipments of Iranian arms to Bosnia, or (2) instead, to seek alternative ways to meet Congress's informational needs consistent with the Executive Branch's interest in confidentiality in these circumstances.

Background

In responding to Senator Specter's claim that the IOB and Administration are "stonewalling" the Senate Intelligence Committee's investigation, it is important to keep in mind that we have provided the substance of the report orally to Specter. Tony Harrington has briefed the SSCI and talked with members of the Committee individually. (In fact, he offered to brief the intelligence committees as soon as we were aware of the story on March 28.) PFIAB member Warren Rudman has read the report and briefed Senator Dole and others on it. Additionally, we are now actively responding to document requests. And, various officials, such as Peter Tarnoff, either have briefed or will soon testify on the Hill.

✓ Former Senator Rudman, who has gone on record stating that "no covert action has occurred," recommends that we not release the report. And, it is not at all clear that Specter has the support of his committee on seeking disclosure of the report. Senator Kerrey stated today that "the IOB is wholly within the Executive Office of the President, so there may be legitimate Executive Privilege here." (He went on to say, however, that "if the report is off limits to Congress" we should stop citing it as vindication of our actions.) In addition, Dole's marching orders to his committee chairmen yesterday, while stating that the IOB and White House had not cooperated, did not pick up Specter's specific theme of seeking access to the report. (Dole has, however, asked the Foreign Relations Committee to look at Administration policy and

cc: Vice President
Chief of Staff

PHOTOCOPY
WJC HANDWRITING

the SSCI to look at whether Administration officials engaged in covert action.)

In his hill briefings, Tony Harrington discussed fully the IOB's review of whether U.S. officials went beyond a policy of "no instructions" and became actively involved in arms shipments to Bosnia. He went line-by-line through his report, describing the specific events that caused concern in the first instance, as well as other events of which the Board became aware. He stated the Board's view that our policy as implemented created a sense of ambiguity, but he also made clear that, in his view and that of the White House Counsel, the officials involved did not cross the line into covert action.

What Tony did not do was share with the Members of Congress the words, tone and manner in which these opinions were conveyed to you in the Board's six-page report (or orally to the Secretary of State, the DCI, Anthony Lake and the White House Counsel). And, with the exception of the principal players, Tony declined to identify persons interviewed by the Board, including, for example, a junior officer whose statements in the report contradicted those of a superior. On my instruction, Harrington informed Specter, as he had previously done in writing, that he declines to turn over to the Committee the IOB's report because it is a confidential communication to the President and provision of the report would hamper the effectiveness of the Board as one of the mechanisms by which you oversee intelligence activities.

a. Executive Privilege

The doctrine of executive privilege is an essential adjunct of the constitutional separation of powers. It protects confidential Executive Branch communications and your ability to receive candid advice and accurate information from your senior advisers. It also protects from disclosure your private conversations with other world leaders. It can be invoked before Congress or in judicial proceedings.

All Presidents have considered executive privilege important to protect. Thus, even in the context of the politically charged Army-McCarthy hearings, President Eisenhower barred employees from disclosing confidential communications. (He is reported to have said that anyone who testified to Congress about advice given to him "would not have a job" any longer.)

However, the doctrine of executive privilege is not absolute (except as to state secrets). Rather, it requires that the Executive Branch's interest in confidentiality be balanced against

cc: Vice President
Chief of Staff

Congress' legitimate need for information for legislative purposes.

It is not uncommon for this office to object to disclosure of sensitive communications to the Congress. Indeed, it has happened several times in the six months since I became your Counsel. But, in almost all instances, after interposing such an objection, we are able to reach an accommodation which respects the interests of both Congress and the Executive Branch.

The IOB report presents a case of core executive privilege -- an internal White House communication from senior White House advisers to you. In the past, we have successfully justified withholding such IOB materials from the Congress on these grounds (as set forth in the attached letter from Judge Mikva to Senator Specter in October, 1995 concerning an interim Guatemala report):

[Just] "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 be jeopardized 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."

Put another way, you need to be sure that your senior advisers always give you their best advice, not the advice they think will look best to a congressional committee. And, if the candor of IOB reports is diminished, then eventually you will find the IOB a less useful tool than it has been. That result is not in the public interest.

b. The IOB Report and the Broader Context

The advantage of giving up the IOB report is straightforward and immediate. It would address the allegation of a cover-up. It should also help end the debate over whether there was any illegal activity. It will not, however, put a complete end to the inquiry into the issue of legality, nor will it end congressional inquiries into the policy decision.

The disadvantage of turning over the report is the deleterious impact disclosure will have on Presidential prerogatives. Admittedly, this is a long-term consideration that is difficult to quantify, but it is not an academic point. Please bear carefully in mind that if Congress sees that we are unwilling to invoke the privilege in appropriate cases that involve providing advice to you -- as in this case -- then it surely will be encouraged to

accelerate its requests for all manner of materials that should be protected.

At another level, the damage may be more immediate. We are currently facing several congressional requests that cover documents at the core of executive privilege -- your communications with Yeltsin over Russian chicken imports; NSC deliberations on Haiti human rights violations; the advice you received from Bob Rubin on the debt ceiling. How this report is handled also will directly affect the disposition of the IOB's pending Guatemala report. Again, our ability to achieve accommodations with Congress on these requests by providing information in a way that also protects core Presidential communications will certainly be affected by how we handle this request.

I do not seek to exaggerate the consequences of disclosing the IOB report. Nor do I suggest we can never compromise in significant measure on these issues. We went very far, for example, in responding to congressional requests for Mexico peso documents -- including allowing Members to read memos to you from senior advisers. I do want, however, to emphasize that, to the extent we treat exceptional cases such as Mexico peso (where Congress actually passed, and you signed, a law requiring the documents) as our standard, we will seriously erode the privilege.

Options

1. Hold firm on not providing the document, but be willing to provide a summary in relatively short order if that becomes helpful.

Pro:

- Protects your internal deliberative process. Helps draw line at time when Congress is seeking to encroach further into your internal deliberations on such other matters as Mexico, Haiti, and Russian poultry.
- Preserves efficacy of Executive Branch oversight mechanism. While prior IOB's have been largely dormant, your IOB has proven an important mechanism to review matters of concern.
- Providing a summary is supported by precedent. A summary was the basis of accommodation regarding IOB's interim Guatemala report, which the SSCI accepted.
- Is a serious effort at accommodation, particularly given the fact that no request has yet been made for a summary.
- Allows Members a basis on which to cross-check their own review in an area replete with hearsay, innuendo and rumor.

- A line must be drawn. If the IOB's review is provided, we anticipate the Congress will ask for interview notes and internal work product. The report offers a clear line of demarcation.

Con:

- Might fuel continued allegations that the Administration is "stonewalling" Congress and covering something up.
- Congress has already been briefed fully on the contents of the report; a summary is not likely to satisfy if Specter is determined to use the "stonewall" line for political effect.
- Might raise questions of what we left out of the summary.

2(a) Provide a redacted version of the report to the Committees.

Pro:

- Lessens "stonewalling" argument.
- Might help convince Specter and Kerrey that IOB review was thorough and frank and supports White House conclusion that no actions constituting U.S. covert action occurred.

Con:

- Will make it harder to draw, and hold, the line on your deliberative process in other settings, e.g., requests for documents relating to Bob Rubin's advice on Mexico, your conversations with Boris Yeltsin on poultry. In this setting, Congress will likely push on to next hurdle -- e.g., testimony from senior advisers within the White House.
- Could chill the IOB oversight mechanism. IOB may be less inclined to speak candidly in their reports and specify the basis on which they reach conclusions. Senior advisers may be less inclined to refer issues of concern to the Board.
- Establishes precedent for giving Congress access to IOB reports. (Moves IOB in direction of becoming a "White House IG," rather than Presidential advisory body.)
- Not likely to satisfy the Congress in any event. Your interest in confidentiality would be greatly compromised and the investigation will continue anyway.
- Allows Specter and others to continue to allege "cover-up." (Redacted document would offer a visual prop.)

2(b) Allow Chairman and Vice Chairman of SSCI (and if necessary their House counterparts, and perhaps, the Leadership and others if necessary) to read a redacted copy of the Report

Pro:

- Lessens "stonewalling" argument.
- Might help convince Specter and Kerrey that IOB review was thorough and frank and supports White House conclusion that no actions constituting U.S. covert action occurred.
- Presents less harmful precedent for other IOB reports than providing a copy or redacted copy to the Congress would.

Con:

- Congress would still have access to the report making it harder to draw and hold the line on your deliberative process in other settings, e.g., requests for documents relating to Bob Rubin's advice on Mexico, your conversations with Boris Yeltsin on poultry. In this setting, Congress will likely push on to next hurdle -- e.g., testimony from senior advisers within the White House.
- Could chill the IOB oversight mechanism. IOB may be less inclined to speak candidly in their reports and specify the basis on which they reach conclusions. Senior advisors may be less inclined to refer issues of concern to the Board.
- Establishes precedent for giving Congress access to IOB reports. (Moves IOB in direction of becoming a "White House IG," rather than Presidential advisory body.)
- Not likely to satisfy the Congress in any event. The investigation will likely continue anyway and your interest in confidentiality would be compromised.

3. Allow only Specter and Kerrey to read the IOB report.

Pro:

- Removes "stonewalling" argument.
- Might help convince Specter and Kerrey that IOB review was thorough and frank and supports White House conclusion that no actions constituting U.S. covert action occurred.

Con:

- Highly unlikely access could be limited to Specter and Kerrey. At minimum, would open door to House intelligence committee, congressional leadership, and others (such as Helms, since Dole has asked the SFRC to review policy).
- Gives Specter more influence over the characterization of the report.
- Will make it harder to draw and hold the line on your deliberative process in other settings, e.g., requests for documents relating to Bob Rubin's advice on Mexico, your conversations with Boris Yeltsin on poultry. In this setting, Congress will likely push on to next hurdle -- e.g., testimony from senior advisers within the White House.
- Could chill the IOB oversight mechanism. IOB may be less inclined to speak candidly in their reports and specify the basis on which they reach conclusions. Senior advisers may be less inclined to refer issues of concern to the Board.
- Establishes precedent for giving Congress access to IOB reports. (Moves IOB in direction of becoming a "White House IG," rather than Presidential advisory body.)
- Not likely to satisfy the Congress in any event. The investigation will continue anyway while your interest in confidentiality will be greatly compromised.

4. Turn the report over to SSCI and, if requested, the HPSCI.

Pro:

- Removes "stonewalling" argument.
- Might help convince Specter and Kerrey that IOB review was thorough and frank and supports White House conclusion that no actions constituting U.S. covert action occurred.

Con:

- Will make it harder to draw, and hold, the line on your deliberative process in other settings. In this setting, Congress will likely push on to next hurdle -- e.g., testimony from senior advisers within the White House.
- Could chill the IOB oversight mechanism. IOB may be less inclined to speak candidly in their reports and specify the basis on which they reach conclusions. Senior advisers may be less inclined to refer issues of concern to the Board.

- Establishes precedent for giving Congress access to IOB reports. (Moves IOB in direction of becoming a "White House IG," rather than Presidential advisory body.)
- Not likely to satisfy the Congress in any event. They will conduct their own investigation anyway and your interest in confidentiality will be greatly compromised.

RECOMMENDATION

That you approve option #1 on the understanding that we will continue to cooperate with Congressional efforts to access and understand the underlying facts.

Approve

Disapprove

That we fallback to option #2(b) -- showing the intelligence committee leadership a redacted copy of the report -- if we have to. (Leon Panetta, Tony Lake and Bruce Lindsey support Option #1 with option #2(b)).

Approve

Disapprove

Attachments

Tab I The IOB's Report
 Tab II Tony Harrington's Letter to Specter, April 15, 1996
 Tab III White House Counsel letter to Specter, October 26, 1995

THE WHITE HOUSE

WASHINGTON

April 19, 1996

Leon --

Attached is a new draft of Jack's memo on Executive Privilege and the IOB report on Bosnia.

The third paragraph on the first page adds some new information on what Sen. Kerrey said about this issue today. In addition, a new Option 2(b) has been added. Thus, the options are:

- (1) Do not provide report, but provide summary if useful;
- (2a) Provide redacted copy to the Committees;
- (2b) Allow Chairman and Vice Chairman of Senate Select Committee on Intelligence (and if necessary their House counterparts, Leadership, and others) to read redacted copy;
- (3) Allow Specter and Kerrey to read report;
- (4) Turn over report to SSCI and, if requested to House Permanent Select Committee on Intelligence.

I am sending the new memo to you, Tony, Bruce and Mike.

Todd

4/19/96

WSC would like to send
ASAP - no substantive
changes -

I have a call into
them to see exactly what
changes are -

7066

Quinn Memo
Executive
Privilege &
the IOB
Report

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Memorandum for the President from Jack Quin. Subject: Executive Privilege and the IOB Report. (5 pages)	04/17/1996	P5 7067
002a. memo	Memorandum for the President from Jack Quinn. Executive Privilege and the IOB report. (8 pages) <i>pages 7-8 Dup</i>	n.d.	P5 7068
002b. memo	Memorandum for the President from Jack Quinn. Executive Privilege and the IOB report. (8 pages)	n.d.	P5 Dup 7067
002c. memo	Memorandum for the President from Jack Quinn. Executive Privilege and the IOB report. [with handwritten notes in red ink] (8 pages)	n.d.	P5 7069
002d. fax	Fax containing two pages of Memorandum for the President from Jack Quinn. Executive Privilege and the IOB. (2 pages)	04/18/1996	P5 7070

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 859

FOLDER TITLE:

NSC-IOB [Intelligence Oversight Board] Report 1996

2006-0996-F

bm756

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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- 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.

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

7067

THE WHITE HOUSE

WASHINGTON

April 17, 1996

MEMORANDUM FOR THE PRESIDENT

FROM

JACK QUINN

JQ

SUBJECT:

Executive Privilege and the IOB Report

Purpose

To identify considerations in determining whether to accede, at this time, to Congressional demands that we turn over the IOB's report on shipments of Iranian arms to Bosnia.

Background

At our instruction, Tony Harrington has declined to turn over the IOB's report to the Senate Select Committee on Intelligence on grounds that it is a confidential communication to the President. Turning the report over, he said, would undermine the effectiveness of the Board as one of the mechanisms by which you manage intelligence matters. Despite this, the precedent is clear that only you can actually invoke executive privilege to prevent disclosure of such a document. On a voluntary basis, Tony yesterday briefed the Committee in great detail from the report and responded fully to questions. Not surprisingly; however, Senator Specter is now claiming "stone-walling" and can be expected to continue to push for access to the report inasmuch as the Senate Select Committee on Intelligence is definitely going to proceed with its investigation of whether any U.S. official engaged improperly in covert activities. Former Senator and PFIAB member Warren Rudman, who has reviewed the report at Tony's request, has been quite supportive of our position (although probably not our policy) in this case and has encouraged the withholding of the report.

a. Executive Privilege

The doctrine of executive privilege is an essential adjunct of the constitutional separation of powers. It protects confidential Executive Branch communications and your ability to receive candid advice and accurate information from your senior advisers. It also protects from disclosure your private conversations with other world leaders. And, at times, it is also properly invoked in judicial proceedings.

All Presidents have considered executive privilege important to protect. Thus, even in the context of the politically charged

Army-McCarthy hearings, President Eisenhower barred employees from disclosing confidential communications. (He is reported to have said that anyone who testified to Congress about advice given to him "would not have a job.")

However, the doctrine of executive privilege is not absolute (except as to state secrets). Rather, it requires that the Executive Branch's interest in confidentiality be balanced against Congress' legitimate need for information for legislative purposes. It is not uncommon for this office to object to disclosure of sensitive communications to the Congress. Indeed, it has happened several times in the six months since I became your Counsel. But, in almost all instances, after interposing such an objection, we are able to reach an accommodation which respects the interests of both Congress and the Executive Branch. The terms of that accommodation generally turn upon various factors including: whether the communication at issue is directly to or from the President, as opposed to, for example, a communication among his advisers in a Cabinet Department; the nature of Congress' needs; and competing political considerations. In the process of reaching an accommodation with Congress, we sometimes resolve the issue by briefing Members on the contents of a document; in other cases, we may succeed in providing alternative, less sensitive documents; and, in yet other cases, we may agree to let them review but not keep a document.

The IOB report presents a case of core executive privilege -- an internal White House communication from senior White House advisers to you. In the past, we have successfully justified withholding such IOB materials from the Congress on these grounds (as set forth in a letter from Judge Mikva to Senator Specter in October, 1995 concerning an interim Guatemala report, on which Tony also voluntarily briefed the SSCI):

"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.

* * *

[Just] 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 be jeopardized 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."

Put another way, you need to be sure that your senior advisers always give you their best advice, not the advice they think will look best to a congressional committee. Sharing such communications with Congress inevitably will affect the candor of the advice you receive -- as I know Tony Lake observed in arguing forcefully that Cabinet officials should not disclose to Congress what position they recommended to you on Mexico certification. The same principle applies to IOB reports. And, if the reliability of IOB reports is diminished because they are subject to disclosure to the Congress, then eventually you will find the IOB a less useful tool than it has been. That result is not in the public interest.

b. The IOB Report and the Broader Context

The advantage of giving up the IOB report is straightforward and immediate. It should eliminate any allegation of a cover-up, although Senator Specter has also requested other materials used by the Board in its deliberations. It should also help end the debate over whether there was any illegal activity, as Tony Harrington's briefings on the Hill already have begun to do. It will not, however, put a complete end to the inquiry into the issue of legality, nor will it end congressional inquiries into the policy decision.

The disadvantage of turning over the report is the deleterious impact disclosure will have on Presidential prerogatives. Admittedly, this is a long-term consideration that is difficult to quantify, but it is not an academic point. Please bear carefully in mind that if Congress sees that we are unwilling to invoke the privilege in appropriate cases that involve providing advice to you -- as in this case -- then it surely will be encouraged to accelerate its requests for all manner of materials that should be protected.

At another level, the damage may be more immediate. We are currently facing several congressional requests that cover documents at the core of executive privilege -- your communications with Yeltsin over Russian chicken imports; NSC deliberations on Haiti human rights violations; the advice you received from Bob Rubin on the debt ceiling. How this report is handled also will directly affect the disposition of the IOB's pending Guatemala report. Again, our ability to achieve accommodations with Congress on these requests by providing information in a way that also protects core Presidential communications will certainly be affected by how we handle this request.

I do not seek to exaggerate the consequences of disclosing the IOB report. Nor do I suggest we can never compromise in significant measure on these issues. We went very far, for example, in responding to congressional requests for Mexico peso documents -- including allowing Members to read memos to you from senior advisers. I do want, however, to emphasize that, to the extent we treat exceptional cases such as Mexico peso (where Congress actually passed, and you signed, a law requiring the documents) as our standard, we will seriously erode the privilege.

Options

1. Hold firm on not turning the document over. Make clear that:

(a) although executive privilege has not been formally invoked, the report is a sensitive document that is subject to a legitimate claim of privilege, and

(b) we might never need to invoke executive privilege because we are working to determine with the SSCI if we can meet its legitimate needs for information contained in the document while protecting the Executive Branch's interest in confidentiality; we hope to reach a successful accommodation. We have provided a detailed briefing, and Tony has offered further briefings and responses to proper questions. We might provide a written summary of the report. This was the basis of an earlier compromise over an interim Guatemala report, but it may not satisfy the heightened political concerns here.

