

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY P3/b(3)
001. email	Personal (Partial) [CIA Act] (1 page)	05/01/1997	
002. email	Paul Busick to Robert Malley re: BC on Monday (1 page)	09/26/1997	P5 6090

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy (D. Brian Peterman)
OA/Box Number: 2370

FOLDER TITLE:

Rudman

Bevin Maloney
2006-1000-F
bm227

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]

COPY

Collier, Dorothy A.

From: Busick, Paul E.
Sent: Friday, September 26, 1997 7:51 PM
To: Malley, Robert
Cc: @EXECSEC - Executive Secretary; @GWI - Gulf War Illnesses; @NSA - Natl Security Advisor
Subject: RE: BC on Monday [UNCLASSIFIED]

COPY

Rob,
 During my meeting with Jim S. we discussed three Gulf War Illnesses points that are worth putting on Sandy's agenda with Sec. Cohen:

(1) DOD investigations: With respect to Cohen's press comment about the PAC's "recommendation" to take the investigation lead from DOD, the **actual** recommendation (that DOD has not yet seen) will have to do with **oversight only – with which DOD agrees**. Cohen needs to stay on the reservation: maintain our message to show disappointment with the PAC's statement, reiterate DOD's commitment to thoroughly investigate all chemical warfare agent incidents, and to welcome oversight. DOD should wait for the report and refrain from "PAC baiting."

(2) Dr. Haley(Perot's researcher): DOD needs to independently peer review the Haley research it will fund outside the interagency Research Working Group process. Note: DOD may object and say that they have met all legal requirements. They need to repeat the peer review process to dispel the perception of preferential treatment. FLOTUS has met with Haley. Initially there was a press assertion that she may have influenced the process, which we think we have put to bed. Nevertheless, DOD needs to be squeaky clean to prevent a negative press story (Brown of WP is still investigating).

(3) Sen. Rudman/Oversight: Both Sen. Rudman and NSC/GWI agree that we need to preserve Rudman's independence until the PAC report is published. DOD should refrain from using Rudman as the counterbalance to PAC criticisms. He'll be more valuable to us in the post-PAC period in an oversight role, if we can keep him out of any short-term controversies.

—Original Message—

From: Malley, Robert
Sent: Friday, September 26, 1997 9:51 AM
To: @ALLNSC - NSC Staff
Subject: BC on Monday [UNCLASSIFIED]

Sandy will be having lunch with Sec. Cohen on Monday,

Please provide suggested topics and points by COB today.

So far, I understand DOD wants to discuss Bosnia -- Jock, please give me a call.

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY
001. email	Thomas Maertens to Maureen Tucker re: Background (5 pages)	04/28/2000	P1/b(1)
002. email	Miles Lackey to James Baker et al. re: SSCI Request for PFIAB Briefing (3 pages)	04/28/2000	P5 6093
003. email	James Baker to Justin Siberell et al. re: SSCI call on PFIAB report (6 pages)	04/28/2000	P5 6094
004. email	Brenda Hilliard to Mary McCarthy re: Rudman/PFIAB (4 pages)	05/01/2000	P1/b(1)
005. email	William Leary to Mary McCarthy and James Baker re: PFIAB and Chile (3 pages)	08/02/2000	P1/b(1)
006. email	William Leary to James Baker re: PFIAB Memo on Chile Documents (2 pages)	08/03/2000	P1/b(1)
007. email	William Leary to Mary McCarthy and James Baker (5 pages)	08/03/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
Exchange-Record (Sept 97- Jan 01) ([Warren Rudman and PFIAB..])
OA/Box Number: 620000

FOLDER TITLE:

[03/17/2000- 08/03/2000]

Bevin Maloney
2006-1000-F
bm160

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]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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COPY

Exchange Mail

6093

COPY

DATE-TIME 04/28/2000 5:26:38 PM
FROM Lackey, Miles M. (LEGIS)
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: SSCI Request for PFIAB Briefing [UNCLASSIFIED]
TO Baker, James E. (LEGAL)

CARBON_COPY Allen, Charles A. (LEGAL)
Baker, James E. (LEGAL)
DeRosa, Mary B. (LEGAL)
Hunerwadel, Joan S. (LEGAL)
Krass, Caroline D. (LEGAL)
Williams, Mary C. (ADMIN)

TEXT_BODY

clear by Miles

-----Original Message-----

From: Baker, James
E. (LEGAL)
Sent: Friday, April 28, 2000 3:40 PM
To: Lackey, Miles
M. (LEGIS)
Cc: @LEGAL - Legal Advisor
Subject: SSCI Request for
PFIAB Briefing [UNCLASSIFIED]

For your review, before I circulate
further.