2. Allow only Specter and Kerrey to read the IOB report. This would remove Specter's ability to claim "cover-up," however, this would establish a precedent for Senate access to IOB reports and thus undercut your privilege. It would also give Specter more sway over the characterization of the report.

3. Turn the report over to SSCI and, if requested, the House Permanent Select Committee on Intelligence.

Note that, if you are going to withhold the document now, you should be prepared to stay with that course. You do not want to resist disclosure now, only to fold your hand and turn the report over later.

RECOMMENDATION

That you approve Option #1 (Tony Harrington and Nancy Soderberg concur in this recommendation).

Approve _____

Disapprove _____

Attachment

Tab I Tony Harrington's Letter to SSCI of April 15, 1996

7068

THE WHITE HOUSE
WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN *Jack Q.*
SUBJECT: Executive Privilege and the IOB Report

Purpose

To identify considerations in determining whether (1) to accede, at this time, to Congressional demands that we turn over the IOB's report on shipments of Iranian arms to Bosnia, or (2) instead, to seek alternative ways to meet Congress's informational needs consistent with the Executive Branch's interest in confidentiality in these circumstances.

Background

In responding to Senator Specter's claim that the IOB and Administration are "stonewalling" the Senate Intelligence Committee's investigation, it is important to keep in mind that we have provided the substance of the report orally to Specter. Tony Harrington has briefed the SSCI and talked with members of the Committee individually. (In fact, he offered to brief the intelligence committees as soon as we were aware of the story on March 28.) PFIAB member Warren Rudman has read the report and briefed Senator Dole and others on it. Additionally, we are now actively responding to document requests. And, various officials, such as Peter Tarnoff, either have briefed or will soon testify on the Hill.

Former Senator Rudman, who has gone on record stating that "no covert action has occurred," recommends that we not release the report. And, it is not at all clear that Specter has the support of his committee on seeking disclosure of the report. ~~Some members, such as ranking Democrat Bob Kerrey, have privately supported Rudman's view, at least so long as we are only using the IOB report to uphold our position that no covert action occurred -- not to defend our policy.~~ In addition, Dole's marching orders to his committee chairmen yesterday, while stating that the IOB and White House had not cooperated, did not pick up Specter's specific theme of seeking access to the report. (Dole has, however, asked the Foreign Relations Committee to look at Administration policy and the SSCI to look at whether Administration officials engaged in covert action.)

cc: Vice President
Chief of Staff

Senator Kerrey stated today that "the the IOB is wholly within the Executive office of the President. So there may be legitimate Executive Privilege here." But if the report is of interest to Congress then the Administration should not cite the report as ~~CLINTON LIBRARY PHOTOCOPY~~

(He went in to say, however, that "if we do not intend to pass the report is of limits to Congress" we should stop citing it as indication of our actions.)

...determined that no event add

DRAFT

7069

Senate Intelligence Committee's

ACTION

DATE (Dec. 25, 1997 ?)

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN

SUBJECT: Executive Privilege and the IOB Report

Purpose

(1) (2)

To identify considerations in determining whether to accede, at this time, to Congressional demands that we turn over the IOB's report on shipments of Iranian arms to Bosnia, or, whether, to seek alternative ways to meet Congress's informational needs consistent with the Executive Branch's interest in confidentiality in these circumstances. *instead,*

Background

Senator

orally to

briefed the SSCI and

responding to

In dealing with Specter's claim that the IOB and Administration are "stonewalling" the SSCI's investigation, it is important to keep in mind that we have provided Specter the substance of the report, and have already taken substantial steps to accommodate the legislative interest in learning what the Administration did and did not do. Tony Harrington has talked with Members and offered to brief the intelligence committees as soon as we were aware of the story. PFIAB member Warren Rudman has read the report and briefed Dole and others on it. *And, we* are actively responding to document requests. In addition, various officials, such as Peter Tarnoff, *other* have briefed *on* and will testify on the Hill. *now*

individually. In fact, he

While the press picked up Specter's "stonewall" theme, the signals are mixed on whether Specter has the support of his Committee on this issue. Rudman, who has gone on record stating that "no covert action has occurred," recommends that we not release the report. *Some* Other members, such as Bob Kerrey, have privately supported this view so long as we are only using the IOB report to uphold our *policy* that no covert action occurred -- not *to* a defense of our policy. To date, however, he has publicly remained neutral. In addition, Dole's marching orders to his committee chairmen yesterday, while stating that the IOB and White House had not cooperated, did not pick up Specter's specific theme of access to the report. (Dole has asked the Foreign Relations Committee to look at Administration policy and the SSCI to look at whether Administration officials engaged in covert action.) *Ranking Democrat, however*

why besides Tarnoff?

And, it is not at all clear that Specter has the support of his committee on seeking disclosure of the report.

seeking

Rudman's

and Rudman claims that Dole has told him that the Vice President Chief of Staff should not be

GAINTON LIBRARY PHOTOGRAPH

In his HIN briefings,

other
~~Tony Harrington has worked hard to be available to provide the information in the report to interested members. On Tuesday, he briefed the Senate Select Committee on Intelligence on the IOB's review. At this briefing, and in separate sessions to the congressional leadership, Tony fully discussed the IOB's review of whether U.S. officials went beyond a policy of "no instructions" and became actively involved in arms shipments to Bosnia, through Croatia. He basically went line-by-line through his report, describing the specific events that caused concern in the first instance, as well as events of which the Board became aware. He provided the Board's opinion on the manner in which the policy was constructed and implemented and how that might have created an appearance of ambiguity. He made clear, of course, that the officials involved did not, in our view, cross the line into covert action.~~

He
 stated
 the
 Board's
 view that

our policy as implemented created a sense of ambiguity, but ~~that~~ he also made clear that, in his view, ~~the~~ ~~IOB's~~ ~~report~~ ~~did not~~ ~~cross~~ ~~the~~ ~~line~~ ~~into~~ ~~covert~~ ~~action~~.

What Tony did not do was ~~convey~~ ^{share with} the Members of Congress the words, tone and manner in which these opinions were conveyed to you in the Board's six-page report (or orally to the Secretary of State, the DCI, Tony Lake and the White House Counsel). With the exception of the principal players, Tony also declined to ~~name~~ ^{identify} persons interviewed by the Board, including for example, the ~~name of~~ a junior officer whose statements in the report undercut those of a senior policymaker. On my instruction, Tony Harrington informed Specter, as he had previously done in writing, that he declined to turn over to the Committee the IOB's report because it is a confidential communication to the President and provision of the report would hamper the effectiveness of the Board as one of the mechanisms by which you oversee intelligence activities. ~~and that the report is confidential.~~

made
 clear
 that,
 in his
 view,
~~the~~
~~IOB's~~
~~report~~
~~did not~~
~~cross~~
~~the~~
~~line~~
~~into~~
~~covert~~
~~action~~

a. Executive Privilege

The doctrine of executive privilege is an essential adjunct of the constitutional separation of powers. It protects confidential Executive Branch communications and your ability to receive candid advice and accurate information from your senior advisers. It also protects from disclosure your private conversations with other world leaders. And, at times, ~~it is~~ ~~also properly invoked~~ in judicial proceedings.

can be
 invoked
 before
 Congress
 or

All Presidents have considered executive privilege important to protect. Thus, even in the context of the politically charged Army-McCarthy hearings, President Eisenhower barred employees from disclosing confidential communications. (He is reported to have said that anyone who testified to Congress about advice given to him "would not have a job.")

any longer.

However, the doctrine of executive privilege is not absolute (except as to state secrets). Rather, it requires that the Executive Branch's interest in confidentiality be balanced against Congress' legitimate need for information for legislative purposes. ~~It is not uncommon for this office to object to disclosure of sensitive communications to the Congress.~~ NO P

Indeed, it has happened several times in the six months since I became your Counsel. But, in almost all instances, after interposing such an objection, we are able to reach an accommodation which respects the interests of both Congress and the Executive Branch. ~~The terms of that accommodation generally turn upon various factors including: whether the communication at issue is directly to or from the President, as opposed to, for example, a communication among his advisers in a Cabinet Department; the nature of Congress' needs; and competing political considerations.~~ In the process of reaching an accommodation with Congress, we sometimes resolve the issue by briefing Members on the contents of a document; in other cases, we may succeed in providing alternative, less sensitive documents; and, in yet other cases, we may agree to let them review but not keep a document.

The IOB report presents a case of core executive privilege -- an internal White House communication from senior White House advisers to you. In the past, we have successfully justified withholding such IOB materials from the Congress on these grounds (as set forth in the attached letter from Judge Mikva to Senator Specter in October, 1995 concerning an interim Guatemala report):

Put another way, you need to be sure that your senior advisers always give you their best advice, not the advice they think will look best to a congressional committee. ~~Sharing such communications with Congress inevitably will affect the candor of the advice you receive -- as I know Tony Lake observed in arguing forcefully that Cabinet officials should not disclose to Congress what position they recommended to you on Mexico certification. The same principle applies to IOB reports. And, if the reliability of IOB reports is diminished because they are subject to disclosure to the Congress, then eventually you will find the IOB a less useful tool than it has been. That result is not in the public interest.~~ candor

insert
and
indent

b. The IOB Report and the Broader Context

The advantage of giving up the IOB report is straightforward and immediate. It ~~should~~ eliminate any allegation of a cover-up, ~~although Senator Specter has also requested other materials used by the Board in its deliberations.~~ It should also help end the debate over whether there was any illegal activity. ~~as Tony~~

W

~~Harrington's briefings on the Hill already have begun to do.~~ It will not, however, put a complete end to the inquiry into the issue of legality, nor will it end congressional inquiries into the policy decision.

The disadvantage of turning over the report is the deleterious impact disclosure will have on Presidential prerogatives. Admittedly, this is a long-term consideration that is difficult to quantify, but it is not an academic point. Please bear carefully in mind that if Congress sees that we are unwilling to invoke the privilege in appropriate cases that involve providing advice to you -- as in this case -- then it surely will be encouraged to accelerate its requests for all manner of materials that should be protected.

At another level, the damage may be more immediate. We are currently facing several congressional requests that cover documents at the core of executive privilege -- your communications with Yeltsin over Russian chicken imports; NSC deliberations on Haiti human rights violations; the advice you received from Bob Rubin on the debt ceiling. How this report is handled also will directly affect the disposition of the IOB's pending Guatemala report. Again, our ability to achieve accommodations with Congress on these requests by providing information in a way that also protects core Presidential communications will certainly be affected by how we handle this request.

I do not seek to exaggerate the consequences of disclosing the IOB report. Nor do I suggest we can never compromise in significant measure on these issues. We went very far, for example, in responding to congressional requests for Mexico peso documents -- including allowing Members to read memos to you from senior advisers. I do want, however, to emphasize that, to the extent we treat exceptional cases such as Mexico peso (where Congress actually passed, and you signed, a law requiring the documents) as our standard, we will seriously erode the privilege.

Options

1. Hold firm on not providing the document, ~~over~~, but be willing if helpful to provide a summary in relative short order.

Pros:

- Protects your internal deliberative process. Helps draw line at time when Congress is seeking to encroach further into your internal deliberations on Mexico, Haiti, and Russian poultry.

such other matters as

if that becomes necessary.

- Preserves efficacy of ^Executive ^Bran^Bch oversight mechanism. While prior IOB's have been largely dormant, your IOB has proven an important mechanism to review matters of intelligence concern, ~~that require interagency coordination or do not warrant Justice or Congressional investigations.~~

-- A line must be drawn. If the IOB's review is provided, we anticipate the Congress will ask for interview notes and internal work product. The report offers a clear line of demarcation.

- Providing a summary is supported by precedent. A summary was the basis of accommodation regarding IOB's interim Guatemala report, which the SSCI accepted.

- Is a serious effort at accommodation, particularly given fact that no request has yet been made for a summary.

- Allows Members a basis on which to cross-check their own review in an area replete with hearsay, innuendo and rumor.

Cons:

- Might fuel continued allegations that the Administration is "stonewalling" Congress and covering something up.
- Congress has already been briefed fully on the contents of the report; a summary is not likely to satisfy if Specter is determined to use the "stonewall" line for political effect.
- Might raise questions of what we left out of the summary.

2. Provide a redacted version of the report to the Committees.

Pro:

- Lessens "stone-walling" argument.
- Might help convince Specter and Kerrey that IOB review was thorough and frank and supports White House conclusion that no actions constituting U.S. covert action occurred.

Con:

- Will make it harder to draw, and hold, the line on your deliberative process in other settings, e.g., requests for documents relating to Bob Rubin's advice on Mexico, your conversations with Boris Yeltsin on poultry. In this

extra
space
/

setting, Congress will likely push on to next hurdle -- e.g., testimony from senior advisers within the White House.

- Could chill the IOB oversight mechanism. IOB may be less inclined to speak candidly in their reports and specify the basis on which they reach conclusions. Senior advisers may be less inclined to refer issues of concern to the Board.
- Establishes precedent for giving Congress access to IOB reports. (Moves IOB in direction of becoming a "White House IG," rather than Presidential advisory body.)
- Not likely to satisfy the Congress in any event. Your interest in confidentiality will be greatly compromised and the investigation will continue anyway.
- Allows Specter and others to continue to allege "cover-up." (Redacted document would offer a visual prop.)
- 3. Allow only Specter and Kerrey to read the IOB report.

*extra
space*

Pros:

- Removes "stonewalling" argument.
- Might help convince Specter and Kerrey that IOB review was thorough and frank and supports White House conclusion that no actions constituting U.S. covert action occurred.

Cons:

- Highly unlikely access could be limited to Specter and Kerrey. At minimum, would open door to House intelligence committee, congressional leadership, and ~~likely~~ others (such as Helms, since Dole has asked the SFRC to review policy).
- Gives Specter more ^{*influence*} ~~say~~ over the characterization of the report.
- Will make it harder to draw and hold the line on your deliberative process in other settings, e.g., requests for documents relating to Bob Rubin's advice on Mexico, your conversations with Boris Yeltsin on poultry. In this setting, Congress will likely push on to next hurdle -- e.g., testimony from senior advisers within the White House.
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- Establishes precedent for giving Congress access to IOB reports. (Moves IOB in direction of becoming a "White House IG," rather than Presidential advisory body.)
 - Not likely to satisfy the Congress in any event. Your interest in confidentiality will be greatly compromised and the investigation will continue anyway.
4. Turn the report over to SSCI and, if requested, the HPSCI.

Pro:

- Removes "stone-walling" argument.
- Might help convince Specter and Kerrey that IOB review was thorough and frank and supports White House conclusion that no actions constituting U.S. covert action occurred.

Con:

- Will make it harder to draw, and hold, the line on your deliberative process in other settings. In this setting, Congress will likely push on to next hurdle -- e.g., testimony from senior advisers within the White House.
- Could chill the IOB oversight mechanism. IOB may be less inclined to speak candidly in their reports and specify the basis on which they reach conclusions. Senior advisors may be less inclined to refer issues of concern to the Board.
- Establishes precedent for giving Congress access to IOB reports. (Moves IOB in direction of becoming a "White House IG," rather than Presidential advisory body.)
- Not likely to satisfy the Congress in any event. They will conduct their own investigation anyway and your interest in confidentiality will be greatly compromised.

RECOMMENDATION

That you approve option #1 on the understanding that we will continue to cooperate with Congressional efforts to access and understand the underlying facts.

Approve _____

Disapprove _____

Attachments

Tab I The IOB's Report

Tab II Tony Harrington's Letter to Specter, April 15, 1996

Tab II White House Counsel letter to Specter, October 26, 1995

7070

3

and that those who report to the Board understand this to be the case."

Put another way, you need to be sure that your senior advisers always give you their best advice, not the advice they think will look best to a congressional committee. Sharing such communications with Congress inevitably will affect the candor of the advice you receive -- as I know Tony Lake observed in arguing forcefully that Cabinet officials should not disclose to Congress what position they recommended to you on Mexico certification. The same principle applies to IOB reports. And, if the reliability of IOB reports is diminished because they are subject to disclosure to the Congress, then eventually you will find the IOB a less useful tool than it has been. That result is not in the public interest.

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The disadvantage of turning over the report is the deleterious impact disclosure will have on Presidential prerogatives. Admittedly, this is a long-term consideration that is difficult to quantify, but it is not an academic point. Please bear carefully in mind that if Congress sees that we are unwilling to invoke the privilege in appropriate cases that involve providing advice to you -- as in this case -- then it surely will be encouraged to accelerate its requests for all manner of materials that should be protected.

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"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.

* * *

insert
[Just] 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 be jeopardized 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

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
014b. letter	Letter to Abner Mikva concerning placement on the Commission on Roles and Capabilities of the Intelligence Community. (2 pages)	11/15/1994	P2, b(6)
014c. resume	Resume for placement on the Commission on Roles and Capabilities of the Intelligence Community. (4 pages)	04/1994	P2, b(6)
015. email	From Alan J. Kreczko to Neal S. Wollin. Subject: aspin (1 page)	11/29/1994	P5 7071
016. letter	Mikva, Abner J. to Harrington re: [Intelligence Oversight Board Report] [duplicate of 003.] (3 pages)	11/29/1994	P1/b(1), P5
017. paper	[Opportunity] (4 pages)	n.d.	P1/b(1)
018. letter	Mikva, Abner J. to Harrington re: [Intelligence Oversight Board Report] [duplicate of 003. page 3 only]] (1 page)	11/29/1994	P1/b(1), P5
019. memo	Harrington, Anthony S. & Caracristi, Ann Z. to the President re: [Report] [draft] (3 pages)	11/23/1994	P1/b(1)
020a. fax transmission	Wesley, David C. to Garland, Merrick re: [Summary Requested by Ms Gorelick] (1 page)	11/22/1994	P1/b(1)
020b. summary	[Summary of Classified Report] (1 page)	11/22/1994	P1/b(1)
021. report	[Copy of report in Military Intelligence Digest] (2 pages)	04/25/1995	P1/b(1)
022. memo	MFR [Memo For the Record by Wesley, David C.] (1 page)	06/30/1995	P1/b(1), P3/b(3)
023. list	[Handwritten list with comments] (1 page)	n.d.	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor-James Baker
OA/Box Number: 3277

FOLDER TITLE:

President's Intelligence Oversight Board (IOB) [1]

2006-0996-F
ch512

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]
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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]

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
024. list	Phone Numbers [CIA Act] (2 pages)	n.d.	P3/b(3)
025. letter	Wesley, David C. to Harrington, Anthony re: [Where We Are] [National Security Act] (2 pages)	04/23/1995	P1/b(1), P3/b(3), P5
026. memo	MFR [Memo for the Record by Wesley concerning IOB's Bosnia Report] (1 page)	05/12/1995	P1/b(1)
027. memo	[Bosnia] (1 page)	11/08/1994	P1/b(1)
028a. letter	Harrington to Mikva re: [Report of the Intelligence Oversight Board] (1 page)	05/11/1995	P1/b(1), P5
028b. report	Report of the Intelligence Oversight Board on... (7 pages)	05/11/1995	P1/b(1), P5
028c. letter	Mikva, Abner J. to Harrington re: [Intelligence Oversight Board Report] [duplicate of 003.] (3 pages)	11/29/1994	P1/b(1), P5
028d. list	List of IOB Interviewees (1 page)	n.d.	P1/b(1)
029a. memo	Baker, James to Mikva re: IOB Report on Bosnia (2 pages)	05/16/1995	P1/b(1), P5
029b. memo	Lake, Anthony to the President re: The Intelligence Oversight Board's Report on... [draft] (1 page)	n.d.	P1/b(1), P5
030. memo	Memorandum for the File from James Baker. Subject: Distinguishing Covert (3 pages)	11/07/1994	P5 7072
031. memo	Lake, Anthony & Quinn, Jack to the President re: Supplementary Intelligence Oversight Board Report on Bosnia (1 page)	12/20/1996	P1/b(1)

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

7071

Baker, James E.

From: Kreczko, Alan J.
To: Wolin, Neal S.
Cc: /R, Record at A1; Baker, James E.
Subject: aspin [UNCLASSIFIED]
Date: Tuesday, November 29, 1994 12:13PM

Neal, please pass to TL:

I reported to Ab Mikva that you were unaware of Les Aspin's concern that there was a leak concerning the invasion of Haiti, much less of Les' interest in calling the FBI concerning an investigation.

Mikva is calling Aspin to make three points:

- Aspin can not call the FBI directly. PFIAB is part of the White House, and initial contact on a particular case must be by the WH Counsel.
- Mika would not be willing to call DOJ about the matter until he has your views on it.
- Aspin should call you directly to explain his concerns.

November 7, 1994

INFORMATION

MEMORANDUM FOR THE FILE

THROUGH: ALAN KRECZKO *AK*
FROM: JAMES BAKER *JB*
SUBJECT: Distinguishing Covert Activities from Diplomatic Activities

Summary

Requests, without more, to third governments or private citizens to conduct covert actions are diplomatic activities. (Such requests could, however, implicate other laws, particularly if we are encouraging covert activities prohibited under our own laws.)

On the other hand, covert actions undertaken "on behalf of" the U.S. constitute covert actions under U.S. law requiring Presidential authorization unless the U.S. role does not otherwise meet the statutory definition of covert action.

There is no precise line between diplomacy and covert action, but a continuum of activities that can move from diplomatic to covert. Congress has indicated its view that the USG is involved in covert action if its personnel direct "or are directly involved" in carrying out another party's covert action.

The fact that each element of U.S. support for a foreign covert action would not individually constitute covert action does not necessarily mean that the actions taken together also would not.

Discussion

In the wake of the Iran-Contra affair, the Intelligence Authorization Act of 1991 included for the first time a statutory definition of "covert action." There are two essential elements to the definition: (1) an activity or activities of the United States Government is intended to influence political, economic, or military conditions abroad; and (2) it is intended that the role of the United States Government will not be apparent or acknowledged publicly. The definition exempts "traditional" diplomatic, military and law enforcement activities. (Tab A).

As originally passed, the definition also provided that "request[s] by any department, agency, or entity of the United States to a foreign government or a private citizen to conduct a covert action on behalf of the United States shall be deemed to be a covert action." President Bush vetoed the bill primarily on the ground that this provision purported to "regulate diplomacy by the President and other members of the executive branch." The Administration determined that the term's vagueness, and the possibility of a broad construction, "could have a chilling effect on the ability of our diplomats to conduct highly sensitive discussions. . . ." The President's veto statement also indicated that "it remains Administration policy that our intelligence services will not ask third parties to carry out activities that they are themselves forbidden to undertake under E.O. 12333" (Tab B).

The President subsequently signed into law a revised bill without the offensive language, with the definition of covert action described above. The bill retained the requirement that each finding "specify whether it is contemplated that any third party . . . will be used to fund or otherwise participate in any significant way in the covert action concerned, or be used to undertake the covert action on behalf of the United States." The Conference Report elaborates: "[t]he Committee considers third parties to be acting on behalf and under control of an element of the United States Government when they are receiving direction and assistance from U.S. personnel directly involved in carrying out the covert action in question, or when they are receiving significant financial support or other significant forms of tangible materiel support from an element of the United States Government for use in carrying out the covert action." The legislative history also states that "traditional diplomatic activities" include the "use of the diplomatic channels or personnel to pass messages and conduct negotiations." (Tab C).

This report makes it clear that diplomatic requests alone are not covert actions nor are discussions at the diplomatic level involving the intentions of third governments. However, the legislative history is also clear that diplomatic activities are not "traditional," when untraditional means are used, such as arms sales and financial inducements. It is also clear that actual support for a foreign covert action through assistance, direction, direct participation, or inducements constitutes covert action (provided such support also meets the statutory elements of covert action, namely, the U.S. role is not apparent or intended to be acknowledged publicly.) Analysis of what lies in-between will depend on the facts. As a matter of legal policy, however, the Administration has chosen not to attempt to squeeze activities under the "traditional" label in order to

avoid requirements for covert action. Instead, where there has been serious doubt, for example, whether an activity is "traditional" or, where one aspect of an overall project has met the definition of covert action, we have sought Presidential authorization for the activity in a finding or MON.

We should note that there could be Congressional concern about even mere requests to countries to engage in activities, particularly those activities that are prohibited to the USG under U.S. law. Thus, the Bush administration assured the Congress that U.S. intelligence agencies would not request third parties to undertake covert actions prohibited in U.S. laws. And, Congress has expressly prohibited conditioning assistance to a country on that country's willingness to undertake activities precluded by U.S. law.

The State Department Legal Office's analysis of these same issues, which is substantially similar, is attached. (Tab D).

Ab Mikva has reviewed this memorandum.

Attachments: As Stated.

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	Miscik, Jami to Beers, Rand R. re: Response to Representative Bruce F. Vento's Letter... (1 page)	10/13/1995	P1/b(1)
001b. memo	Lake, Anthony & Griffin, Patrick to the President re: Representative Bruce F. Vento's Letter... (1 page)	n.d.	P1/b(1)
002a. memo	Miscik to Lake re: Response to Representative Bruce F. Vento's Letter... [duplicate of 001a.] (1 page)	10/13/1995	P1/b(1)
002b. memo	Lake & Griffin to the President re: Representative Bruce F. Vento's Letter... [duplicate of 001b.] (1 page)	n.d.	P1/b(1)
003. email	James Baker to Nancy Soderberg and Rand R. Beers. Subject: PFIAB and IOB. (1 page)	10/24/1995	P5 7073
004. memo	Harrington, Anthony S. & Caracristi, Ann Z. to the President re: [Report] (3 pages)	11/17/1994	P1/b(1), P5
005. letter	Mikva, Abner J. to Harrington re: [Intelligence Oversight Board Report] [draft] (3 pages)	11/1994	P1/b(1), P5
006. memo	Harrington & Caracristi to the President re: [Report] (3 pages)	11/17/1994	P1/b(1), P5
007. memo	Harrington & Caracristi to the President re: [Report] (3 pages)	11/17/1994	P1/b(1), P5
008. memo	Memorandum for the File from James Baker. Subject: Distinguishing Covert Activities from Diplomatic Activities. (9 pages)	11/07/1994	P5

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor-James Baker
OA/Box Number: 3277

FOLDER TITLE:

President's Intelligence Oversight Board (IOB) [3]

2006-0996-F

eh514

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]

7073

Baker, James E.

From: Baker, James E.
To: Soderberg, Nancy E.; Beers, Rand R
Cc: /R, Record at A1; Kreczko, Alan J.
Subject: PFIAB and IOB [UNCLASSIFIED]
Date: Tuesday, October 24, 1995 4:35PM

PRIVILEGED/DELIBERATIVE

Issue: The IOB and PFIAB

Further to your conversation with Randy regarding Tony Harrington's request that the IOB be re-established as a separate entity from the PFIAB, I have explored a number of different options with Tony and appreciate that his fundamental concern is that the current order (1) directs the Chairman of the IOB to report through the Chairman of the PFIAB; and (2) provides that the Chairman of the IOB shall be selected by the Chairman of the PFIAB rather than the President. The order could be easily amended to address Tony's concerns by specifying that the Chairman of the IOB shall be designated by the President and report to the President, while retaining the IOB as a subcommittee of the PFIAB with the current staff structure (which is where the REGO savings of one staff person and travel expenses comes in.)

As you know, in September we recommended that the IOB remain part of the PFIAB because: (1) Tom Foley agreed to take on the position of Chairman with an understanding that the IOB was part of the PFIAB; (2) the merger was touted as a REGO plus; and (3) there are substantive oversight advantages to having the membership of the IOB also serve on the PFIAB. We still hold to this view, as does Ab, who feels that any change to the executive order could be misperceived by Tom Foley and/or the press and believes that the Chairman of the PFIAB should know what the IOB is working on, except in extraordinary cases.

We believe the real question is political rather than substantive. The worst outcome would be to have Tony Harrington resign amidst the Guatemala review. While it is hard to imagine he would do so, if the issue were really presented that squarely, Ab agrees that the changes should described above should be made.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	Fountain, Frank to Soderberg, Nancy re: Proposed IOB Meeting... (1 page)	03/15/1996	P1/b(1), P5
001b. briefing paper	Conditions and Contingencies for the Meeting (1 page)	03/15/1996	P1/b(1)
002. cable	IOB Visit... (2 pages)	03/15/1996	P1/b(1)
003. email	Baker, James E. to the National Security Advisor re: [IOB Review] (1 page)	03/28/1996	P1/b(1), P5
004. email	Baker, James E. to the National Security Advisor re: DCI/DDCI Meeting 2:15 (1 page)	03/27/1996	P1/b(1), P5
005. memo	Memorandum for Anthony S. Harrington from Anthony Lake. Subject: Intelligence Oversight Board Terms of Reference: Guatemala (4 pages)	n.d.	P5
006a. memo	Memorandum for Anthony S. Harrington from Abner J. Mikva. Subject: White House Policy on Contacts with Third Agencies (3. pages)	12/02/1994	P5
006b. memo	Memorandum for White house Staff from Abner J. Mikva and Joel Klien. Subject: White House Contacts with Agencies and Departments Regarding Investigations, Enforcement Actions, and Adjudications. (1 page)	11/10/1994	P5 7074
007a. memo	Memorandum for Anthony S. Harrington from Abner J. Mikva. Subject: White house Policy on Contacts with Third Agencies. (3 pages)	n.d.	P5 7075

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor-James Baker
OA/Box Number: 3277

FOLDER TITLE:

President's Intelligence Oversight Board (IOB) [4]

2006-0996-F

eh515

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]
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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]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007b. memo	Memorandum for Gene Yeates from James Baker. Subject: White House Policy on Contacts with Third Agencies. (1 page)	11/30/1994	P5 7076
007c. memo	Memorandum for White House Staff from Abner J. Mikva and Joel I. Klein. Subject: White House Contacts with Agencies and Departments Regarding Investigations, Enforcement Actions, and Adjudications. (1 page)	11/10/1994	P5
008. memo	Memorandum for Anthony Lake from James Baker. Subject: Amending E.O. 12863. (2 pages)	10/26/1995	P5 7077
009. list	Current PFIAB/IOB Members. [Document also contains list of potential candidates] (4 pages)	n.d.	P2, b(6)
010a. memo	Note for General Kerrick Subject: PFIAB/IOB [Reverse of the document contains handwritten list of potential candidates] (2 pages)	07/11/1997	P2, P5, b(6)
010b. list	Current PFIAB/IOB Members. [Document also contains list of potential candidates] (1 page)	n.d.	P2, b(6)
011. memo	Memorandum for Samuel R. Berger from James E. Baker. Subject: PFIAB/IOB. (2 pages)	05/13/1997	P5 7078
012. memo	Memorandum for Samuel R. Berger from James Baker. Subject: PFIAB/IOB (2 pages)	05/13/1997	P5 Dup
013. memo	Memorandum for Franklin D. Raines and Samuel R. Berger from Thomas S. Foley. Subject: Proposed Executive Order Entitled, "Amendment to E.O. 12863 [Re: PFIAB], "(memo from OMB General Counsel Robert D. Damus, dated May 27, 1997, Same Subject). (1 page)	06/02/1997	P5

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor-James Baker
OA/Box Number: 3277

FOLDER TITLE:

President's Intelligence Oversight Board (IOB) [4]

2006-0996-F
eh515

RESTRICTION CODES

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

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

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
014. memo	Memorandum for Samuel R. Berger from James Baker. Subject: PFIAB/IOB (2 pages)	05/13/1997	P5 <i>Dup</i>

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor-James Baker
OA/Box Number: 3277

FOLDER TITLE:

President's Intelligence Oversight Board (IOB) [4]

2006-0996-F

eh515

RESTRICTION CODES

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

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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7074

THE WHITE HOUSE

WASHINGTON

November 10, 1994

MEMORANDUM FOR WHITE HOUSE STAFF

FROM:

ABNER J. MIKVA *ajm*
COUNSEL TO THE PRESIDENT

JOEL I. KLEIN *JK*
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT:

WHITE HOUSE CONTACTS WITH AGENCIES AND DEPARTMENTS
REGARDING INVESTIGATIONS, ENFORCEMENT ACTIONS, AND
ADJUDICATIONS

This memo concerns one of the particularly important categories of White House contacts with Executive Branch departments and agencies -- those involving investigations, enforcement actions, or adjudications. It is imperative that all White House staff abide by these rules.

"Investigations" and "enforcement actions" are matters related to investigating, reviewing, or pursuing potential or actual administrative, criminal, or civil charges for alleged violations of law or regulations by specific individuals or entities. "Adjudications" are matters decided at an administrative or judicial hearing, or similar proceeding in which a department or agency determines the rights of particular individuals or entities.

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. You should not contact any department or agency regarding any such matter. Rather, you should request that the contact be made by the Counsel or the Deputy Counsel, who will decide whether the contact is appropriate and will report back to you to the extent warranted.

By the same token, if anyone at any department or agency or anybody from outside the government contacts you about any investigation, enforcement action, or adjudication, you should promptly advise the Counsel or Deputy Counsel, who will decide whether to pursue the contact and will report back to you as warranted.

If you have any question about whether a department or agency matter involves an investigation, enforcement action, or adjudication, or if you have any other question concerning the matters raised in this memorandum, please direct it promptly to the Counsel's Office.

MEMORANDUM FOR ANTHONY S. HARRINGTON
CHAIRMAN
INTELLIGENCE OVERSIGHT BOARD

FROM: ABNER J. MIKVA
COUNSEL TO THE PRESIDENT

*how the policy
and relates to
Executive Order 12863
pertaining to the IOB.*

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). 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." *under the Executive Order*

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 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 Department of Justice [and] the White House, including the IOB, concerning pending law enforcement matters 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.

UNCLASSIFIED

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

November 30, 1994

INFORMATION

MEMORANDUM FOR GENE YEATES
EXECUTIVE DIRECTOR
PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

FROM: JAMES E. BAKER^{MB}
DEPUTY LEGAL ADVISER

SUBJECT: White House Policy on Contacts with Third Agencies

The White House Counsel asked me to provide the Chairman of the PFIAB a copy of the White House policy concerning "Contacts With Agencies and Departments Regarding Investigations, Enforcement Actions, and Adjudications." A copy is attached. Could you please pass it along to Chairman Aspin. The White House Counsel will also soon provide the Chairman of the IOB a more detailed statement concerning the application of the policy to the IOB and the PFIAB in light of their particular responsibilities within the Executive Office of the President (EOP).

Should the Chairman or staff of the PFIAB have any questions regarding the policy, please feel free to contact this office or Ab Mikva directly.

Thank you very much.

Attachment: As Stated.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

7906

7077

October 26, 1995

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ALAN KRECZKO^{AK}/RAND BEERS

FROM: JAMES BAKER^{JB}

SUBJECT: Amending E.O. 12863

Tony Harrington requested that the Intelligence Oversight Board (IOB) be re-established as a separate entity from the President's Foreign Intelligence Advisory Board (PFIAB). We previously recommended, with Ab Mikva's concurrence, that the IOB remain a subcommittee of the PFIAB on the basis that: (1) Tom Foley had agreed to take on the PFIAB position with an understanding that the IOB was a part of his assignment; (2) the 1993 merger of the PIOB with the PFIAB was touted as a REGO plus; and (3) there are oversight advantages to having members serve on both boards.

In light of Tony Harrington's strong views, however, we revisited the issue and, with Tony's concurrence, believe it is possible to address his fundamental concerns while at the same time maintaining the IOB as a subcommittee of the PFIAB. (Indeed, Tony now agrees that there are good oversight reasons to have the membership overlap.) This could be accomplished by amending the Executive order to have the IOB Chairman designated by the President, rather than the Chairman of the PFIAB, and by directing the IOB Chairman to report directly to the President, rather than through the PFIAB Chairman. The IOB may, of course, still report through the PFIAB Chairman, but this would be a matter of choice rather than Presidential direction. While Ab continues to believe the current formulation is preferable as a matter of substance, he is prepared to defer to Tony Harrington's strong views on the subject.

The necessary paperwork to affect these changes is attached. Before sending these amendments to OMB, however, we recommend that you advise John Deutch and Tom Foley that these changes are being made. Once through the Executive order process, we would

subsequently submit the amendments to the President for signature under cover of memoranda from you and Alice Rivlin.

RECOMMENDATION

That you confer with Tom Foley and John Deutch regarding the recommended changes.

Approve _____ Disapprove _____

That you subsequently approve Andy Sens transmitting the attached package to OMB.

Approve _____ Disapprove _____

Attachments

Tab I Draft Memorandum for OMB

Tab A E.O. Amendment

Tab II Executive Order 12863

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

3291

May 13, 1997

7078

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ALAN KRECZKO/RAND BEERS

FROM: JAMES E. BAKER

SUBJECT: PFIAB/IOB

You asked for a short note to Bob Nash requesting that his office consult with you regarding all appointments and re-appointments to the PFIAB and IOB. You also indicated that you and Tony Harrington agreed with NSC staff recommendations on the future structure and appointments process for the IOB. Specifically, the President, rather than the PFIAB chair, would designate the members and the Chairman of the IOB, who would report directly to the President. Because a transition between PFIAB Chairmen would be an auspicious time to make these changes, the necessary OMB paperwork is attached at Tab II.

We are also now recommending two technical amendments to the order: (1) the IOB is currently authorized to utilize such full-time staff and consultants as authorized by the Chairman of the PFIAB. To allow the IOB to surge quickly as they did for Guatemala, we would recommend that this authority be transferred to the Chairman of the IOB with the concurrence of the Chairman of the PFIAB: (2) the current order states that the IOB reports, when required by the order. This appears a heritage from earlier orders. In fact, the IOB's principal reports have not been required by the order, but have been discretionary reports requested by the President or his senior advisers.

While agreeing with the recommendations posed, you asked whether NSC staff intended IOB members to be drawn only from the PFIAB. Yes. With the changes stated above, we would recommend that the IOB remain a standing subcommittee of the PFIAB with all its members, by definition, coming from the PFIAB itself. This structure increases IOB expertise, gives member new to intelligence a broader perspective in which to consider oversight issues, avoids intelligence community forum shopping, and eliminates a degree of redundant briefing that occurred when the PIOB was separate from the PFIAB. Tony Harrington mentioned his

conversation and confirmed to me that for the reasons stated above he agrees that the IOB should continue as a standing subcommittee of the PFIAB. However, he did not know if Warren Rudman would also agree.

RECOMMENDATIONS

That you sign the attached memorandum to Bob Nash. (Rand also recommends that you telephone Bob.)

That we meet with you to discuss the membership of the PFIAB/IOB.