DRAFT DRAFT
DELIBERATIVE/PRIVILEGED

Sandy:

We
understand from SSCI staff that Sen. Bryan is likely to call you
on Monday to press for access to the PFIAB Deutch report and/or a
briefing from Warren Rudman next week.

Background

On April
14, you cleared a letter from Rudman to the Committee stating that

COPY

"at this point I regret that I am not in a position to respond immediately to your request. Once the report has been reviewed by the President, and DDC, and appropriate actions, I will be better situated to respond to your request and accommodate your interest in appropriate fashion." Rudman did not send this letter to the Committee until April 27.

COPY

Discussion

We continue to believe this is the correct position to take for the reasons previously stated by memorandum (attached).

<< File:

2346PFIABDEUTCHSSCI.DOC >>

In addition:

* We cannot imagine a scenario where the President's FIAB would provide a briefing to the Hill before it had briefed the President. (In this regard, we note that the report commends to the President "and the President alone" the responsibility for judging the incumbent DCI's actions.)

* We also believe that given the nature of the report, the DDCI should have an adequate opportunity to consider its content in a deliberative manner, before its content becomes more broadly known.

For these reasons, we believe you should firmly resist any effort to have Sen. Rudman brief the report or his conclusions at this time. For the reasons stated in our earlier memorandum, you are on firm legal footing holding this ground.

Talking Points

* I appreciate your interest in the PFIAB's conclusions; however, it remains premature to consider such a request.

* I am sure you would agree that the intended recipients of the report, the President and the DDCI deserve an opportunity to receive the report and be briefed on it, before its conclusions are shared elsewhere.

When can we see the report? Warren tells me he is willing to come up next week, but the White House will not let him.

* While I am confident an appropriate accommodation of your interest can eventually be reached,

COPY

I want you to know that I am concerned about Congressional efforts to use the PFIAB as an investigative vehicle. The PFIAB is quintessentially a Presidential oversight mechanism, just as I am quintessentially a Presidential advisor, and just as your staff are quintessentially Congressional in character.

COPY

* While there will always be arguments to be made in a given context, if we erode this principle, we may eventually erode the efficacy of this mechanism, which your interest only serves to illustrate is an effective one.

* PFIAB briefings to Members of Congress are the exception and not the norm. Nor is this a topic for which the PFIAB has unique knowledge or access; indeed, the SSCI has conducted its own hearings and investigation on this matter.

COPY

6094

Exchange Mail

COPY

DATE-TIME 04/28/2000 6:47:06 PM
FROM Baker, James E. (LEGAL)
CLASSIFICATION UNCLASSIFIED
SUBJECT SSCI Call on PFIAB Report Monday? [UNCLASSIFIED]
TO Siberell, Justin H. (NSA)
Crocker, Bathsheba N. (NSA)

CARBON_COPY Lackey, Miles M. (LEGIS)
McCarthy, Mary O. (INTEL)
Allen, Charles A. (LEGAL)
Baker, James E. (LEGAL)
DeRosa, Mary B. (LEGAL)
Hunerwadel, Joan S. (LEGAL)
Krass, Caroline D. (LEGAL)
Williams, Mary C. (ADMIN)
Leary, William H. (RECORDS)

TEXT_BODY NOT FOR DISTRIBUTION OTHER THAN TO SANDY AND JIM
DELIBERATIVE/PRIVILEGED

Sandy:

We understand from SSCI staff that Sen. Bryan is likely to call you on Monday to press for access to the PFIAB Deutch report and/or

a briefing from Warren Rudman next week.

Background

On April 14, you cleared a letter from Rudman to the Committee stating that "at this point I regret that I am not in a position to respond immediately to your request. Once the report has been reviewed by the President and DDCI, and appropriate actions taken, I will be better situated to respond to your request and accommodate your interest in appropriate fashion." Rudman did not send this letter to the Committee until April 27.

COPY

Discussion

We continue to believe this is the correct position to take at this time for the reasons previously stated by memorandum (attached).

COPY

In addition:

* We cannot imagine a scenario where a Presidential advisory board would provide a briefing to the Hill before it has briefed the President. (In this regard, we note that the report commends to the President "and the President alone" the responsibility for judging the incumbent DCI's actions.)