Approve

A

Disapprove

That you authorize Glyn Davies to sign the attached memorandum to OMB/GC Bob Damus.

Approve

A

Disapprove

Attachments

Tab I Memorandum for Bob Nash

Tab II Memorandum for Bob Damus

Tab A Draft Order Amending E.O. 12863

Tab B Support Materials

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. letter	Letter from members of Congress to Robert Nash concerning candidate for the President's Foreign Intelligence Board. (2 pages)	06/25/1997	P2, b(6)
001b. resume	Curriculum Vitae for PFIAB candidate. (1 page)	n.d.	P2, b(6)
001c. memo	Memorandum for Charles Duncan from Randy Deitering. Subject: Membership Additions. (1 page)	09/17/1997	P2, b(6)
002. memo	Memorandum for Anthony S. Harrington from Anthony Lake. Subject: Intelligence Oversight Board Terms of Reference: Guatemala. (4 pages)	n.d.	P5
003. fax cover sheet	CIA General Counsel/Litigation Division to Fountain, Frank re: Harbury v. CIA [partial] (1 page)	04/27/1997	b(2), P3/b(3)
004. memo	Memorandum for Anthony S. Harrington from Anthony Lake. Subject: Intelligence Oversight Board Terms of Reference: Guatemala. (4 pages)	n.d.	P5
005a. memo	Memorandum for Samuel R. Berger from James Baker. Subject: Draft Press Guidance on Recusal of Jim Hamilton from PFIAB Business and SSCI Request for PFIAB Report. (3 pages)	03/24/1996	P5 7079
005b. letter	Letter to Richard C. Shelby from Warren B. Rudman. (3 pages)	03/24/1997	P5 7080
005c. draft	Press Guidance re: Recusal by Mr. James Hamilton from PFIAB-related duties and access to information. (1 page)	n.d.	P5
006a. memo	Memorandum for Charles Ruff from James Baker. Subject: Responding to the SSCI's Request for the PFIAB's 1994 Somalia Report. (2 pages)	03/14/1997	P5 7081

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor-James Baker
OA/Box Number: 3277

FOLDER TITLE:

President's Intelligence Oversight Board (IOB) [5]

2006-0996-F
eh516

RESTRICTION CODES

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

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RR. Document will be reviewed upon request.

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Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006b. letter	Letter to Thomas Foley from J. Robert Kerrey. (1 page)	03/12/1997	P5
006c. letter	Letter to Richard Shelby from Warren Rudman and Thomas S. Foley. (2 pages)	03/14/1997	P5
006d. letter	Letter to Senator Spector from Abner J. Mikva. (1 page)	10/26/1995	P5
006e. letter	Letter to Lary Combest from Jack Quinn. (2 pages)	08/14/1996	P5 7083
007a. memo	Tenet, George to Lake, Anthony re: Senator Warner's Request to Access PFIAB Somalia Report. (2 pages)	06/03/1994	P1/b(1), P5
007b. memo	Tenet, George to Lake, Anthony re: Senator Warner's Request to Access PFIAB Somalia Report. [draft] (2 pages)	06/03/1994	P1/b(1), P5
008a. memo	Tenet to Lake re: President's Foreign Intelligence Advisory Board Support on Somalia (1 page)	05/25/1994	P1/b(1)
008b. memo	Lake to the President re: President's Foreign Intelligence Advisory Board Support on Somalia (4 pages)	05/26/1994	P1/b(1), P5
008c. report	Crisis in Somalia: Lessons Learned [cover page only] (1 page)	04/1994	P1/b(1)
009. memo	Intelligence Oversight Board to the President re: Supplemental Inquiry by the Intelligence Oversight Board... (4 pages)	12/11/1996	P1/b(1), P5
010. memo	Memorandum for Anthony Lake from R. Rand Beers. Subject: Merging PFIAB and PIOB. (1 page)	09/26/1995	P5

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor-James Baker
OA/Box Number: 3277

FOLDER TITLE:

President's Intelligence Oversight Board (IOB) [5]

2006-0996-F

eh516

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

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
011. email	James Baker to Alan J. Kreczko. Subject: FYI: SSCI Letters on Guatemala. (1 page)	10/18/1995	P5 7082

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor-James Baker
OA/Box Number: 3277

FOLDER TITLE:

President's Intelligence Oversight Board (IOB) [5]

2006-0996-F
eh516

RESTRICTION CODES

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

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7079

March 24, 1996

3/25

→ RAND

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ALAN KRECZKO/RAND BEERS

FROM: JAMES BAKER

SUBJECT: Draft Press Guidance on Recusal of Jim Hamilton
from PFIAB Business and SSCI Request for PFIAB
Report

① This action was acceptable to Rudman, Harrington, Ruff and Hamilton. I'd leave it alone.

② can we change Rudman's letter? ^A

Attached for your concurrence are two PFIAB documents. The first is, as needed, press guidance regarding Jim Hamilton's March 19 recusal from all PFIAB duties, because of a potential or actual conflict of interest, or the appearance of one, between his representation of a client and his participation in PFIAB work and briefings. We know that Tony Harrington and Senator Rudman urged Mr. Hamilton to recuse. We agree with the recusal.

However, Rand would recommend that Mr. Hamilton resign rather than recuse since he will not be in a position to participate on the PFIAB for an indefinite period of time and since it is critical to avoid even the appearance of a conflict of interest regarding this Presidential group.

The second document is a draft response to Senator Shelby's request for the PFIAB's 1994 Somalia report. Shelby requested the report during Tony's confirmation process, apparently in an effort to argue that Tony and the NSC staff sought to suppress or change the PFIAB's findings. However, the SSCI renewed the request after Tony's name was withdrawn. Although we might defer a response arguing the Lake confirmation process is over, Tom Foley, Senator Rudman and Tony Harrington think it important to lay the marker down that there was no interference with the PFIAB report and the PFIAB provides its reports solely to the President and not the Congress. In light of their strong feelings and the likelihood that the SSCI will pursue the request for George's confirmation anyway, we recommend that you concur in the attached letter, which they have cleared. Senator Rudman is clearly well suited to make these institutional points (Foley is traveling). However, we recommend the deletion of the penultimate paragraph,

which appears unduly confrontational on the eve of George's confirmation hearings.

Once we have your edits, we will also clear these documents with Chuck Ruff. In a related PFIAB matter, Randy and I have discussed the PFIAB appointments process and PFIAB/IOB structure with Don Kerrick, and we will soon have a memorandum to you on those topics.

RECOMMENDATION

That you concur in the attached letter and press guidance with the NSC/Legal edits as indicated.

Approve _____ Disapprove _____

Attachments

Tab I Draft Letter to SSCI Re: Somalia Report
Tab II Press Guidance on Jim Hamilton

cc: Bill Danvers
David Johnson

7080
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.~~ *Withstanding 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 against our providing the report.

[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.]

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

UNCLASSIFIED

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

7081

March 14, 1997

MEMORANDUM FOR CHARLES RUFF

FROM: JAMES BAKER *JB*

SUBJECT: Responding to the SSCI's Request for the PFIAB's
1994 Somalia Report

On March 12, Senators Shelby and Kerrey wrote the Chairman of the President's Foreign Intelligence Advisory Board, Tom Foley, requesting a copy of the PFIAB's April 1994 Somalia report and suggesting that Mr. Lake and the NSC staff may have prevented the President from seeing the report and insisted on changes to its content. Attached is a draft response from Tom Foley and the Vice Chairman of the PFIAB, Sen. Warren Rudman, responding that the NSC staff and Tony did not block passage of the report to the President nor influence the content of the report (other than as persons who may have appeared before the Board as it was conducting its inquiry).

In accord with long-standing practice, based on the separation of powers, the attached response from Tom Foley and Warren Rudman declines to provide a copy of the report, but as a matter of comity and accommodation offers a briefing on the report. The Board, and its standing subcommittee, the Intelligence Oversight Board, are solely Presidential mechanisms for overseeing the effectiveness and propriety of intelligence activities on behalf of the President. As explained in greater detail in the attached letters, the confidentiality of the PFIAB's and IOB's reports to the President is essential to their effective operation. Without an expectation of confidentiality Members will be less likely to offer their most candid advice to the President, and executive branch staff less likely to bring matters to either Board's attention. OLC has advised that the IOB Chairman constitutes a senior adviser to the President, for the purposes of analyzing the constitutionality of any Congressional request for testimony. For these reasons and others, the President decided in the Spring of 1996 against providing or showing the IOB's Bosnia report to the Hill despite heavy Congressional pressure to do so.

UNCLASSIFIED

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The attached letters from Jack Quinn and Ab Mikva address IOB reports. However, the principles are the same with respect to the PFIAB. Indeed, a NSC memo reflects that NSC staff recommended against providing the Somalia report to Senator Warner in June 1994 for the reasons cited above. I recall that this decision was taken in consultation with the White House Counsel at the time (Lloyd Cutler), although I have not found documentation of our consultations.

As with the previous letters from Ab and Jack, Warren Rudman and IOB Chairman Tony Harrington feel strongly that any response predicated on a separation of powers argument should be based on your guidance.

Recommendation

That you concur in the attached letter, including the sentence on page 2 stating that you have advised against providing the SSCI a copy of the Somalia report.

Attachments:

1. Incoming.
2. Draft response.
3. Letter from Ab Mikva to Sen. Specter re: access to IOB Guatemala report.
4. Letter from Jack Quinn to House Intelligence Committee re: access to IOB reports on Guatemala and Bosnia.

Not Attached, but Available:

1. Quinn and Harrington Letters to Henry Hyde re: Access to the IOB's Bosnia Report.
2. PFIAB Somalia report with NSC Memorandum and POTUS comments, which is classified at the Codeword Level.

Baker, James E.

7082

From: Baker, James E.
To: Kreczko, Alan J.
Cc: /R, Record at A1; Beers, Rand R
Subject: FYI: SSCI Letters on Guatemala [UNCLASSIFIED]
Date: Wednesday, October 18, 1995 8:10PM

PRIVILEGED

In case you have not seen, I now have copies of the Specter/Kerrey letters (1) to Tony Harrington requesting "more details" on the White House Counsel's view that IOB reports need not be provided to the Hill and requesting a legal opinion from the IOB or competent authority on whether an action taken knowingly equates with criminal intent; and (2) refer to the AG "all issues of possible criminal prosecution for employees of the CIA for deliberately withholding information from Congress with an intent to mislead the intelligence oversight committees."

Regarding the first, IOB is inclined to respond: Your question re: access to the IOB report has been referred to WHC as I said I would do. Regarding your second question, as I have previously advised you it is the IOB's view that no criminal laws were violated. In any event, you have referred the matter to the Attorney General for her consideration and I am confident your question will be addressed in the context of her review.

7083

THE WHITE HOUSE

WASHINGTON

August 14, 1996

Dear Mr. Chairman:

Thank you for your letter regarding the Intelligence Oversight Board's (IOB's) report on Guatemala. I want to address your suggestion that the Administration's treatment of the Guatemala report may be inconsistent with its treatment of the IOB's Bosnia report.

In fact, consistent with long-standing practice, the IOB's report to the President was not made publicly available or available to the Congress in either instance. Indeed, we are aware of no precedent in this or any other Administration for providing to the Congress IOB reports to the President. Rather, what was made available concerning Guatemala is an unclassified version of the Guatemala report prepared in response to the President's directive, at the outset of the IOB's review, to make available to the public as much information as appropriate following the review.

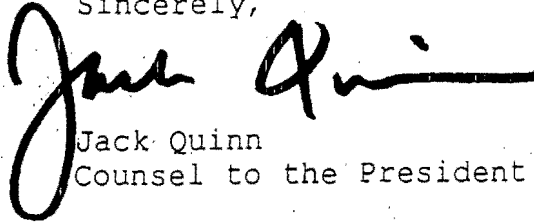
As you know, the IOB's work on behalf of the President is ordinarily conducted in confidence and shared only with the President and his immediate senior advisors. As a matter of comity, however, this Administration has sought to accommodate Congressional interest in the work of the IOB. In the case of Bosnia, for example, the Board was authorized to brief the Congress extensively on its factual review and conclusions. In addition, in an effort to respond to both Congressional and public interest, a public Guatemala report was prepared. The public report was not identical to the classified report to the President.

Notwithstanding these accommodations, the Board remains a Presidential oversight mechanism. I am sure you would agree that the goal of effective Presidential oversight is best served when the President's senior advisers, such as the Chairman of the IOB, are able to provide frank and forthright advice and information to the President without restraint. Both the IOB's report to the President on Guatemala and the report on Bosnia are examples of the importance of this principle. Without a reliable expectation of confidentiality, Board members might not be as candid in their comments to the President; employees would also no doubt be less willing to talk to the Board freely; and Administration officials

likely would be less willing to turn to the Board to address matters of concern.

Although I am heartened by Congress' interest in the work of the Board and the confidence that interest demonstrates, it is important that we preserve the effectiveness of this important Presidential oversight mechanism. This is a goal clearly consistent with our shared interest in effective intelligence oversight.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jack Quinn". The signature is fluid and cursive, with a large initial "J" and a long, sweeping horizontal line at the end.

Jack Quinn
Counsel to the President

The Honorable Larry Combest
Chairman
Permanent Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515-0415

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Alphonse Maldon to Susan Brophy at 19:25:33.12. Subject: Bosnia Strategy. (1 page)	04/08/1996	P5
002. email	Alphonse Maldon to Elisa K. Millsap and Stacy L. Rubin at 10:44:42.66. Subject: E-mail from Al. (1 page)	04/09/1996	P5
003. email	Haggard@osdpo.secdef.osd.mil to David Plummer at 16:44:00.00. Subject: Others Considered for ... Job (1 page)	05/28/1996	P2, P6/b(6)
004. email	Dennis Burke to Michelle Crisci at 17:59:40.63. Subject: Attached is Deutch Letter. (1 page)	09/30/1996	P5
005. email	G. Timothy Saunders to Charles N. Duncan at 12:12:33.00. Subject: "The Intelligence Oversight Board, Amendment to Executive Order 12863. [partial] [1st page was withdrawn but hexcode and attachment remain open] (1 page)	12/12/1997	P5. 7084

COLLECTION:

Clinton Presidential Records
Automated Records Management System [Email]
WHO ([Intelligence Oversight Board])
OA/Box Number: 500000

FOLDER TITLE:

[07/19/1993 - 12/16/1997]

2006-0996-F

ab904

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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- 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.

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

7084

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: G. Timothy Saunders (CN=G. Timothy Saunders/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:12-DEC-1997 12:12:33.00

SUBJECT: "The Intelligence Oversight Board, Amendment to Executive Order 12863"

TO: Charles N. Duncan (CN=Charles N. Duncan/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: KALBAUGH_D (KALBAUGH_D @ A1 @ CD @ LNGTWY [UNKNOWN]) (WHO)

READ:UNKNOWN

TEXT:

CHARLES,

I've since spoken w/ Jamie Baker, NSC Counsel, who advises they did not want the members of the IOB to receive additional commissions; thus I've reworded the E.O. to have the President designate both members and chair (by simple order).

Once the executive order is approved, all we'll need is a signed Bob Nash memo requesting designation of the appropriate members and chair, and I'll take care of the rest.

Many thanks.

TIM/CLERK

----- Forwarded by G. Timothy Saunders/WHO/EOP on
12/12/97 12:08 PM -----

G. TIMOTHY

SAUNDERS

12/12/97 12:07:27 PM

Record Type: Record

To: BAKER_JA @ A1 @ CD @ LNGTWY

cc: HUNERWADEL_J @ A1 @ CD @ LNGTWY

Subject: "The Intelligence Oversight Board, Amendment to Executive Order 12863"

JAMIE,

Attached is a copy the E.O. w/ our edits incorporated, as we discussed.

You'll note the title has been edited, as noted above, simply for historical reference purposes (this more conforms with current style).

Many thanks.

TIM/CLERK

CLINTON LIBRARY PHOTOCOPY

EXECUTIVE ORDER

THE INTELLIGENCE OVERSIGHT BOARD,
AMENDMENT TO EXECUTIVE ORDER 12863

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to emphasize the role of the Intelligence Oversight Board in providing Executive branch oversight, it is hereby ordered that Executive Order 12863 is amended as follows:

Section 1. The text in section 2.1 is deleted and the following text is inserted in lieu thereof: "The Intelligence Oversight Board (IOB) is hereby established as a standing committee of the PFIAB. The IOB shall consist of no more than four members designated by the President from among the membership of the PFIAB. The Chairman of the PFIAB may also serve as the Chairman or a member of the IOB if so designated by the President. The IOB shall utilize such full-time staff and consultants as authorized by the Chairman of the IOB with the concurrence of the Chairman of the PFIAB."

Sec. 2. The first sentence in section 2.3 is deleted and the following sentence is inserted in lieu thereof: "The IOB shall report to the President."

THE WHITE HOUSE,

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Tenet, George J. to Hawkins, Ardenia R. re: Torricelli Phone Call (2 pages)	04/18/1995	P1/b(1)
002. email	Bakke, Kyle D. to Darnes, Victoria J. re: Guatemala/Harbury Staffing (2 pages)	04/20/1995	P1/b(1)
003. email	Darnes to Argarin, Jocelyn D. et al. re: FW: Guatemala/Harbury Staffing (2 pages)	04/20/1995	P1/b(1)
004. email	Garthoff, Paulette to Pease, Bruce E. & Tenet re: Mtg with Dave Wesley (1 page)	04/21/1995	P1/b(1)
005. email	Feinberg, Richard E. to Blakeman, Earlen C. re: More Items (1 page)	04/24/1995	P1/b(1)
006. email	Blakeman to Feinberg re: Odds/Ends (1 page)	04/25/1995	P1/b(1)
007. email	Garthoff to Hammond, Cathy J. & Hammonds, Lisa W. re: Guatemala Chronologies (22 pages)	04/28/1995	P1/b(1)
008. email	Garthoff to Pease & Tenet re: Wrapup (1 page)	04/28/1995	P1/b(1)
009. email	James E. Baker to Earle C. Blakeman and Bruce E. Pease. Subject: Subject: Spector/Kerry letter. (2 pages)	05/02/1995	P5 7085
010. email	James E. Baker to Earle C. Blakeman. Subject: Subject: Guatemala Letters. (2 pages)	05/02/1995	P5 7084

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Intelligence Oversight Board...])
OA/Box Number: 590000

FOLDER TITLE:

[04/17/1995-05/02/1995]

2006-0996-F
eh459

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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7085

MS Mail

DATE-TIME 02 May 95 19:40
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: Specter/Kerry letter [UNCLASSIFIED]
TO Blakeman, Earle C.
Pease, Bruce E.
CARBON_COPY Baker, James E.
Kreczko, Alan J.
TEXT_BODY

PRIVILEGED/DRAFT RESPONSE TO SENATORS SPECTER AND
KERREY

Chat:

We may want to duck the issue altogether and send back a generic statement about the IOB's review. Both approaches have risks. Personally, I don't think the State Dept. should duck on this. The USG has a responsibility to hear U.S. citizens out and who better to do so involving events overseas than the Department.

Let me know if you need a copy of the incoming it is fairly specific and urges the President "to direct that a focal point be established for interagency coordination and analysis of any information these agencies may find, so that aggrieved citizens need not approach each separate agency to search for information n these and similar human rights abuses." Also, Dave Wesley is checking with Justice to see if they have particular views on how this response is handled.