* We also believe that given the nature of the report, the DDCI should have an adequate opportunity to consider its content in a deliberative manner, before its content becomes more broadly known.

For these reasons, we believe you should firmly resist any effort to have Sen. Rudman brief the report or his conclusions at this time. For the reasons stated in our earlier memorandum, you are on firm legal footing holding this ground. However, as you have previously discussed with Sen. Rudman, we would anticipate that an "appropriate accommodation" of the Committee would include a briefing of the Chairman and Ranking Member in the near term.

Talking Points

* I appreciate your interest in the PFIAB's conclusions; however, it remains premature to consider such a request.

* I am sure you would agree that the intended recipients of the report, the President and the DDCI deserve an opportunity to receive the report and be briefed on it, before its conclusions are shared elsewhere.

When can we see the report? Warren tells me he is willing to come up next week, but the White House will not let him.

* While I am confident an appropriate accommodation of your interest can soon be reached, I

COPY

want you to know that I am concerned about Congressional efforts to use the PFIAB as an investigative vehicle. The PFIAB is quintessentially a Presidential mechanism, the sole purpose of which is to provide complete and candid advice to the President. The advice is less likely to be complete and candid if the advisors do not know it will be kept confidential.

COPY

* While there will always be arguments to be made in a given context, if we erode this principle, we may eventually erode the efficacy of this mechanism.

* PFIAB briefings to Members of Congress are the exception and not the norm. Nor is this a topic for which the PFIAB has unique knowledge or access; indeed, the SSCI has conducted its own hearings and investigation on this matter.

Concurrence: Miles, Mary

TRANSLATED_ATTACHMENT 2346PFIABDEUTCHSSCI.DOC

April 5, 2000

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: JAMES BAKER

SUBJECT: SSCI Request for PFIAB Brief on Deutch

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

1. Say no. As you state, it is important that we maintain the PFIAB's position as the President's eyes and ears on intelligence oversight.

* To the extent the PFIAB is perceived by executive employees as a conduit to the

COPY

Congress, employees may be chilled from raising concerns to the PFIAB, or chilled in the manner in which they do so.

COPY

* Further, the President and his immediate senior advisors may be less likely to ask the PFIAB questions, if they know that at the end of each such question will come a Congressional fight over access to internal discussions.

* Third, for the same reasons we have identified in the Principals Committee context, the PFIAB itself may consciously or subconsciously modify the manner in which it presents issues to the President or his senior advisers if they believe they will then need to defend those same judgments on the Hill.

* Finally, we are wary of the PFIAB being enlisted into one side or another of a charged Congressional debate, which could undermine the PFIAB's longstanding tradition of non-partisan objectivity.

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

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

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

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

* A briefing will interject the temperate and objective voice of the PFIAB into a charged issue.

* It avoids a Congressional confrontation. However, I believe this is a distinction that will ultimately be lost on those persons who might be chilled in their dealings with the PFIAB as described above.

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

Concurrence by: Mary McCarthy and Mark Talvarides

RECOMMENDATION

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

Approve _____ Disapprove _____

COPY

2

DELIBERATIVE/PRIVILEGED

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DELIBERATIVE/PRIVILEGED 2346

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY
001. email	James Smith to Mary McCarthy re: PFIAB report (5 pages)	12/19/2000	P1/b(1)
002. email	William Leary to Wendy Gary and Mara Rudman re: JFK Appeals (3 pages)	01/13/2001	P5 6095 Dup.
003. email	Mara Rudman to William Leary re: FW: JFK Appeals (4 pages)	01/13/2001	P5 6095
004. email	William Leary to Wendy Gary and Mara Rudman re: JFK Appeals (8 pages)	01/13/01	P1/b(1), P5
005. email	Wendy Gary to William Leary re: JFK Appeals (9 pages)	01/17/01	P1/b(1)
006. email	Cathy Millison to William Leary re: Package 0205 Kennedy Assassination Records Appeal (4 pages)	01/18/2001	P5 6096 Dup.
007. email	Cathy Millison to William Leary re: Kennedy (5 pages)	01/18/01	P1/b(1), P5
008. email	William Leary to Cathy Millison re: FW: Package 0205 Kennedy Assassination Records Appeals (4 pages)	01/18/2001	P5 6096

COLLECTION:

Clinton Presidential Records
NSC Emails
Exchange-Record (Sept 97- Jan 01) ([Warren Rudman and PFIAB..])
OA/Box Number: 620000

FOLDER TITLE:

[12/19/2000-01/18/2001]

Bevin Maloney
2006-1000-F
bml62

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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RR. Document will be reviewed upon request.

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COPY

Exchange Mail

COPY

DATE-TIME 1/13/01 1:55:08 PM
FROM Rudman, Mara E. (NSA)
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: JFK Appeals [UNCLASSIFIED]
TO Leary, William H. (RECORDS)

CARBON_COPY Gray, Wendy E. (NSA)
Rudman, Mara E. (NSA)

TEXT_BODY Bill, see edits. I will turn now to your other email with the POTUS memo in it.

-----Original Message-----

From: Leary, William
H. (RECORDS)
Sent: Saturday, January 13, 2001 1:48 PM
To: @RUDMAN
Subject: JFK
Appeals [UNCLASSIFIED]

Mara,

Here is a slightly updated draft version of the memo to Podesta, which eliminates the lasrt bullet before the Recommendation line. Peter (who originally suggested this option) no longer thinks it makes sense and I agree.

TRANSLATED_ATTACHMENT

jfkappeals~2001.doc

January 13, 2001

ACTION

MEMORANDUM FOR JOHN PODESTA/BETH NOLAN

FROM: BILL LEARY/PETER RUNDLET

SUBJECT: Kennedy Assassination Records Appeals

COPY

John Tunheim, former Chairman of the President John F. Kennedy Assassination Records Review Board wrote to John on December 1, 2000, regarding two unresolved appeals of disclosure decisions made by the Board shortly before it went out of existence on September 30, 1998. The appeals were filed by the Secret Service and the President's Foreign Intelligence Advisory Board. Our analysis of these two cases is presented most fully in the draft memorandum to the President.

Background

In June 1995, when the JFK Board was ready to begin ordering the release of documents, Tony Lake, Judge Mikva, and John Podesta sent a memo to the President outlining an approach to exercising Presidential review authority. It emphasized that the White House should not get involved except when a dispute involved important principles that could not be resolved between the Board and an appealing agency. The memo also acknowledged a strong disposition to recommend release while remaining open to arguments in favor of postponement. Based on the President's approval of the memo, we conveyed that message to the Board and to the CIA, FBI, and Secret Service.

Originally, we sought to resolve all disputes without a formal Presidential decision. At this point, however, it is clear that the two remaining disputes cannot be resolved by negotiation, particularly since the Board no longer exists.

The only two prior appeals were submitted by the FBI. The first FBI appeal involved foreign government information and sources information; the second involved information about counter-intelligence methods and highly personal information in one document. In both cases, after extensive contacts among the parties, the FBI withdrew its appeal. In the case of the one document involving personal privacy, the Board agreed to redact the most sensitive information.

Secret Service Appeal

In 1998, Bill worked with Shelley Peterson of the Counsel's office and Jane Vezeris, the Deputy Assistant Director of the Secret Service's Office of Administration in an effort to find an acceptable compromise. We believed that we identified a reasonable compromise, as outlined in the attached draft memorandum to the President; however, we did not persuade the Board to accept the proposed compromise before it ceased to function. Jane Vezeris no longer works at the Secret Service, and we have not yet confirmed that the Secret Service would still endorse this compromise. (Bill has contacted the Director's office to ask for an opinion and Peter has

COPY

contacted the OGC at Treasury.) We continue to believe this is a reasonable solution which could and should be put into effect.

COPY

PFIAB Appeal

Since the Board's decision in this case was made on September 30, 1998, there is relatively little written analysis of the issues in dispute. Most of the exchanges between PFIAB and the Board at Tab III involve issues that are no longer disputed or relevant. The PFIAB appeal involves 18 packages totalling some 400 pages. All the documents have already been redacted to protect national security. Still disputed are the issues of relevance and deliberative process, as reviewed in the attached memorandum to the President.

We find the PFIAB's objections to releasing these documents less than compelling. Warren Rudman's January 4 memorandum to John does suggest some willingness to compromise. Although not stated explicitly, it appears that PFIAB is willing to agree to the release of any documents that they determine are relevant. However, since PFIAB still disagrees fundamentally with the Board's definition of relevance, we cannot envision reaching consensus on that disagreement before January 20.

The draft memorandum at Tab I presents the substantive case for a decision by the President to uphold the Board's decision. Alternatively, you could recommend that the President overrule the decision of the Board. We do not believe it is possible, at this late date, to fashion a compromise that splits the difference.