Alternatively: this letter is really about human rights abuses in Guatemala and not the IOB DeVine and Bamaca. You could refer the letter and the issue to an ARA lead IWG to draft an appropriate response.

DRAFT TEXT:

Dear

Thank you for your letter of April 11, 1995, regarding human rights abuses in Guatemala.

As you know, on March 30, I directed that the Intelligence Oversight Board

conduct a government-wide review of any and all aspects of the allegations surrounding the 1990 death of Michael DeVine and the 1992 disappearance of Efrain Bamaca Valesquez, as well as any related matters. I also directed that the review include any available information on the deaths of or human rights abuses of other Americans, including the torture of Sister Ortiz and the death of Griffith Davis and Nicholas Blake. While the IOB has been asked to review particular questions, it is my intent that the Board's Terms of Reference not limit the Board, either by restricting inquiry where it is appropriate or directing duplication where it is unnecessary.

On my behalf, the IOB is coordinating its review with the Department of Justice and agency inspectors general to make sure that all relevant questions and facts are being addressed and that they are being addressed in a manner consistent with law enforcement requirements and the IOB's review. Once the IOB has had a chance to review the facts, and report to me, it is my intention to make as much information available about these cases as is appropriate both to the families involved and the public.

As a separate matter, it is my intent that the United States Government assist the Historical Clarification Commission, once it is established, however we reasonably can. As part of that process I would encourage any citizen with information that may be relevant to the investigation of human rights abuses in Guatemala to provide that information to the State Department. Where information bears on the IOB's inquiry or warrants law enforcement investigation, appropriate referrals will be made.

Closing sentence.

MS Mail

7086

DATE-TIME 02 May 95 19:38
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: Guatemala Letters [UNCLASSIFIED]
TO Blakeman, Earle C.
CARBON_COPY Kreczko, Alan J.
Pease, Bruce E.
Tenet, George J.

TEXT_BODY

PRIVILEGED/DELIBERATIVE

Chat:

RE: Bellamy, Specter and DeVine letters

1. Peace Corps: I think you need to know how IOB is responding, or has responded, to Bellamy before we send a draft response forward to Tony. At the very least we need to be able to advise Tony Lake what the IOB's views are with respect to explicitly adding this case to their list. We run the risk of diminishing the value of the IOB's review if they are asked to take on more than they can reasonably handle. That is not to say all cases should not be looked at, but that the IOB should be looking first at the one's with an intelligence nexus; the others might more appropriately be reviewed by State or referred to the Clarification Commission. I do not know enough about the case Bellamy raises to make any judgment on this front. However, the IOB (with the IGS) may soon be in a position to survey the landscape and make a judgment about the scope of their review and what other questions have come up and where they might be handled if not by the IOB.

2. I do not concur in the Specter letter and recommend instead that we work off the draft that I will send you by separate E-mail. The letter suggests that the IOB will serve as the Government's focal point for informational inquiries regarding Guatemala. The draft I will send you recommends that State serve as the focal point for Guatemala matters that are not appropriately handled by the IOB and do not implicate U.S. law enforcement equities.

3. I think the DeVine letter is good, with the exception of the last paragraph which should be deleted in favor of more tempered language that

can not be read as an unqualified commitment of support. We are not in a position yet to know how all this will break. I would, however, like to see the incoming before clearing this letter and Tony Harrington or Dave Wesley should take a look at this letter along with the rest before it goes forward.

I will alert Tony Herrington through his staff that we have a number of letters for him to review. It is unlikely, however, that IOB will be in a position to do so until Thursday. Thank you.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Baker, James E. to Kreczko, Alan J. re: FW: A Note from Nancy Soderberg (1 page)	05/06/1995	P1/b(1)
002. email	Earle C. Blakeman to Richard E. Feinberg. Subject: FW: Handling Harbury FOIA. (5 pages) <i>pages 2-5 Dup</i>	05/10/1995	P5 <i>7087</i>
003. email	Pease, Bruce E. to Baker, James E. & Blakeman, Earle C. re: Guatemala Guidance (2 pages)	05/15/1995	P1/b(1)
004. email	Earle C. Blakeman to James E. Baker. Subject: Subject: RE: Guatemala Guidance. (3 pages)	05/16/1995	P5 <i>7088</i>
005. email	Blakeman to Baker, James E. re: More Guatemala (1 page)	05/17/1995	P1/b(1)
006. email	Blakeman to Bass, Peter E. et al. re: Guatemala Update (2 pages)	05/19/1995	P1/b(1)
007. email	Blakeman to Feinberg, Richard E. & Rocha, Victor M. re: Briefing Leslie [CIA Act] [partial] (1 page)	05/23/1995	b(2), P3/b(3)
008. email	Blakeman to Baker, James E. et al. re: Guatemala - Very New (2 pages)	05/23/1995	P1/b(1), P5
009. email	Breeland, Jocelyn G. to Darby, Melanie B. re: Personnel (2 pages)	05/24/1995	P1/b(1)
010. email	Baker, James E. to Pease et al. re: Proffer of "Nuclear Warheads" (4 pages)	05/25/1995	P1/b(1)
011. email	Stern, Jessica E. to Baker, James E. re: Proffer of "Nuclear Warheads" (4 pages)	05/26/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 MSMail-Record (Sept 94-Sept 97) ([Intelligence Oversight Board...])
 OA/Box Number: 590000

FOLDER TITLE:

[05/03/1995-06/16/1995]

2006-0996-F
 ch460

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]
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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]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
012. email	Baker, James E. to Pease et al. re: Proffer of Nukes (4 pages)	05/26/1995	P1/b(1)
013. email	James E. Baker to Richard E. Feinberg and William W. Leary. Subject: Subject: Re: Guatemala. (2 pages)	06/02/1995	P5 7089
014. email	Hawkins, Ardenia R. to Pease re: [Guatemala Story] (2 pages)	06/05/1995	P1/b(1)
015. email	Hawkins to Kreczko re: Next Steps Devine Investigation (2 pages)	06/05/1995	P6/b(6), b(7)(A), b(7)(F)
016. email	James E. Baker to Leslie A. Bassett. Subject: Subject: RE: Guatemala package 3548 -- clearance. (2 pages)	06/12/1995	P5 7090
017. email	Bassett, Leslie A. to Feinberg re: Guatemala Update (2 pages)	06/06/1995	P1/b(1)
018. email	Feinberg to Baker, Jane E. et al. re: Honduras Human Rights (1 page)	06/13/1995	P1/b(1)
019. email	Feinberg to Beers, Rand R. re: Honduras Human Rights Draft (4 pages)	06/14/1995	P1/b(1), P5
020. email	Bassett to Feinberg re: tps [talking points] (4 pages)	06/15/1995	P1/b(1), P5
021. email	Leary, William H. to Baker, James E. re: [Options for Talking Points] (2 pages)	06/15/1995	P1/b(1), P5
022. email	Baker, James E. to Beers & Feinberg re: Honduras Human Rights Draft (3 pages)	06/15/1995	P1/b(1), P5
023. email	Bassett to Baker, Jane E. et al. re: Memo for Lake/Deutch Meeting 6/16 (7 pages)	06/15/1995	P1/b(1), P5

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eh460

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and his advisors, or between such advisors [(a)(5) of the PRA]
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personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

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information [(b)(4) of the FOIA]
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purposes [(b)(7) of the FOIA]
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financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information
concerning wells [(b)(9) of the FOIA]

MSMail

7087

DATE-TIME 10 May 95 12:48
FROM Blakeman, Earle C.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Handling Harbury FOIA [UNCLASSIFIED]
TO Feinberg, Richard E.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

FYI

From: Baker, James E.
To: Blakeman, Earle C.; Leary, William H.
CC: /R, Record at A1; Kreczko, Alan J.
Subject: Handling Harbury FOIA [UNCLASSIFIED]
Date: Wednesday, May 10, 1995 12:01 PM

[[GFOIA.DOC : 3082 in GFOIA.DOC]]

DELIBERATIVE AND PRIVILEGED

As you know, Jennifer Harbury has written the President (May 2) requesting that he direct the release of all information responsive to her January 1995 FOIA request to relevant agencies. Harbury's lawyers have also written the White House Counsel this week and requested an immediate meeting on the handling of the Harbury FOIA request. Ab Mikva is inclined to meet with Harbury's lawyers, and has requested that if NSC has views on how the FOIA request should be handled we express those views today. Attached is a point paper on how to handle FOIA requests, a recommendation follows the two issues presented. Could you please take a look before the 2:30 meeting.

Bill: I need to do some more work to determine if it is in fact appropriate/legal for White House to direct agencies as a policy matter to treat a request as a priority. This is only somewhat analagous to the Clinton passport issue, because here the policy incentive is to address public interest in a current issue. My take: legal yes if otherwise consistent with applicable law and appropriate where policy for doing so is predicated on public interest in knowing more and defusing "crisis." What is your view?

ATTACHMENT
FILE DATE

10 May 95 11:54

MS Mail

7088

DATE-TIME 16 May 95 07:58
FROM Blakeman, Earle C.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: GUATEMALA GUIDANCE [UNCLASSIFIED]
TO Baker, James E.
CARBON_COPY Kreczko, Alan J.
Pease, Bruce E.
Ross, Thomas B.

TEXT_BODY

They went forward as you saw them. I understood you were reflecting Tony's concerns and that's why the points were covered with a note asking that he review them. apologies if that was not the case.

From: Baker, James E.
To: Blakeman, Earle C.
CC: /R, Record at A1; Kreczko, Alan J.; Pease, Bruce E.; Ross, Thomas B.
Subject: RE: GUATEMALA GUIDANCE [UNCLASSIFIED]
Date: Monday, May 15, 1995 09:12 PM

Chat:

For the record, while we requested that Tony Lake clear based on his concerns at the small staff meeting, we also expressly did NOT clear on any of the points below except the last one relating to the IOB. Did the points actually go forward to Tony as drafted below, as this e-mail would suggest, or was there another version reflecting our views which was sent forward to Tony? Please advise. Thank you.

From: Blakeman, Earle C.
To: Baker, James E.
CC: /R, Record at A1
Subject: FW: GUATEMALA GUIDANCE [UNCLASSIFIED]
Date: Monday, May 15, 1995 02:23 PM

FYI

From: Fetig, James L.
To: Blakeman, Earle C.
CC: /R, Record at A1; @PRESS - Public Affairs
Subject: RE: GUATEMALA GUIDANCE [UNCLASSIFIED]
Date: Monday, May 15, 1995 02:16 PM

FYI, Tony and Nancy cleared only the last point. The first two could risk putting the WH out on a limb if they are not totally correct. These were also considered detail that State should supply.

Thanks.

From: Blakeman, Earle C.
To: @PRESS - Public Affairs
CC: /R, Record at A1; @LEGAL - Legal Advisor; @INTEL - Intelligence Programs
Subject: FW: GUATEMALA GUIDANCE [UNCLASSIFIED]
Date: Monday, May 15, 1995 01:07 PM

Tom: Legal would like Tony Lake to review/clear.

From: Blakeman, Earle C.
To: Blakeman, Earle C.
CC: /R, Record at A1
Subject: FW: GUATEMALA GUIDANCE [UNCLASSIFIED]
Date: Monday, May 15, 1995 12:44 PM

From: Blakeman, Earle C.
To: Baker, James E.; Pease, Bruce E.
CC: /R, Record at A1
Subject: GUATEMALA GUIDANCE [UNCLASSIFIED]
Date: Monday, May 15, 1995 11:32 AM

Bruce, Jamie: Your clearest soonest, pls. Ross awaits. Thanks

BACKGROUND: NYT story today raises questions about death of U.S. anthropologist Peter Tiscione (ti-SHAWN-ee) in Guatemala in 1992. Torricelli's assertion that US Embassy ignored his requests for assistance immediately prior to the incident are false. Tiscione spoke to Embassy duty officer day of his death and asked for assistance obtaining medication; however, subsequently declined embassy duty officer's offer to help him obtain the medication. Police investigation found no evidence Tiscione was murdered: windows in hotel room were closed from inside, door was locked and chained from inside. Only fingerprints on machete found in his room were his. No signs of struggle or theft. Embassy reviewed police report on Tiscione's death and found no reason to disagree with its conclusions. This case falls under Intelligence Oversight Board's broad mandate to inquire into any intelligence that may bear on facts surrounding torture, disappearance or death of any US citizens in Guatemala since 1984. Meantime, important to slap down accusations that Embassy did not provide proper/adequate assistance.

POINTS TO MAKE

o No reason to believe Embassy acted improperly or that it failed to offer assistance to Mr. Tiscione. State can provide you the details, but Embassy records indicate that on day of his death, Mr. Tiscione declined embassy's offer to help him obtain medication he was seeking.

o They can also provide details on the police report concerning his death and why the Embassy concluded there was no reason to disagree with its finding that Mr. Tiscione died by suicide.

o Intelligence Oversight Board has been asked to look at any intelligence that may bear on torture, disappearance or death of U.S. citizens in Guatemala since 1984. If such intelligence exists on this case, IOB will review it accordingly.

M S M a i l

7089

DATE-TIME 02 June 95 08:45
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: Guatemala [UNCLASSIFIED]
TO Feinberg, Richard E.
Leary, William H.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Absolutely. Let me know when and where.

From: Leary, William H.
To: Baker, James E.; Feinberg, Richard E.
CC: /R, Record at A1
Subject: Guatemala [UNCLASSIFIED]
Date: Friday, June 02, 1995 08:13 AM

DELIBERATIVE

I talked to Nancy last night at some length about the memo we sent her on expediting Guatemala FOIA requests. She takes issue with our recommendations in one important respect and wants to expand upon them in several other ways. To wit:

1. All agencies should give expedited handling to ALL Harbury requests, but not others unless their regulations so permit. She argues that distinguishing between Harbury requests is unsustainable in PR terms. She believes the Torricelli revelations are irrelevant. They merely made public information that these agencies had in their possession for years; they do not confirm Bamaca's death. Therefore, she argues that agencies should be able to give expedited treatment to all Harbury requests without modifying or compromising their current standards. And, of course, we should "persuade" agencies to adopt this position forthwith.
2. She wants advance notice/summaries of documents that agencies are about to release AND withhold.
3. She wants/expects the release, including declassification, of most documents on all cases as soon as the IOB reports. And she wants the agencies to plan for that. We should handle this like we handled El Salvador or the POW/MIA documents. Specifically, e.g., she believes that NSC should at that time, as a matter of discretion, release the deliberative Presidential documents that we have thus far fenced off from FOIA-like

review.

4. She wants to know what coordination there is between the IOB and our IWG. I assured her that Jamie was providing all needed coordination.

5. State should be pushed to decide the staff names redaction issue and begin releasing documents pronto.

Given all this this, she thinks we probably should have another meeting of the IWG next week. Also, I think we should probably try to meet sometime today and discuss all this. Right?

DELIBERATIVE

M S M a i l

7090

DATE-TIME 12 June 95 16:56
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: Guatemala package 3548 -- clearance [UNCLASSIFIED]
TO Bassett, Leslie A.
CARBON_COPY Feinberg, Richard E.
Leary, William H.
TEXT_BODY

I have not yet shown to IOB staff, however, I think there are two basic difficulties with paras 1 and 3 of the draft response.

(1) the memo and letter refer to their special interest in finding out the facts of US involvement in Guatemala and informing Americans about our activities in Guatemala. Using this template in this instance would create the impression that there is a U.S. link to the cases cited in the letter. This letter is all about human rights cases in Guatemala not necessarily U.S. involvement in Guatemala. This is easily fixed by referring to events in Guatemala or human rights cases in Guatemala. See e.g., the letter to John Kerry of May 5:

(2) I no longer think we can say that a more ample review of government files will await the IOB's review as we have under active consideration a proposal to review and release documents in advance the IOB's report. I think we either need a holding letter or we need to push for resolution of this issue so that we can send a more responsive letter.

These are difficult to draft. Please let me know if you would like talk this one through. I will show to IOB staff as soon as they are available.
Thanks.

From: Bassett, Leslie A.
To: Baker, James E.
CC: /R, Record at A1
Subject: Guatemala package 3548 -- clearance [UNCLASSIFIED]
Date: Monday, June 12, 1995 03:19 PM

<<Attached File: LARSON.DOC>>

If all goes well I am attaching a copy of the letter to the Meredith Larson of Coalition "Missing" re Amcit cases -- you should have received hard copy of entire package with proposed reply last week -- would appreciate your clearance as soon as possible -- Richard and Bill Leary have both cleared.

Many more of these backed up -- the fun never stops. Thanks.

ll

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Bassett, Leslie A. to Baker, Jane E. et al. re: Honduras Memo/Talking Points (9 pages)	06/16/1995	P1/b(1), P5
002. email	Baker, James E. to Pease, Bruce E. re: Coalition "Missing" Package (3 pages)	06/17/1995	P1/b(1), P5
003. email	Bassett to Baker, Jane E. et al. re: Honduras Memo and Talking Points (3 pages)	06/17/1995	P1/b(1), P5
004. email	Baker, James E. to Bassett re: Honduras Memo and Talking Points (2 pages)	06/17/1995	P1/b(1), P5
005. email	Joshi, M. Kay to Bassett re: Honduras Memo and Talking Points (2 pages)	06/17/1995	P1/b(1)
006. email	James E. Baker to Alan J. Kreczko. Subject: Subject: FW: Honduras talking points. (2 pages)	06/17/1995	P5 7091
007. email	Bassett to Baker, James E. et al. re: FW: Honduras: Third Memo Revision (4 pages)	06/19/1995	P1/b(1), P5
008. email	Baker, James E. to Bassett et al. re: Honduras: Third Memo Revision (2 pages)	06/19/1995	P1/b(1)
009. email	Baker, James E. to Kreczko, Alan J. re: Senator Spector Inquiry on Proffer of Nuclear (2 pages)	06/20/1995	P1/b(1)
010. email	James E. Baker to Richard E. Feinberg and William H. Leary. Subject: Subject: RE: Honduras Guidance. (1 page)	06/26/1995	P5 7092
011. email	Baker, James E. to Feinberg re: U.S. Human Rights Cases in Guatemala (1 page)	06/29/1995	P1/b(1)

COLLECTION:

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OA/Box Number: 590000

FOLDER TITLE:

[06/16/1995-07/18/1995]

2006-0996-F
eh461

RESTRICTION CODES

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RR. Document will be reviewed upon request.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
012. email	Grey, Wendy to Bassett et al. re: A Note from Nancy Soderberg (4 pages)	07/03/1995	P1/b(1)
013. email	James E. Baker to Melanie Darby and Wendy Gray. Subject: Subject: FW: Guatemala (2 pages)	07/05/1995	P5 7093
014. email	Pease to Baker, James E. et al. re: A Note from Nancy Soderberg (3 pages)	07/05/1995	P1/b(1)
015. email	Baker, James E. to Baker, Jane E. et al. re: Devine Investigation (1 page)	07/10/1995	P6/b(6), b(7)(A), b(7)(C)
016. email	James E. Baker to Leslie A. Bassett at 12:14. Subject: Subject: RE: desparately seeking... (2 pages)	07/17/1995	P5 7095
017. email	Bassett to Baker, Jane E. et al. re: Honduras Points/List of Human Rights Cases (7 pages)	07/17/1995	P1/b(1)
018. email	Bruce E. Pease to James E. Baker, Leslie A. Bassett, and William H. Leary. (2 pages)	07/17/1995	P5 7094
019. email	Bassett to Hawkins, Ardenia R. re: Honduras Points/List of Human Rights Cases (2 pages)	07/18/1995	P1/b(1), P5

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2006-0996-F

ch461

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MS Mail

7091

DATE-TIME 17 June 95 10:19
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: FW: Honduras talking points [UNCLASSIFIED]
TO Kreczko, Alan J.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

FYI.