RECOMMENDATION

That you forward the attached memorandum to the President.

Attachments

Tab I Draft Memorandum to the President
Tab II Background on Secret Service Appeal
Tab III Background on PFIAB Appeal
Tab A PFIAB Appeal Letter of October 7, 1998
Tab IV Incoming Tunheim Letter

2

Unclassified With
~~TOP SECRET~~ Attachments

Unclassified With
~~TOP SECRET~~ Attachments

Unclassified With 0205
~~TOP SECRET~~ Attachments

COPY

Unclassified With
~~TOP SECRET~~ Attachments

COPY

COPY

6096

Exchange Mail

COPY

DATE-TIME 1/18/01 8:12:12 AM
FROM Leary, William H. (RECORDS)
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Package 0205 Kennedy Assassination Records Appeals
[UNCLASSIFIED]
TO Millison, Cathy L. (EXSEC)

CARBON_COPY**TEXT_BODY**

Here's the added change.

-----Original Message-----

From: Millison,
Cathy L. (EXSEC)
Sent: Thursday, January 18, 2001 7:56 AM
To: Leary,
William H. (RECORDS)
Cc: Gray, Wendy E. (NSA)
Subject: RE: Package
0205 Kennedy Assassination Records Appeals [UNCLASSIFIED]

Bill:

Can
you see if this version is okay.

-----Original Message-----

From:
Wasserman, Elaine P. (EXSEC)
Sent: Thursday, January 18, 2001
12:39 AM
To: Wasserman, Elaine P. (EXSEC); Leary, William H. (RECORDS)
Cc: @RECORDS
& ACCESS MGMT; @EXECSEC - Executive Secretary
Subject: RE: Package
0205 Kennedy Assassination Records Appeals [UNCLASSIFIED]

Disregard

- found it on previous e-mail. Made changes and downloaded it to
diskette. Thanks.

COPY

-----Original Message-----

From: Wasserman,
Elaine P. (EXSEC)
Sent: Wednesday, January 17, 2001 11:55 PM
To: Leary,
William H. (RECORDS)
Cc: @RECORDS & ACCESS MGMT; @EXECSEC - Executive
Secretary
Subject: Package 0205 Kennedy Assassination Records Appeals
[UNCLASSIFIED]
Importance: High

COPY

Please e-mail to @CROSS Tab I
the memo to Podesta/Nolan. Several minor edits need to be made and
it is not on the diskette. Thanks.

TRANSLATED_ATTACHMENT jfkappeals~2001b.doc

January 13, 2001

ACTION

MEMORANDUM FOR JOHN PODESTA/BETH NOLAN

FROM: BILL LEARY/PETER RUNDLET

SUBJECT: Kennedy Assassination Records Appeals

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COPY

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parties, the FBI withdrew its appeal. In the case of the one document involving personal privacy, the Board agreed to redact the most sensitive information.

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PFIAB Appeal

Since the Board's decision in this case was made on September 30, 1998, there is relatively little written analysis of the issues in dispute. Most of the exchanges between PFIAB and the Board at Tab III involve issues that are no longer disputed or relevant. The PFIAB appeal involves 18 packages totalling some 400 pages. All the documents have already been redacted to protect national security. Still disputed are the issues of relevance and deliberative process, as reviewed in the attached memorandum to the President.

We find the PFIAB's objections to releasing these documents less than compelling. Warren Rudman's January 4 memorandum to John does suggest some willingness to compromise. Although not stated explicitly, it appears that PFIAB is willing to agree to the release of any documents that they determine are relevant. Since PFIAB still disagrees fundamentally with the Board's definition of relevance, we cannot envision reaching consensus on that disagreement before

COPY

January 20.

The draft memorandum at Tab I presents the case for a decision by the President to uphold the Board's decision. Alternatively, you could recommend that the President overrule the decision of the Board. We do not believe it is possible, at this late date, to fashion a compromise that splits the difference.

RECOMMENDATION

That you forward the attached memorandum to the President.

Attachments

Tab I Draft Memorandum to the President

Tab II Background on Secret Service Appeal

Tab III Background on PFIAB Appeal

Tab A PFIAB Appeal Letter of October 7, 1998

Tab IV Incoming Tunheim Letter

2

Unclassified With

~~TOP SECRET~~ Attachments

Unclassified With

~~TOP SECRET~~ Attachments

Unclassified With 0205

~~TOP SECRET~~ Attachments

Unclassified With

~~TOP SECRET~~ Attachments

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY
001. email	Steven Andreasen to James Fallin et al. re: Memo (9 pages)	10/19/1999	P1/b(1), P5
002. email	Brenda Curts to Mary McCarthy re: Xmas List (4 pages)	11/29/1999	P3/b(3)
003. email	Maureen Tucker to Mary McCarthy et al. re: PFIAB letter (5 pages)	02/18/2000	P1/b(1)
004. email	Mary DeRosa to Maureen Tucker re: 2/24 Deputies (25 pages)	02/22/2000	P1/b(1)
005. email	Mary DeRosa to Maureen Tucker re: PFIAB letter (6 pages)	02/23/2000	P1/b(1)
006. email	James Baker to Mary McCarthy and Miles Lackey re: PFIAB: SSCI request for brief (4 pages)	04/04/2000	P5 6097 Dup.
007. email	Mary DeRosa to James Baker re: FW: PFIAB: SSCI request for brief (4 pages)	04/04/2000	P5 6097

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange Non-Record (Mar 97- Jan 01) ([Warren Rudman and PFIAB..])
 OA/Box Number: 630000

FOLDER TITLE:

[10/19/1999-04/04/2000]

Bevin Maloney
 2006-1000-F
 bm165

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]
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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]

COPY

6097

Exchange Mail

COPY

DATE-TIME 04/04/2000 7:02:40 PM
FROM DeRosa, Mary B. (LEGAL)
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: PFIAB: SSCI Request for Brief [UNCLASSIFIED]
TO Baker, James E. (LEGAL)

CARBON_COPY

TEXT_BODY I think this is very good. I made small one suggestion, just for clarification.

-----Original Message-----

From: Baker, James
E. (LEGAL)
Sent: Tuesday, April 04, 2000 6:41 PM
To: McCarthy,
Mary O. (INTEL); Lackey, Miles M. (LEGIS)
Cc: @LEGISLAT - Legislative
Affairs; @LEGAL - Legal Advisor
Subject: PFIAB: SSCI Request for
Brief [UNCLASSIFIED]
Importance: High

Sandy asked this evening
for a memo by tomorrow morning on whether the PFIAB should brief
the SSCI on its Deutch review. Could you please review by OOB.
I have also sent to Beth for her concurrence. Thanks.

DRAFT

TRANSLATED_ATTACHMENT PFIABDeutchSSCI.doc

Date

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: JAMES BAKER

COPY

SUBJECT: SSCI Request for PFIAB Brief on Deutch

COPY

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

1. Say no. As you state, it is important that we maintain the PFIAB's position as the President's eyes and ears on intelligence oversight.

* To the extent the PFIAB is perceived by executive employees as a conduit to the Congress, employees may be chilled from raising concerns to the PFIAB, or chilled in the manner in which they do so.

* Further, the President and his immediate senior advisors may be less likely to ask the PFIAB questions, if they know that at the end of each such question will come a Congressional fight over access to internal discussions.

* Third, for the same reasons we have identified in the Principals Committee context, the PFIAB itself may consciously or subconsciously modify the manner in which it presents issues to the President or his senior advisers if they believe they will then need to defend those same judgments on the Hill.

* Finally, we are wary of the PFIAB being enlisted into one side or another of a charged Congressional debate, which could undermine the PFIAB's longstanding tradition of non-partisan objectivity.

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

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

COPY

legislative
oversight concern.

COPY

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

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

* A briefing will interject the temperate and objective voice of the PFIAB into a charged issue.

* It avoids a Congressional confrontation. However, I believe this is a distinction that will ultimately be lost on those persons who might be chilled in their dealings with the PFIAB as described above.

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

COPY

Concurrence by: Mary McCarthy

COPY

RECOMMENDATION

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

Approve _____ Disapprove _____d

Attachment

Tab [I or A] [Enter brief description of attachment]

2

DELIBERATIVE/PRIVILEGED

DELIBERATIVE/PRIVILEGED

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY
001. email	Miles Lackey to James Baker re: SSCI request for PFIAB briefing (3 pages)	04/28/2000	P5 6098
002. email	James Baker to Mary DeRosa re: SSCI request for PFIAB briefing (3 pages)	04/28/2000	P5 6099
003. email	James Baker to Mary McCarthy re: PFIAB points (3 pages)	04/28/2000	P5 6100 Dup.
004. email	Mary McCarthy to James Baker re: PFIAB points (3 pages)	04/28/2000	P5 6100 Dup.
005. email	Mary McCarthy to James Baker re: PFIAB points (4 pages)	04/28/2000	P5 6100

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange Non-Record (Mar 97- Jan 01) ([Warren Rudman and PFIAB..])
 OA/Box Number: 630000

FOLDER TITLE:

[04/28/2000-07/19/2000]

Bevin Maloney
 2006-1000-F
 bm526

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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RR. Document will be reviewed upon request.