From: Baker, James E.
To: Beers, Rand R; Leary, William H.; Pease, Bruce E.; Bassett, Leslie A.
CC: /R, Record at A1
Subject: RE: Honduras talking points [UNCLASSIFIED]
Date: Saturday, June 17, 1995 09:49 AM

Leslie:

The IOB should be given an opportunity to review these points before they go final. If you can give me a revised version on Monday am I will pass along. From a lawyer's perspective, shorter is better. Specific comments follow.

1. 5th bullet. I would delete the last sentence of this bullet in favor of "The IOB's review should be instructive with respect to U.S. intelligence activities generally." I would want to see the IG and IOB conclusions before we suggest there is a pattern of human rights abuse by U.S. assets. Put differently, I think the context needs to be presented at the same time there is a discussion about patterns: What is an asset? Do they act at all times at U.S. request? Were they doing so in the situations at issue? To just say there is a pattern does not really present a full picture.

2. 6th Bullet. Government agencies can CONSIDER for expedited treatment requests from anybody. This particular bullet creates the expectation that agencies WILL expedite all requests involving human rights cases involving U.S. citizens regardless of who they come from. It is not accurate to say agencies are PREPARED to expedite any request "regarding the fate of American citizens" when we know there agencies do not permit them to do so. I would drop this bullet. Alternatively, you could say that "agencies will consider any request for expedited treatment." But this still implies they will receive expedited treatment whether or not they meet the

regulatory standards. I would delete this bullet.

3. 7th bullet. I think this works if it is intended to apply to direct contacts with relatives and families etc. because the "as possible" should cover U.S. national security concerns, privacy act, etc. However, I doubt Harbury would say we have been as forthcoming "as possible" in her context. A statement like this may just lead to squabbling later over what we meant by "as forthcoming as possible." Is this intended to be direction to agencies on FOIA? I would delete this bullet. You might go instead with something like " the Administration will continue to ensure that all [credible] allegations involving possible U.S. misconduct in Guatemala, Honduras or anywhere else, have been addressed or are addressed and where appropriate referred to the relevant Inspectors General and the Department of Justice."

4. 9th bullet. Accept for the point above that the IOB's review may be instructive regarding intelligence activities in Central America generally, I do not think we can bleed the two together. The IOB's work really doesn't have much of a link to whether to declassify Honduras documents. I would delete this bullet.

5. could I take another look after Bruce and Bill comment.

Thank you.

From: Bassett, Leslie A.

To: Baker, James E.; Beers, Rand R; Leary, William H.; Pease, Bruce E.

CC: /R, Record at A1

Subject: Honduras talking points [UNCLASSIFIED]

Date: Friday, June 16, 1995 06:11 PM

<<Attached File: HONDTP.DOC>>

Attached are talking points drafted at Nancy Soderberg's request for urgent clearance. Memo status is still unknown, but this would establish general line for Monday press guidance. Thanks for your help.

MS Mail

7092

DATE-TIME 26 June 95 19:49
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: Honduras Guidance [UNCLASSIFIED]
TO Feinberg, Richard E.
Leary, William H.
CARBON_COPY Bassett, Leslie A.
Pease, Bruce E.

TEXT_BODY

Richard:

I concur with the edit Bill Leary has proposed regarding the fourth paragraph of the policy conclusions document. I do not concur without it. As drafted, the paragraph could be read to suggest that we might only make "recommendations" to the National Security Adviser as to whether to refer a matter to Justice, IGs or the IOB. Not accurate. All matters that meet the standards prescribed by law or Executive Order must be referred to the appropriate entity. It is not appropriate to not do so. How a matter is referred would depend on the circumstances. Bill's edit captures these points using "as appropriate" to in effect indicate "where such referral is called for" but allowing that allegations that are not credible will not be treated as if they are.

Thank you.

From: Feinberg, Richard E.
To: Leary, William H.
CC: /R, Record at A1; Baker, James E.; Bassett, Leslie A.; Pease, Bruce E.
Subject: Honduras Guidance [UNCLASSIFIED]
Date: Monday, June 26, 1995 08:36 AM

<<Attached File: HONDPOL.DOC>>
<<Attached File: HONDTP.DOC>>

Attached for your comments are the results of Friday's meeting on Honduras. Once I have your input I will pass the documents on to Nancy and then on to State, CIA.

MS Mail

7093

DATE-TIME 05 July 95 17:57
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: FW: Guatemala [UNCLASSIFIED]
TO Darby, Melanie B.
Gray, Wendy
CARBON_COPY Leary, William H.
TEXT_BODY

Brooke/Wendy:

I was inadvertently left off the clearance list for the HONDTP and HONDPOL.
My comments, which I originally transmitted to Bill, follow. Thanks.

From: Baker, James E.
To: Leary, William H.
CC: /R, Record at A1; Kreczko, Alan J.
Subject: Guatemala [UNCLASSIFIED]
Date: Wednesday, July 05, 1995 03:27 PM

Thanks for the opportunity to look at the papers.

1. Second para. of A. Although this is my own language, I think it is better without "additional" modifying "any allegations." We would of course refer any credible allegations past present or future and do not want to suggest that if evidence of wrongdoing involving these allegations surfaced we would not refer it.

2. In paragraph 1) third para. of Section A. I would reword last two sentences along following lines: "The IOB is reviewing certain human rights cases involving Americans, in particular those cases specified by the IOB's Terms of Reference and any cases having a nexus to U.S. intelligence. The IOB anticipates that its review will be instructive with respect to U.S. intelligence activities in Central America generally." Item 1. below may provide a better formulation; see what you think.

3. In para. 2) first para. I would structure slightly different as there is an inherent tension between as appropriate, with a view toward, and consistent with regulations. Thus, "We will respond to all FOIA requests regarding the fate of American citizens or their close relatives and will expedite all requests consistent relevant legislation and regulations."

4. The second paragraph of this section belongs in the next section on declassification policy as this describes a discretionary policy choice to declassify a class of information rather than the handling of FOIA requests. Having declassified a class of information, the Government can then, fully consistent with FOIA, make that same information available to FOIA requestors on the basis that the information is readily available and has already been reviewed for applicable privileges etc. I would add the clause "as a matter of policy discretion" after "effort to declassify. . . "

5. Existing second para. of 3) need an "a" between is and good in last line.

6. Last sentence of 4) if the purpose of this sentence is to avoid reference to policies and debates about those policies rather than indicate that statements should be about competence and loyalty, I would think it better to drop the reference to competence and loyalty, as statements should really be tailored to the person in question. We could then word this as a negative, statements should not refer to the policies in question. . . "

Talking Points:

1. Fifth bullet. I think the second to last sentence overstates the Terms of Reference, or at least the IOB's interpretation of those terms. The Terms of reference specifically direct the IOB to review the Devine and Bamaca cases "as well as any related matters." The Board is also asked to review "any intelligence that may bear on the facts surrounding the torture, disappearance, or death of any US citizens in Guatemala since 1984." Certain cases are specifically cited. The fifth bullet drops the cross-reference to intelligence suggesting that the IOB is conducting a human rights review. This will likely raise false expectations about what the IOB is and is not doing. I would say something like, "The President has directed the Intelligence Oversight Board to conduct a government-wide review of the Devine and Bamaca cases, as well as any related matters. The IOB is also reviewing, in light of the specific questions posed to the Board, any intelligence that may bear on the facts surrounding the torture, disappearance, or death of any U.S. citizens in Guatemala since 1984." This language comes from the TOR.

2. We should be careful to not get ahead of what we are prepared to do. Under our MLAT Treaties, for example, we do not make public all the information we provide foreign governments for law enforcement purposes. Such public disclosure could affect the proper conduct of the other government's investigation. We may want to drop this bullet or throw in an appropriate.

I have not coordinated this document with the IOB, but am prepared to do so.

Thanks.

MS Mail

7094

DATE-TIME 17 July 95 13:48
FROM Pease, Bruce E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: desparately seeking . . . [UNCLASSIFIED]
TO Baker, James E.
Bassett, Leslie A.
Leary, William H.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Jamie, Leslie,

I take your point (#2 below). I think it is fair to say human rights concerns are at the forefront of our intelligence relationship. That does not imply to me that this is the ONLY concern at the forefront, which would be incorrect.

From: Baker, James E.
To: Bassett, Leslie A.; Leary, William H.; Pease, Bruce E.
CC: /R, Record at A1
Subject: RE: desparately seeking . . . [UNCLASSIFIED]
Date: Monday, July 17, 1995 11:44 AM

I clear as follows. (1) in memo to TL. 2d para. you state that at least one of the cases has been the subject of litigation. Are you referring to the Ortiz suit against General BLANK or a FOIA law suit? If the former then I think this sentence is misleading. If the latter, did we win, lost, still being litigated and depending on answer are we following any court orders in the case. Bottom line: I would delete, but Bill and I should know the answer.

(2) BRUCE: I have no issue with sentence at top of page two of letter, but would want to make sure that Bruce focused on the notion that protection of human rights is at the forefront of our intelligence relationships. That is a pretty strong statement which may be hard to live up to in a world where we necessarily must use a mixed bag of resources. I am comfortable if Bruce is.

(3) I will coordinate today with IOB and affirmatively advise you that I have done so.

Thanks. Difficult letter to put together.

From: Bassett, Leslie A.
To: Leary, William H.; Pease, Bruce E.
CC: /R, Record at A1; Baker, James E.
Subject: desperately seeking . . . [UNCLASSIFIED]
Date: Saturday, July 15, 1995 02:21 PM

<<Attached File: AIDOCB.DOC>>

<<Attached File: AIDOCA.DOC>>

your clearance on the attached -- slightly revised to reflect honduras talking points, and with rhetoric slightly toned down. Y'all received hard copy version about a week ago, I really need to move this one, more coming alas. Thanks!!!!

M S M a i l

7095

DATE-TIME 17 July 95 12:14
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: desperately seeking . . . [UNCLASSIFIED]
TO Bassett, Leslie A.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

The facts are as you state them. I will watch for the returns. Thanks.

From: Bassett, Leslie A.
To: Baker, James E.
CC: /R, Record at A1
Subject: RE: desperately seeking . . . [UNCLASSIFIED]
Date: Monday, July 17, 1995 12:07 PM

Jamie; I info'd you on this because you had already cleared it -- changes were made to tone down purple prose you objected to; the litigation I had in mind was the La Penca case; Bruce cleared as did Bill, so I moved this -- scream if you want it pulled back (it'll probably get bounced anyway). Sorry for confusion, thanks

From: Baker, James E.
To: Bassett, Leslie A.; Leary, William H.; Pease, Bruce E.
CC: /R, Record at A1
Subject: RE: desperately seeking . . . [UNCLASSIFIED]
Date: Monday, July 17, 1995 11:44 AM

I clear as follows. (1) in memo to TL. 2d para. you state that at least one of the cases has been the subject of litigation. Are you referring to the Ortiz suit against General BLANK or a FOIA law suit? If the former then I think this sentence is misleading. If the latter, did we win, lost, still being litigated and depending on answer are we following any court orders in the case. Bottom line: I would delete, but Bill and I should know the answer.

(2) BRUCE: I have no issue with sentence at top of page two of letter, but would want to make sure that Bruce focused on the notion that protection of human rights is at the forefront of our intelligence relationships. That is a pretty strong statement which may be hard to live up to in a world where

we necessarily must use a mixed bag of resources. I am comfortable if Bruce is.

(3) I will coordinate today with IOB and affirmatively advise you that I have done so.

Thanks. Difficult letter to put together.

From: Bassett, Leslie A.

To: Leary, William H.; Pease, Bruce E.

CC: /R, Record at A1; Baker, James E.

Subject: desperately seeking . . . [UNCLASSIFIED]

Date: Saturday, July 15, 1995 02:21 PM

<<Attached File: AIDOCB.DOC>>

<<Attached File: AIDOCA.DOC>>

your clearance on the attached -- slightly revised to reflect honduras talking points, and with rhetoric slightly toned down. Y'all received hard copy version about a week ago, I really need to move this one, more coming alas. Thanks!!!!

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Pease, Bruce E. to Baker, Jane E. et al. re: Guatemala Mtg Issues (2 pages)	07/19/1995	P1/b(1)
002. email	Beers, Rand R. to Hammond, Cathy J. re: [Memorandum for Anthony Lake concerning meeting on Guatemala with IOB Chairman] (3 pages)	07/20/1995	P1/b(1)
003. email	Baker, James E. to Appel, Edward J. et al. re: IOB Package for POTUS (2 pages)	07/21/1995	P1/b(1), P5
004. email	William H. Leary to James E. Baker. Subject: Subject: RE: Guatemala. (2 pages)	07/24/1995	P5 7096
005. email	Baker, James E. to Kreczko, Alan re: IOB Package for POTUS (7 pages)	07/21/1995	P1/b(1)
006. email	Bassett, Leslie A. to Fetig, James L. re: Press Request: Rita Beamish (2 pages)	07/24/1995	P1/b(1)
007. email	Bassett to Fetig re: AP Reporter (1 page)	07/25/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 MSMail-Record (Sept 94-Sept 97) ([Intelligence Oversight Board...])
 OA/Box Number: 590000

FOLDER TITLE:

[07/19/1995-07/26/1995]

2006-0996-F

ch463

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]

M S M a i l

7094

DATE-TIME 24 July 95 15:49
FROM Leary, William H.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: Guatemala IWG [UNCLASSIFIED]
TO Baker, James E.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Thanks for the comments, Jamie. You have no idea what a boost it is for morale to know that someone actually reads this crap carefully.

1. I will send you the list, in case you don't have it. You will get it to IOB, right?
2. Hopefully, we will hear no more about this.
3. Of course, they should since we referred copies to State's FOIA office for their advice. But, it is no big deal for us to send copies to John Hamilton, so. . . .

From: Baker, James E.
To: Leary, William H.
CC: /R, Record at A1; Bassett, Leslie A.
Subject: RE: Guatemala IWG [UNCLASSIFIED]
Date: Monday, July 24, 1995 01:51 PM

Thank you. Department of 2 cents from one who did not attend.

1. We should make sure that the IOB gets a copy of the human rights cases list, at least with respect to Guatemala.
2. I agree, advance notice to Congress is impracticable. Implementing the law is difficult enough without creating additional procedural requirements.
3. Wouldn't State already have copies of State documents we released as a result of third agency rule?

From: Leary, William H.
To: Andricos, George M.; Baker, James E.; Bassett, Leslie A.; Feinberg, Richard E.; Pease, Bruce E.; Soderberg, Nancy E.
CC: /R, Record at A1; Hawkins, Ardenia R.

Subject: Guatemala IWG [UNCLASSIFIED]

Date: Monday, July 24, 1995 10:00 AM

<<Attached File: IWG7-14.DOC>>

Attached are minutes of the most recent meeting of the Guatemala IWG.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Hammonds, Lisa W. to Beers, Rand R. re: FYI (1 page)	08/11/1995	P1/b(1)
002. email	James Baker to Leslie Bassett, re: Comments on O'Dea Letter (2 pages)	08/31/1995	P5 7097
003. email	Bassett to Baker, James E. re: Two Items [8 U.S.C., seciton 1202 (f)] (1 page)	09/05/1995	P1/b(1), P3/b(3)
004. email	Baldwin, Kenneth to Pease, Bruce E. re: Status of Guatemala Review (2 pages)	09/06/1995	P1/b(1)
005. email	Pease, Bruce E. to Bass et al. re: IOB Request to Brief SSCI (2 pages)	08/31/1995	P1/b(1)
006. email	Bassett to Gray, Wendy re: DeVine Appointment Request and Guatemala Update (3 pages)	09/12/1995	P1/b(1)
007. email	Baldwin to Beers & Pease re: [A Note from Nancy Soderberg concerning Deutch Meeting] (1 page)	09/12/1995	P1/b(1)
008. email	Leslie Bassett to William Leary, re: IOB Study (1 page)	09/15/1995	P5 7098
009. email	Bassett to Feinberg, Richard E. re: Pkg. #6390 - Human Rights Ldrs re Expansion of IOB Review (1 page)	09/20/1995	P1/b(1)
010. email	Bassett to Baker, Jane E. et al. re: Meeting with Carole DeVine (2 pages)	09/21/1995	P1/b(1)
011. email	Pease to Baker, Jane E. et al. re: Draft Press Guidance (2 pages)	09/22/1995	P1/b(1)
012. email	Baldwin to Baker, Jane E. et al. re: Draft Press Guidance (2 pages)	09/25/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 MSMail-Record (Sept 94-Sept 97) ([Intelligence Oversight Board...])
 OA/Box Number: 590000

FOLDER TITLE:

[07/28/1995-09/27/1995]

2006-0996-F

ch464

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]
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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]

MS Mail

7097

DATE-TIME 31 August 95 13:51
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: Comments on O'Dea Letter [UNCLASSIFIED]
TO Bassett, Leslie A.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

The virtue of patience is recommended. My fault. Thanks.

From: Bassett, Leslie A.
To: Baker, James E.
CC: /R, Record at A1
Subject: RE: Comments on O'Dea Letter [UNCLASSIFIED]
Date: Thursday, August 31, 1995 01:49 PM

so they are happy with this and it can go forward, or do I cultivate the virtue of patience a little longer?

From: Baker, James E.
To: Bassett, Leslie A.
CC: /R, Record at A1
Subject: RE: Comments on O'Dea Letter [UNCLASSIFIED]
Date: Thursday, August 31, 1995 01:35 PM

You were correct, but I recommended that they do so in the interest of the thoroughness. The IOB's credibility depends in part on leaving no stone unturned. Thanks.

From: Bassett, Leslie A.
To: Baker, James E.
CC: /R, Record at A1
Subject: RE: Comments on O'Dea Letter [UNCLASSIFIED]
Date: Wednesday, August 30, 1995 02:39 PM

lovely. I was under the impression the IOB would prefer NOT to meet with the assembled group, but if they are willing to do so that is much better. I gratefully concur with your changes. let me know when all are happy -- and thanks.

From: Baker, James E.
To: Bassett, Leslie A.
CC: /R, Record at A1

Subject: Comments on O'Dea Letter [UNCLASSIFIED]
Date: Wednesday, August 30, 1995 02:06 PM

<<Attached File: ODEA.DOC>>

Leslie:

I couldn't resist. I have made a number of changes to the letter, in particular the 2d and 4th paragraphs. I would be happy to explain any specific edits. The main substantive points are follow: 1. the IOB is conducting a review rather than an investigation. I think USG agencies take human rights seriously; the one sentence was too negative coming from the National Security Adviser. The referral to the IOB represents commitment to intelligence oversight as well as human rights. 2. I believe the IOB should meet with anybody who thinks they have something to tell the Board. This goes to the credibility of their review and any misperception that this is a white wash. For example, IOB staff have met with Harbury. They are their own best advertisement as to the integrity and thoroughness of the process. 3. Finally, while it is true the Board operates in confidence (i.e., in a privileged relationship vis a vis the President and his immediate advisers.) This is a matter that is complex to explain and the first two sentences of the last para. are therefore probably more provocative than explanatory.

Cover memo looks fine with two changes. I gather from Frank that the first letter in was to the President rather than Tony. (1st sentence.) And I would delete last sentence of 2d para. The IOB should welcome public input, but is not in a position to carry on a dialogue because they report to President etc.

Please see if you are no comfortable with these changes. Frank Fountain concurs, but pending your approval would like to show to Tony Harrington before we mover forward.

M S M a i l

7098

DATE-TIME 15 September 95 10:47
FROM Bassett, Leslie A.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: IOB Study [UNCLASSIFIED]
TO Leary, William H.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

thanks!!!!!!

From: Leary, William H.
To: Bassett, Leslie A.; Feinberg, Richard E.
CC: /R, Record at A1; Baker, James E.
Subject: IOB Study [UNCLASSIFIED]
Date: Friday, September 15, 1995 09:05 AM

I talked with Jamie about the several IOB questions that came up at yesterday's meeting.

1. He agreed that State should NOT delay any FOIA response because of the timing of the IOB report, but they definitely should delay their discretionary release until after the IOB report and subsequent POTUS decisions about declassification. I passed on this information to Jack Boyle and John Kropf at State.

2. Jamie obtained some useful guidance from the IOB about the timing of their report, which I can pass on at the next meeting (Jamie will be goofing off in Europe for the next two weeks). In short: the IOB hopes to complete its study by the end of October, BUT that is not guaranteed, nor does it mean that POTUS decisions about what to release from the report will be made by then.

3. Jamie reports that discussions about possible pre-briefs of Harbury, Devine, et al, are taking place at higher levels within the White House.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. email	William Danvers to George Andricos, et al., re: The Hill on Guatemala (3 pages)
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10/01/1995

P5

7099

COLLECTION:

Clinton Presidential Records

NSC Emails

MSMail - Record (Sept 94 - Sept 97) ([Intelligence Oversight Board...])

OA/Box Number: 590000

FOLDER TITLE:

[09/28/1995 - 10/01/1995]

2006-0996-F

ke2565

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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- 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]

MS Mail

7099

DATE-TIME 01 October 95 13:08
FROM Danvers, William C.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: The Hill on Guatemala [UNCLASSIFIED]
TO Andricos, George M.
Appel, Edward J.
Baker, Jane E.
Baker, James E.
Baldwin, Kenneth
Beers, Rand R.
Burrell, Christina L.
Danvers, William C.
Genton, Regina A.
Gray, Wendy
Hammond, Cathy J.
Hawkins, Ardenia R.
Hilliard, Brenda I.
Hunerwadel, Joan S.
Joshi, M. Kay
Kessinger, Jodi
Kreczko, Alan J.
Merchant, Brian
Millison, Cathy L.
Norman, Marcia G.
Pease, Bruce E.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Randy-- While I don't think there is a "silver bullet" we can use to solve this issue, I'd like Mike Andricos to call Charley if you are ok with that to try and judge how much of an issue this is for the former prosecutor, Senator and Presidential candidate.

Let me know what you think. Thanks.

From: Beers, Rand R
To: Kreczko, Alan J.; @CROSS - Cross Hatches; @INTEL - Intelligence Programs; @LEGAL - Legal Advisor; @LEGISLAT-Legislative Affairs
CC: /R, Record at A1
Subject: RE: The Hill on Guatemala [UNCLASSIFIED]
Date: Saturday, September 30, 1995 09:52 AM

Nancy,

I would be prepared to call Battaglia, or Jamie Baker might call, in Alan's absence. This may no longer be so big an issue, and a call to Battaglia could establish this. However, if it turns out that we need to call Specter, then Tony Lake is the prime candidate if Ab does not believe he can, since Tony felt strongly on this issue. Bill, do you have another candidate to argue executive privilege with the Philadelphia prosecutor? Is Jack Quinn available yet?

Randy

From: Kreczko, Alan J.
To: Baker, Jane E.; Baker, James E.; Beers, Rand R; Danvers, William C.
CC: /N, NonRecord at A1; /R, Record at A1; @CROSS - Cross Hatches
Subject: RE: The Hill on Guatemala [UNCLASSIFIED]
Date: Friday, September 29, 1995 09:10 PM

assume this means who should call Specter. As indicated, Ab does not think he's the best person.

From: Baker, Jane E.
To: Beers, Rand R; Danvers, William C.; Kreczko, Alan J.
CC: /N, NonRecord at A1; /R, Record at A1; @CROSS - Cross Hatches
Subject: The Hill on Guatemala [UNCLASSIFIED]
Date: Friday, September 29, 1995 08:16 PM

Note from Nancy Soderberg:

Who should call Rudman?

Nancy

From: Kreczko, Alan J.
To: Beers, Rand R; Miscik, J.(Jami) A.; Pease, Bruce E.; Soderberg, Nancy E.
CC: /R, Record at A1; @INTEL - Intelligence Programs; @NSA - Nat'l Security Advisor; @INTERAM - Inter-American; @CROSS - Cross Hatches;
@LEGISLAT-Legislative Affairs; @LEGAL - Legal Advisor; @PRESS - Public

Affairs

Subject: RE: The Hill on Guatemala [UNCLASSIFIED]
Date: Friday, September 29, 1995 11:29 AM

Please pass to Nancy, as soon as possible:

Mikva spoke to Rudman, who said he understands and will be helpful. Rudman also suggested that someone call Specter to smooth his feathers. Ab agrees that this is a good idea, but says he (Ab) is not the person to do that (I don't know what the personal relationship is.)

From: Pease, Bruce E.

To: Beers, Rand R; Kreczko, Alan J.; Miscik, J.(Jami) A.; Soderberg, Nancy E.

CC: /R, Record at A1; @INTEL - Intelligence Programs; @NSA - Nat'l Security Advisor; @INTERAM - Inter-American; @CROSS - Cross Hatches; @LEGISLAT-Legislative Affairs; @LEGAL - Legal Advisor; @PRESS - Public

Affairs

Subject: The Hill on Guatemala [UNCLASSIFIED]

Date: Friday, September 29, 1995 09:15 AM

Nancy, Alan,

SSCI Staff Director Battaglia informed the IOB that Specter was, as expected, angry over not getting a full copy of the IOB interim report. Specter called Rudman on the matter, and Rudman said, as one who co-signed the Interim Report, he couldn't understand the decision to claim executive privilege. Rudman said he would call the White House on the issue today, but didn't say who he would contact.

Next issue, Harrington plans to refer to the White House Press office and press folks who approach him after the hearing this morning. He also has agreed to meet with R. Jeff Smith at 1230 today.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Bassett, Leslie A. to Baker, Jane E. et al. re: Guatemala Update (2 pages)	10/10/1995	P1/b(1)
002. email	James Baker to Alan Kreczko, re: Comments on Guatemala Letter (2 pages)	10/17/1995	P5 7100
003. email	James Baker to Alan Kreczko, re: SSCI Letters on Guatemala (1 page)	10/18/1995	P5 7101
004. email	Leslie Bassett to James Baker and Judith Miscik, re: 7338 IOB Report (3 pages)	10/23/1995	P5 7102
005. email	James Baker to Judith Miscik, re: 7338 IOB Report (5 pages) page 3-5 Dup	10/23/1995	P5 7103
006. email	Bassett to Baker, Jane E. et al. re: Guatemala Points for Nancy Soderberg -- Urgent (2 pages)	10/25/1995	P1/b(1)
007. email	Bassett to Baker, Jane E. et al. re: FW: Guatemala Update for Nancy Soderberg (2 pages)	10/25/1995	P1/b(1)
008. email	Bassett to Joshi, M. Kay re: Guatemala Package -- Thanks (2 pages)	10/25/1995	P1/b(1)
009. email	James Baker to Leslie Bassett, re: O'Dea Briefing Paper (2 pages)	10/27/1995	P5 7104
010. email	Miscik, Judith A. to Bassett re: ...Paper (2 pages)	10/30/1995	P1/b(1)
011. email	Veit, Katherine M. to Baker, Jane E. et al. re: New, New Procedures on Lake/Berger Schedules (3 pages)	10/30/1995	P1/b(1), P5
012. email	Bassett to Feinberg, Richard E. re: GT Points Attached in Case Shattuck Calls (4 pages)	11/03/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Intelligence Oversight Board...])
OA/Box Number: 590000

FOLDER TITLE:

[10/06/1995-11/02/1995]

2006-0996-F

eh465

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]

MS Mail

7100

DATE-TIME 17 October 95 18:59
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Comments on Guatemala letter [UNCLASSIFIED]
TO Kreczko, Alan J.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

FYI.

From: Baker, James E.
To: Beers, Rand R
CC: /R, Record at A1; Bassett, Leslie A.; Hawkins, Ardenia R.
Subject: Comments on Guatemala letter [UNCLASSIFIED]
Date: Tuesday, October 17, 1995 06:56 PM

PRIVILEGED

Randy:

A couple of edits and process comments. I concur in Leslie's deletion of last sentence, but will raise her three and recommend you delete the entire last paragraph and replace with something along the following lines:

Edits:

"The IOB continues its review. It is the President's intent that at the close of the IOB's review, all appropriate information about the events surrounding the death of Michael Devine and the disappearance of Efrain Bamaca Valasquez be provided to the public. " [Note this is the language from the original TOR.]

As background: The IOB is conducting a review vice investigation. I am not aware that they are looking at any additional cases other than the ones they have already looked at. Also, while they at one point had hoped to conclude by month's end they are now looking toward December.

You include as an attachment Questions and Answers. Ordinarily we would consider Qs and A's as internal and deliberative documents unless they were actually used. Were these qs and As in fact drafted with public distribution in mind? Otherwise I would not include as an attachment. Moreover, we would want to be sure that Press folks did not otherwise stray from these qs and as in the event we release these and they are compared to other answers.

Comments:

1. My suggested language, if Leslie concurs, may itself be provocative as most critics do not appreciate that some information is in fact appropriately classified. This leads me to a question. While it is good government to respond to all incoming letters and in particular letters to the President, do we necessarily want to respond to all the letters as they come in rather than hold them for a final letter/package? Otherwise we risk contradiction (or the cure for contradiction) safe generality. Neither is likely to satisfy recipients.

2. In the context of Specter's request for interim IOB report and our memo to Tony L. seeking his views, we stated that our view would change on not providing the report if the Administration had already decided to release the IOB's final report (with the exception of any classified annex.) Independent of 1. you may want to hold on to this package until after we get Specter memo back in the event a decision has already been made regarding the final report.

3. You should coordinate this response with IOB staff (Frank Fountain) even if it mimics earlier responses as they may well have learned something new that would change content or tone.

Thank you.

PRIVILEGED

M S M a i l

7101

DATE-TIME 18 October 95 20:10
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT FYI: SSCI Letters on Guatemala [UNCLASSIFIED]
TO Kreczko, Alan J.
CARBON_COPY Beers, Rand R.
TEXT_BODY
PRIVILEGED

In case you have not seen, I now have copies of the Specter/Kerrey letters (1) to Tony Harrington requesting "more details" on the White House Counsel's view that IOB reports need not be provided to the Hill and requesting a legal opinion from the IOB or competent authority on whether an action taken knowingly equates with criminal intent; and (2) refer to the AG "all issues of possible criminal prosecution for employees of the CIA for deliberately withholding information from Congress with an intent to mislead the intelligence oversight committees."

Regarding the first, IOB is inclined to respond: Your question re: access to the IOB report has been referred to WHC as I said I would do. Regarding your second question, as I have previously advised you it is the IOB's view that no criminal laws were violated. In any event, you have referred the matter to the Attorney General for her consideration and I am confident your question will be addressed in the context of her review.

M S M a i l

7102

DATE-TIME 23 October 95 16:29
FROM Bassett, Leslie A.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: 7338 IOB Report [UNCLASSIFIED]
TO Baker, James E.
Miscik, Judith A.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Jami(e)s all: with regard to point four, i have repeatedly missed the nuance you described and have used the formulation " the President intends to provide the American public as much information about the [IOB] review as possible . . ." in several different letters without specific reference to the Bamaca/DeVine cases . . . I will be glad to check if you think it important, but my recollection is that it has gone into letters signed by Lake; a similar formulation may have gone into letters that date back to Chat (since I am a shameless plagiarizer) under presidential signature.

From: Baker, James E.
To: Hawkins, Ardenia R.; Miscik, J.(Jami) A.
CC: /R, Record at A1; Bassett, Leslie A.; Leary, William H.
Subject: 7338 IOB Report [UNCLASSIFIED]
Date: Monday, October 23, 1995 04:07 PM

Nancy bounced package 7338, response to Rep. Vento re: making public the IOB's report, pending a legal chop. Comments follow, although I, of course, welcome any comments/edits to my own comments:

1. Why is your memo classified Secret? Deliberative yes. Secret?? Note: Executive Privilege reaches deliberative material as well as state secrets. I.e., these comments, like your cover memo to the President would be "protected" from disclosure because they are deliberative and in the case of your memo, confidential presidential communications.

2. I did not comment on Friday, because I wanted to wait for Tony's review of the Specter letter memo. Tony selected option 1, i.e., to have Ab send the draft letter to Specter indicating the Administration's views on why we do not provide IOB reports to the Hill. We understand that Tony did not make any notations on the memo that would indicate that a decision has already been taken on release of the final IOB report. Therefore, the Vento response should preserve all the President's options as it does.

I would delete the second paragraph of the Lake memo and 3d para. of the President's memo:

3. The decision not to provide the report to the SSCI is based not on a "desire to protect Executive Privilege" (we can't give away Constitutional principles); the issue is whether we assert the privilege. Since the President (and/or White House Counsel) has not made a decision to invoke EP, what we are really doing is holding to the view, shared by prior administrations, that confidential communications from the IOB to the President should not be shared with the Congress. The basis for this view is included in Ab's draft response to Specter, which I have attached. In this instance, we have, however, made the substance of the IOB's interim report known to the Hill in the form of a summary and oral briefings by IOB Chairman Harrington. Vento does not seem to raise issue with the administration's decision not to release the interim report, however, if you thought it helpful, one option would be to offer to have the IOB brief Vento on the interim report or to see if we can agree to language in the letter that would commit to prospective briefings.

4. As a point of nuance, the TOR for the IOB limited its discussion of public disclosure to the Bamaca and Devine cases, so unless you are aware of other Presidential statements on this point, technically any decision to release all appropriate information (without qualification) would move the ball forward from prior statements. I have no substantive objection to doing so, it is a logical step, but we should be clear that this is new ground in terms of commitments publicly made.

5. In light of these comments I would reformulate the 2d and 3d paragraphs to say something along the following lines:

"The draft response makes clear that the President shares Rep. Vento's concern about the seriousness of the reviews being undertaken as well as his general agreement that all appropriate information should be made public from the IOB's report. (This is new ground, as the original statement regarding disclosure in the IOB's terms of reference was linked specifically to the Bamaca and Devine cases.) The response, however, notes that decisions regarding the ultimate disposition of the content of the IOB and IG reports should await the completion of both reviews so that decisions about national security information can be made with an understanding of all the facts."

6. In addition to reflecting the comments above, I would edit the letter as follows. The topic paragraph refers to the IOB's "ongoing investigation of CIA operations in Guatemala." This is Vento's choice of terms, but I do not think we should make it the President's choice of terms unless the IOB is comfortable with that characterization. In previous letters we have referred to the "IOB's interim report on Guatemala." The IOB is not necessarily reviewing CIA operations in G. per se and I know that from their perspective they are conducting a review, rather than an investigation,

which carries with it implications of criminal and coercive authority such as the authority to compel testimony and documents.

I would specify that the new guidelines cited in para. 2 are the informant guidelines, rather than e.g., the new guidelines on reporting to Congress.

In light of above comments, last paragraph might be reordered to say: "I share your view of the importance of government's Guatemala review. I also agree, that as much information should be made available to the public regarding this review as is possible, however, decisions regarding the disclosure or protection of national security information should be made at the close of the IOB's review when we will have a fuller understanding of the facts." [I BELIEVE THIS LEAVES OPEN THE QUESTION ON WHETHER THE IOB REPORT ITSELF WILL BE RELEASED, BUT WANT TO MAKE SURE YOU AGREE.

7. In addition to us, the IOB should clear this draft response.

8. Thank you.

M S M a i l

DATE-TIME 23 October 95 20:37
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: 7338 IOB Report [UNCLASSIFIED]
TO Miscik, Judith A.
CARBON_COPY Bassett, Leslie A.
Leary, William H.
TEXT_BODY

7103
pages 3-5
Dupes

I stand happily corrected on the public release point, by you and Leslie. As Leslie will attest, I float in and out of consciousness on these letters and as soon as she pointed it out I remembered the shift to the broader language. I agree on 4-6. I found Specter. Executive privilege is no easy field (there are only so many places you have reason to address the topic). Thank you.

[[7562I.DOC : 5147 in 7562I.DOC]]

From: Miscik, J.(Jami) A.
To: Baker, James E.
CC: /R, Record at A1
Subject: RE: 7338 IOB Report [UNCLASSIFIED]
Date: Monday, October 23, 1995 05:36 PM

Jamie--

A few points regarding your note:

1. Deliberative=fine, I didn't know that it was an option.
2. I've struck the paragraphs you suggested.
3. The Specter response isn't attached, but I take your point.
4. The phrase "release all appropriate information" is in a statement approved for Q&As on Guatemala approved by the West Wing. The guidance, approved by Nancy, was "It is the President's intention that after the report is completed, all appropriate information will be released."
5. Re: "this is new ground" I didn't see it that way given the press guidance, which whether actually used or not appears to be the Administration's policy and intent.
6. The topic paragraph was actually meant to refer to more than just the

IOB report. It was intended to respond to Vento's queries about the IOB and CIA IG reports. The CIA's was characterized as a "an investigation concerning allegations that have been raised concerning Agency activities in Guatemala." I will rework the letter to make sure the wording is clear and that the IOB isn't misrepresented. The suggestions for the final paragraph are fine.

7. I'll make sure IOB sees it.

8. Thanks.

From: Baker, James E.
To: Hawkins, Ardenia R.; Miscik, J.(Jami) A.
CC: /R, Record at A1; Bassett, Leslie A.; Leary, William H.
Subject: 7338 IOB Report [UNCLASSIFIED]
Date: Monday, October 23, 1995 04:07 PM

Nancy bounced package 7338, response to Rep. Vento re: making public the IOB's report, pending a legal chop. Comments follow, although I, of course, welcome any comments/edits to my own comments:

1. Why is your memo classified Secret? Deliberative yes. Secret?? Note: Executive Privilege reaches deliberative material as well as state secrets. I.e., these comments, like your cover memo to the President would be "protected" from disclosure because they are deliberative and in the case of your memo, confidential presidential communications.

2. I did not comment on Friday, because I wanted to wait for Tony's review of the Specter letter memo. Tony selected option 1, i.e., to have Ab send the draft letter to Specter indicating the Administration's views on why we do not provide IOB reports to the Hill. We understand that Tony did not make any notations on the memo that would indicate that a decision has already been taken on release of the final IOB report. Therefore, the Vento response should preserve all the President's options as it does.