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- 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]

COPY

6098

Exchange Mail

COPY

DATE-TIME 04/28/2000 5:26:38 PM
FROM Lackey, Miles M. (LEGIS)
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: SSCI Request for PFIAB Briefing [UNCLASSIFIED]
TO Baker, James E. (LEGAL)

CARBON_COPY Allen, Charles A. (LEGAL)
Baker, James E. (LEGAL)
DeRosa, Mary B. (LEGAL)
Hunerwadel, Joan S. (LEGAL)
Krass, Caroline D. (LEGAL)
Williams, Mary C. (ADMIN)

TEXT_BODY

clear by Miles

-----Original Message-----

From: Baker, James
E. (LEGAL)
Sent: Friday, April 28, 2000 3:40 PM
To: Lackey, Miles
M. (LEGIS)
Cc: @LEGAL - Legal Advisor
Subject: SSCI Request for
PFIAB Briefing [UNCLASSIFIED]

For your review, before I circulate
further.

DRAFT DRAFT
DELIBERATIVE/PRIVILEGED

Sandy:

We
understand from SSCI staff that Sen. Bryan is likely to call you
on Monday to press for access to the PFIAB Deutch report and/or a
briefing from Warren Rudman next week.

Background

On April
14, you cleared a letter from Rudman to the Committee stating that

COPY

"at this point I regret that I am not in a position to respond immediately to your request. Once the report has been reviewed by the President, and DDC, and appropriate actions, I will be better situated to respond to your request and accommodate your interest in appropriate fashion." Rudman did not send this letter to the Committee until April 27.

COPY

Discussion

We

continue to believe this is the correct position to take for the reasons previously stated by memorandum (attached).

<< File:

2346PFIABDEUTCHSSCI.DOC >>

In addition:

* We cannot imagine a scenario where the President's FIAB would provide a briefing to the Hill before it had briefed the President. (In this regard, we note that the report commends to the President "and the President alone" the responsibility for judging the incumbent DCI's actions.)

* We also believe that given the nature of the report, the DDCI should have an adequate opportunity to consider its content in a deliberative manner, before its content becomes more broadly known.

For these reasons, we believe you should firmly resist any effort to have Sen. Rudman brief the report or his conclusions at this time. For the reasons stated in our earlier memorandum, you are on firm legal footing holding this ground.

Talking Points

* I appreciate your interest in the PFIAB's conclusions; however, it remains premature to consider such a request.

* I am sure you would agree that the intended recipients of the report, the President and the DDCI deserve an opportunity to receive the report and be briefed on it, before its conclusions are shared elsewhere.

When can we see the report? Warren tells me he is willing to come up next week, but the White House will not let him.

* While I am confident an appropriate accommodation of your interest can eventually be reached,

COPY

I want you to know that I am concerned about Congressional efforts to use the PFIAB as an investigative vehicle. The PFIAB is quintessentially a Presidential oversight mechanism, just as I am quintessentially a Presidential advisor, and just as your staff are quintessentially Congressional in character.

COPY

* While there will always be arguments to be made in a given context, if we erode this principle, we may eventually erode the efficacy of this mechanism, which your interest only serves to illustrate is an effective one.

* PFIAB briefings to Members of Congress are the exception and not the norm. Nor is this a topic for which the PFIAB has unique knowledge or access; indeed, the SSCI has conducted its own hearings and investigation on this matter.

COPY

6099

Exchange Mail

COPY

DATE-TIME 04/28/2000 5:26:45 PM
FROM Baker, James E. (LEGAL)
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: SSCI Request for PFIAB Briefing [UNCLASSIFIED]
TO DeRosa, Mary B. (LEGAL)

CARBON_COPY

TEXT_BODY

Last point is somewhat obtuse I admit and perhaps snide. The reason they want the briefing is because they know the PFIAB is effective. But if they push this door too wide open the PFIAB will no longer be effective.

-----Original Message-----

From: DeRosa, Mary
B. (LEGAL)
Sent: Friday, April 28, 2000 5:24 PM
To: Baker, James
E. (LEGAL); Lackey, Miles M. (LEGIS)
Cc: @LEGAL - Legal Advisor
Subject: RE:
SSCI Request for PFIAB Briefing [UNCLASSIFIED]

A few suggestions
on the TPs. Also, a typo.

-----Original Message-----

From: Baker,
James E. (LEGAL)
Sent: Friday, April 28, 2000 3:40 PM
To: Lackey,
Miles M. (LEGIS)
Cc: @LEGAL - Legal Advisor
Subject: SSCI Request
for PFIAB Briefing [UNCLASSIFIED]

For your review, before I circulate
further.

DRAFT DRAFT
DELIBERATIVE/PRIVILEGED

Sandy:

COPY

COPY

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Discussion

We continue to believe this is the correct position to take for the reasons previously stated by memorandum (attached).

<< File:
2346PFIABDEUTCHSSCI.DOC >>

In addition:

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COPY

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COPY

When can we see the report? Warren tells me he is willing to come up next week, but the White House will not let him.

* While I am confident an appropriate accommodation of your interest can eventually be reached, I want you to know that I am concerned about Congressional efforts to use the PFIAB as an investigative vehicle. The PFIAB is quintessentially a Presidential oversight mechanism, the sole purpose of which is to provide complete and candid advice to the President. The advice is less likely to be complete and candid if the advisors do not know it will be kept confidential. just as I am quintessentially a Presidential advisor, and just as your staff are quintessentially Congressional in character.

* While there will always be arguments to be made in a given context, if we erode this principle, we may eventually erode the efficacy of this mechanism, [which your interest only serves to illustrate is an effective one. I don't understand this point.]

* PFIAB briefings to Members of Congress are the exception and not the norm. Nor is this a topic for which the PFIAB has unique knowledge or access; indeed, the SSCI has conducted its own hearings and investigation on this matter.

COPY

6100

Exchange Mail

COPY

DATE-TIME 04/28/2000 6:38:41 PM
FROM McCarthy, Mary O. (INTEL)
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: PFIAB Points [UNCLASSIFIED]
TO Baker, James E. (LEGAL)

CARBON_COPY Lackey, Miles M. (LEGIS)
Allen, Charles A. (LEGAL)
Baker, James E. (LEGAL)
DeRosa, Mary B. (LEGAL)
Hunerwadel, Joan S. (LEGAL)
Krass, Caroline D. (LEGAL)
Williams, Mary C. (ADMIN)

TEXT_BODY

ok, good. it was a little too veiled for my meager senses

-----Original

Message-----

From: Baker, James E. (LEGAL)

Sent: Friday, April

28, 2000 6:37 PM

To: McCarthy, Mary O. (INTEL)

Cc: Lackey, Miles

M. (LEGIS); @LEGAL - Legal Advisor

Subject: RE: PFIAB Points [UNCLASSIFIED]

That

is the direction we are heading in and is the implication behind last para. of Rudman letter. Appropriate accommodation = likely briefing of Chair + ranking.

-----Original Message-----

From: McCarthy,

Mary O. (INTEL)

Sent: Friday, April 28, 2000 5:51 PM

To: Baker,

James E. (LEGAL)

Cc: Lackey, Miles M. (LEGIS); @LEGAL - Legal
Advisor

Subject: RE: PFIAB Points [UNCLASSIFIED]

Jamie, I can

COPY

concur with these points as written because they don't foreclose a briefing of the Report. Agree that DDCI and President must have time to consider report.

COPY

However, because it was the DDCI who tasked the Board (not the President), and because we can assume the DDCI intends to provide the Committees with the full range of information needed to fulfill their oversight responsibilities, I would urge that, once he and the President have studied the report, and decided on any actions they will take, the report in some form (perhaps as briefed by Gordon) be briefed to the Hill. Otherwise, the Committees are left with only part of the picture.

-----Original Message-----

From:

Baker, James E. (LEGAL)

Sent: Friday, April 28, 2000 5:37 PM

To: McCarthy,

Mary O. (INTEL)

Cc: Lackey, Miles M. (LEGIS); @LEGAL - Legal Advisor

Subject: PFIAB

Points [UNCLASSIFIED]

Mary: for concurrence please.

DRAFT

DRAFT

DELIBERATIVE/PRIVILEGED

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2346PFIABDEUTCHSSCI.DOC >>

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COPY**COPY**