I would delete the second paragraph of the Lake memo and 3d para. of the President's memo:

3. The decision not to provide the report to the SSCI is based not on a "desire to protect Executive Privilege" (we can't give away Constitutional principles); the issue is whether we assert the privilege. Since the President (and/or White House Counsel) has not made a decision to invoke EP, what we are really doing is holding to the view, shared by prior administrations, that confidential communications from the IOB to the

M S M a i l

7104

DATE-TIME 27 October 95 14:25
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: O'Dea Briefing Paper [UNCLASSIFIED]
TO Bassett, Leslie A.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

If you or Tony would like me to sit in, of course, I will. Otherwise I would pass.

From: Bassett, Leslie A.
To: Baker, James E.
CC: /R, Record at A1
Subject: RE: O'Dea Briefing Paper [UNCLASSIFIED]
Date: Friday, October 27, 1995 01:38 PM

thanks will make changes. meeting moved off to 5 pm tues -- were you planning to sit in? i can't remember who was initially asked.

From: Baker, James E.
To: Bassett, Leslie A.; Miscik, J.(Jami) A.
CC: /R, Record at A1
Subject: O'Dea Briefing Paper [UNCLASSIFIED]
Date: Friday, October 27, 1995 01:11 PM

Leslie:

I clear your excellent package. A couple of edits/comments:

1. Page 2, first full para: Probably more accurate to say as topic sentence, "Outside the context of the Bamaca and Devine cases, the IOB review was not meant to be exhaustive. . . " The TOR does request that the IOB review "all aspects" of the Devine and Bamaca matters.
2. Third bullet, page 2: you cite to institutional reforms to ensure CIA reports REQUESTED by Congress are timely, thorough and candid." If this point is seeking to address generally the issue of Congressional notification the language is too narrow. DCI has requirement to keep the "intelligence committees fully and currently informed of all intelligence activities." Point: not just a reactive requirement to be full and candid, but rather a general requirement to keep informed. I believe steps taken by Deutch et al are intended to address broad range of matters regarding

Congressional notification. I would say something more like:
"institutional reforms to ensure CIA meets its reporting requirements to the Congress and that managers are held accountable for doing so." This avoids characterization of the scope of the requirement. Encourage Jami's views on how best to address.

3. Final IOB report: Somewhere I would say something like: (We would caution against an optimistic prediction, as the IOB's deadline has slipped before and may well do so again.)

4. Page 3 top after documents. suggest you add something like: "although at the staff level we have urged the IOB to make as much of their report unclassified as possible and recommended modalities for doing so, in the event the President does decide to release all or part of the report.)

5. POINTS TO MAKE: Para. 4: We briefly discussed the merits of a bullet like: "I take your point, however. We would have given serious consideration to such a proposal at the outset." Probably best to get in and out of this issue, but just through out as food for thought.

6. Page 3, top para at end. Same point as 2. above.

Thank you.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	James Baker to Leslie Bassett and William Leary, re: Guatemala IWG (1 page)	11/03/1995	P5 7105
002. email	Beers, Rand R. to Miscik, Judith A. re: IOB Guest List [CIA Act] [partial] (1 page)	11/10/1995	P3/b(3)
003. email	Miscik to Baker, James E. re: IOB End Game (3 pages)	11/13/1995	P1/b(1), P5
004. email	Leary, William H. to Baker, James E. et al. re: IOB End Game (3 pages)	11/13/1995	P1/b(1), P5
005. email	Miscik to Beers re: Memo to Nancy re: Guat. Mtg. (5 pages)	11/13/1995	P1/b(1), P5
006. email	Baker, James E. to Beers & Miscik re: Guat. IWG (7 pages)	11/14/1995	P1/b(1), P5
007. email	Richard Feinberg to Leslie Bassett, re: State Guatemala Docs (2 pages)	11/28/1995	P5 7106
008. email	Leslie Basset to James Baker, et al., re: State Guatemala Docs (1 page)	11/28/1995	P5
009. email	Judith Miscik to Rand Beers, re: State Guatemala Docs (2 pages)	11/29/1995	P5 7107
010. email	Judith Miscik to James Baker and Leslie Bassett, re: State Guatemala Docs (3 pages) <i>pages 2-3 Dup</i>	11/29/1995	P5 7108
011. email	Leslie Bassett to James Baker, re: State Guatemala Docs (2 pages)	11/30/1995	P5 Dup
012. email	Hawkins, Ardenia R. to Baker, James E. et al. re: Concurrence on Declassifying Guatemala IG Reports (3 pages)	12/12/1995	P1/b(1), P5

COLLECTION:

Clinton Presidential Records
 NSC Emails
 MSMail-Record (Sept 94-Sept 97) ([Intelligence Oversight Board...])
 OA/Box Number: 590000

FOLDER TITLE:

[11/03/1995-12/22/1995]

2006-0996-F
 eh466

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]

7105

MS Mail

DATE-TIME 03 November 95 18:34
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: Guatemala IWG [UNCLASSIFIED]
TO Bassett, Leslie A.
Leary, William H.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

A couple of edits to the last paragraph.

1. The second sentence is not accurate. I would delete.
2. 4th sentence. I must have missed this meeting, but I don't recall a decision to delay release of material until the IOB report was released. Besides, it is up to the President and not the IWG to decide if the IOB report will be released at all. You might amend by saying "until such time as a decision is taken on whether to release the IOB's final report."
3. 5th sent. I would specify that the review being referred to is State's discretionary review of Honduran documents.
4. last sentence. I would drop "mistaken" since I don't believe a decision has necessarily been taken that some sort of wider review or declassification will not occur. Point remains the same with just impression. And I would add at end "and release." i.e., the same type of review and release.

Thanks for the opportunity to review.

From: Leary, William H.
To: Baker, James E.; Bassett, Leslie A.
CC: /R, Record at A1
Subject: Guatemala IWG [UNCLASSIFIED]
Date: Friday, November 03, 1995 04:01 PM

<<Attached File: IWG10-31.DOC>>

Attached are the draft minutes. Comments, please.

7106

M S M a i l

DATE-TIME 28 November 95 17:33
FROM Feinberg, Richard E.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: State Guatemala Docs [UNCLASSIFIED]
TO Bassett, Leslie A.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Leslie, you may forward to Nancy, showing clearance by Baker, Beers and Leary, and make the last para a formal recommendation with approve/disapprove. Thanks.

From: Bassett, Leslie A.
To: Feinberg, Richard E.
CC: /R, Record at A1
Subject: RE: State Guatemala Docs [UNCLASSIFIED]
Date: Tuesday, November 28, 1995 03:42 PM

Richard -- you can forward the attached e-mail to Nancy if it meets your requirements

Note for Nancy:

State/ARA reports that its discretionary review of approximately 6,000 Guatemala documents will be completed shortly, and has asked us informally to consider whether it makes sense to let this release go forward ASAP independent of the IOB review. The rationale would be that immediate release would ease pressure from NGOs and Congress for declassification; it would preempt the question of why State was ready for a declassification and other agencies were not (which could be raised if the release were held until the IOB's report is ready).

Since the State Guatemala review was conducted on a discretionary basis we do not face legal bars to delaying the public release of the documents.

The IOB continues to feel that no public release outside of FOIA channels should take place until its report is complete. The IOB would want the State IG to review the documents prior to release, and would itself want to review the documents as well, further delaying the completion of the review. The IOB does not anticipate that it would make any recommendations in its report that would preclude State release of the documents once the IOB review is completed.

At this stage if, as we understand, the IOB will need only another month or so to finish its review, then holding the State documents should not prove too difficult. If the IOB review is significantly prolonged, we may want to reconsider whether State should be allowed to go ahead with its release. Please let us know if you agree.

From: Feinberg, Richard E.
To: Bassett, Leslie A.
CC: /R, Record at A1
Subject: State Guatemala Docs [UNCLASSIFIED]
Date: Monday, November 27, 1995 06:10 PM

I told Hamilton that we needed to consult first with Nancy before giving him an NSC position, as you suggested. Please do an e-mail to NS with the options of release whenever ready (with approximate date) and hold upon after IOB. Hamilton indicates he can live with either.

MS Mail

7107

DATE-TIME 29 November 95 16:57
FROM Miscik, Judith A.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: State Guatemala Docs [UNCLASSIFIED]
TO Beers, Rand R.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Randy

Do we have word from CIA on their position yet? Have you spoken with Jamie or Leslie or is this on my plate?

Jami

From: Baker, James E.
To: Bassett, Leslie A.
CC: /R, Record at A1; Leary, William H.; Miscik, J.(Jami) A.
Subject: RE: State Guatemala Docs [UNCLASSIFIED]
Date: Wednesday, November 29, 1995 04:24 PM

Leslie:

I do not think the IOB's position is entirely clear. If the documents are relevant to their review, then they should be reviewing them now, indeed they would have a duty to do so. If the documents are not relevant to their review, then it is not clear why they would need to review them at all be it before or after the IOB's report is issued. If the latter is true, the better argument for not releasing the documents now is that it will gratuitously create pressure for the IOB to complete its review, when it is not in a position to do so.

Therefore, I think we need to go back to the IOB and press them, I am happy to do if you would like me to, and then modify your note to reflect either that the documents are relevant and the IOB is reviewing. Or they are not relevant, however, IOB believes it will create gratuitous pressure blah blah to release them now.

If the former is the case, I do not see how we can support release until the IOB has reviewed. If the latter is the case, my recommendation would be that we recommend against release for the reason stated (although I am interested in what the counter would be.)

As separate matter, at end of second para. I would add following. "... public release of the documents, provided they are not independently the subject of FOIA requests."

Please let me know if you concur in this approach and whether you would like me to talk with IOB. Thanks. P.s. I have discussed with Bill, who agrees in substance with this approach.

From: Bassett, Leslie A.
To: Baker, James E.; Leary, William H.; Miscik, J.(Jami) A.
CC: /R, Record at A1
Subject: FW: State Guatemala Docs [UNCLASSIFIED]
Date: Tuesday, November 28, 1995 06:01 PM

Jami, Jamie, Bill -- attached ok with you?

Note for Nancy:

State/ARA reports that its discretionary review of approximately 6,000 Guatemala documents will be completed shortly, and has asked us informally to consider whether it makes sense to let this release go forward ASAP independent of the IOB review. The rationale would be that immediate release would ease pressure from NGOs and Congress for declassification; it would preempt the question of why State was ready for a declassification and other agencies were not (which could be raised if the release were held until the IOB's report is ready).

Since the State Guatemala review was conducted on a discretionary basis we do not face legal bars to delaying the public release of the documents.

The IOB continues to feel that no public release outside of FOIA channels should take place until its report is complete. The IOB would want the State IG to review the documents prior to release, and would itself want to review the documents as well, further delaying the completion of the review. The IOB does not anticipate that it would make any recommendations in its report that would preclude State release of the documents once the IOB review is completed.

Recommendation: At this stage, as we understand, the IOB will need only another month or so to finish its review, so holding the State documents should not prove too difficult. If the IOB review is significantly prolonged, we may want to reconsider whether State should be allowed to go ahead with its release.

Approve _____ -- Disapprove _____

MS Mail

7108

DATE-TIME 29 November 95 19:06
FROM Miscik, Judith A.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: State Guatemala Docs [UNCLASSIFIED]
TO Baker, James E.
Bassett, Leslie A.
CARBON_COPY Leary, William H.
TEXT_BODY

pages 2-3
are
dups

Leslie:

Maybe I'm being "thick" but I complete miss the argument that if State releases now it will preempt the question of why State was ready for declassification and others were not. Wont it just increase pressure on the others? CIA is at a loss on why State is so anxious. I'd like to hear IOB's comeback to Jamie's questions.

Thanks

From: Baker, James E.
To: Bassett, Leslie A.
CC: /R, Record at A1; Leary, William H.; Miscik, J.(Jami) A.
Subject: RE: State Guatemala Docs [UNCLASSIFIED]
Date: Wednesday, November 29, 1995 04:24 PM

Leslie:

I do not think the IOB's position is entirely clear. If the documents are relevant to their review, then they should be reviewing them now, indeed they would ahve a duty to do so. If the documents are not relevant to their review, then it is not clear why they would need to review them at all be it before or after the IOB's report is issued. If the latter is true, the better argument for not releasing the documents now is that it will gratuitously create pressure for the IOB to complete its review, when it is not in a position to do so.

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Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Jodi Kessinger to Jane Baker, et al., re: Zona Rosa (3 pages)	02/09/1996	P5 7110

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail - Record (Sept 94 - Sept 97) ([Intelligence Oversight Board...])
OA/Box Number: 590000

FOLDER TITLE:

[02/09/1996 - 02/14/1996]

2006-0996-F

ke2564

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]
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.

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]

MS Mail

7110

DATE-TIME 09 February 96 11:22
FROM Kessinger, Jodi
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Zona Rosa [UNCLASSIFIED]
TO Baker, Jane E.
Baldwin, Kenneth
Friedrich, M. K.
Hilliard, Brenda I.
Joshi, M. Kay
Kessinger, Jodi
Millison, Cathy L.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

fyi

From: Bassett, Leslie A.
To: Kessinger, Jodi
CC: /R, Record at A1
Subject: RE: Zona Rosa [UNCLASSIFIED]
Date: Friday, February 09, 1996 08:26 AM

As requested:

CIA, DOJ letters: have moved to respective Leg Affairs offices for signature, will work to get them out today; Jamie Baker reviewed both and suggested some changes, your changes also transmitted.

Incoming Shelby letters: I spoke to SSCI staffer Pat Hanback on Monday; said letters coming, offered interagency briefing to include issue of reprisals, and added we were interested in being responsive to Shelby's concerns re constituents and wanted to discuss providing additional information to them. She said they would wait until they had recieved our letters before launching any new correspondence, welcomed briefing, would have to get back to us re constituent concerns. However, on Wednesday she told IOB that they were proceeding with letters anyway. I spoke to her Thursday, she confirmed they were proceeding with letters and provided draft (will send to you separately), letters aren't likely to be signed before next week. Gordy Bendick spoke to SSCI staff directors as stated below. Pat said they would have to get back to us re best way to handle constituent concerns. I offered unclas Zona Rosa materials, State Department summary of ivestigation for the second time. (FYI: USMC says they didn't do investigation, would have nothing to brief to families.)

Military Reprisals: have obtained documents referred to in first Zona Rosa meeting -- will send you a set. Do not confirm military reprisals. OSD has agreed to conduct internal review including interviews with MILGRP commander, OSD DASD, other key players. They will be prepared to brief on reprisal issue, but note that CIA should be similarly prepared -- I asked Jami Miscik to be sure they were prepared to brief as well. OSD will also prepare non-paper on reprisals which can be left with SSCI.

Helms letter to Reno: covers same ground as Shelby letter but adds angle on what is happening to Andrade. State will provide set of Shelby letters to Helms once all are ready.

From: Kessinger, Jodi
To: Bassett, Leslie A.
CC: /R, Record at A1; @CROSS - Cross Hatches
Subject: FW: Zona Rosa [UNCLASSIFIED]
Date: Thursday, February 08, 1996 07:08 PM

Leslie -

Nancy would like to know where we are on this.

From: Bendick, Gordon L.
To: @INTERAM - Inter-American; Soderberg, Nancy E.
CC: /R, Record at A1; @LEGISLAT-Legislative Affairs
Subject: FW: Zona Rosa [UNCLASSIFIED]
Date: Thursday, February 08, 1996 03:23 PM

Leslie

Per our conversation, I talked to Chris Straub re: the IOB investigation. He would agree to holding off on a letter til early next week - if we ensured him that a Shelby letter was coming by Friday/Monday. I told him that we are making every effort to get the letters to the Shelby and the SSCI ASAP. Straub also told me that the State IG report has led the SSCI to believe that the Andrade case deserves more investigation. Still, he is willing to talk to Suzanne Spaulding and Charlie Battaglia about holding off on the IOB investigation til the SSCI hears from us.

Ergo, Leslie, can we push State, DOJ, CIA to get their letters to the SSCI quickly? Thanks

Gordy

From: Bendick, Gordon L.
To: @INTERAM - Inter-American

CC: /R, Record at A1; @LEGISLAT-Legislative Affairs; Soderberg, Nancy E.
Subject: Zona Rosa [UNCLASSIFIED]
Date: Thursday, February 08, 1996 12:37 PM

Leslie

Sen Helms' has sent to AG Reno a letter re: Zona Rosa. I'll walk a copy down to you. It contains the same spurious accusations and half-truths that Sen Shelby has promulgated. State, of course, gets much more excited by Helms' potential impact on them. They are working with DOJ and Helms' staff (Gina Marie Lichasz) to put out this fire before it flames. Will keep you updated on their progress.

Cheers
Gordy

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
013. email	Fetig to Baker, James E. et al. re: IOB/Bosnia/Press (2 pages)	03/22/1996	P1/b(1), P5
014. email	Bass, Peter E. to Baker, James E. & Johnson, David T. re: Bosnia/IOB/Press (2 pages)	03/23/1996	P1/b(1), P5
015. email	Miscik, Judith A. to Bassett re: Draft Guat Press Guidance for Your Comment Thanks [CIA Act] [partial] (1 page)	03/25/1996	P3/b(3)
016. email	Bassette to Appel, Edward J. et al. re: Draft Guat Press Guidance for Your Comments Thanks (3 pages)	03/25/1996	P1/b(1), P5
017. email	James Baker to Alan Kreczko re: Draft guat press guidance for your comment thanks (2 pages)	03/25/1996	P5 7111

COLLECTION:

Clinton Presidential Records
 NSC Emails
 MSMail-Record (Sept 94-Sept 97) ([Intelligence Oversight Board...])
 OA/Box Number: 590000

FOLDER TITLE:

[02/29/1996-03/25/1996]

2006-0996-F

ch472

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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- 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]

M S M a i l

DATE-TIME 25 March 96 10:39
FROM Baker, James E.
CLASSIFICATION ***** CLASSIFICATION NOT FOUND *****
SUBJECT FW: DRAFT guat press guidance for your comment thanks
TO Kreczko, Alan J.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

FYI: I will continue to assume that you do not want to be involved on the play by play re: Guatemala, like this, but rather kept informed of key issues/events. Let me know if otherwise.

From: Baker, James E.
To: Leary, William H.; @INTEL - Intelligence Programs; Bassett, Leslie A.
CC: /R, Record at A1
Subject: RE: DRAFT guat press guidance for your comment thanks
[UNCLASSIFIED]
Date: Monday, March 25, 1996 10:02 AM

Leslie:

Okay here, with two edits. (1) agree with Bill on "alleged." Could be misunderstood as reflecting an attitude rather than a factual uncertainty. (2) I would either delete the second and third Devine bullets, or indicate who has found that there is no evidence re: CIA employees and Devine, "In DATE, the CIA/IG concluded that." I am not challenging the conclusion, but until DOJ review is complete and IOB review is complete, I believe it is premature for the White House, and NSC staff, to sign up to such a conclusion. Other alternatives not so hot: To indicate that no evidence has been found "to date" is inappropriately suggestive. It also appears incomplete, when the other cases are not referenced. Blah blah blah.

As you are doing, IOB should definately clear. If you are under deadline pressure, let me know if I can help you pressure process along. Thanks.

From: Bassett, Leslie A.
To: Baker, James E.; Leary, William H.; @INTEL - Intelligence Programs
CC: /R, Record at A1
Subject: DRAFT guat press guidance for your comment thanks
[UNCLASSIFIED]
Date: Monday, March 25, 1996 09:09 AM

<<Attached File: GTPG325.DOC>>

IOB is currently reviewing as well -- will let you know what they change.