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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. memo	Internal Revenue Service Memorandum. [26 USC 6103] (1 page)	05/14/1993	~~P3/b(3), P6/b(6)~~	
002. memo	Internal Revenue Service Memorandum. [26 USC 6103] (2 pages)	05/14/1993	P3/b(3), P6/b(6)	
003. form	SF-450 [5 USC app. §107(a)] (2 pages)	04/17/1993	P3/b(3), P4/b(4), P6/b(6)	
004. memo	For Bill Kennedy and Beth Nolan from Frank Sobol. Subject: Ann Z. Caracristi SF-450 Review. (3 pages)	06/23/1993	P2, P5	6101
005. note	Notes for Memorandum. (3 pages)	n.d.	P2, P5	
006. memo	For Bill Kennedy and Beth Nolan from Frank Sobol. Subject: Questions from the President's Foreign Intelligence Advisory Board. [with marginalia] (2 pages)	06/21/1993	P2, P5	6102
007. memo	Duplicate of 006. [without marginalia] (2 pages)	06/21/1993	P2, P5	6102 Dup.
008. form	SF-86. (12 pages)	04/17/1993	P6/b(6)	
009a. form	Interview Completion Form. (1 page)	04/28/1993	P6/b(6)	
009b. form	Interview Completion Form. (1 page)	04/28/1993	P6/b(6)	
009c. memo	Personal Data Statement Questionnaire. (3 pages)	04/16/1993	P6/b(6)	
009d. form	SF-86. (12 pages)	04/17/1993	P6/b(6)	

COLLECTION:

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Counsel's Office
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FOLDER TITLE:

Caracrisiti, Ann [2]

Van Zbinden
2006-1007-F
vz379

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]

6101

THE WHITE HOUSE

WASHINGTON

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June 23, 1993

MEMORANDUM FOR BILL KENNEDY & BETH NOLAN
ASSOCIATE COUNSELS TO THE PRESIDENT

FROM: Frank Sobol

SUBJECT: Ann Z. Caracristi SF-450 Review for Presidential Appointment (without Senate Confirmation)

CANDIDATE: Ann Z. Caracristi

POSITION: Member, President's Foreign Intelligence Advisory Board (PFIAB)

SUMMARY: I agree with the Mr. Eugene Yeats, Executive Director of PFIAB that no conflict of interest or appearance issues exist that cannot be resolved with the usual procedures of resignation from affiliates and recusal, waiver, or divestiture related to financial interests. Thus, assuming that all other background checks prove positive, I recommend that the processing of this nomination proceed.

DISCUSSION:

I reviewed Ms. Caracristi's SF-450 with Mr. Eugene Yeats, Executive Director of PFIAB.

1. <u>Purpose of PFIAB and § 208 considerations:</u>

The purpose of the PFIAB is to "assess the quality, quantity, and adequacy of intelligence collection, of analysis and estimates, of counterintelligence and other intelligence activities of all agencies of the Federal Government. The Board reports directly to the President and advises him concerning the objectives, conduct, management, and coordination of the various activities of the intelligence community. <u>See</u> Executive Order 12537, October 28, 1985.

Thus, the Board's responsibility is to consider broad policy issues and to make recommendations to the President concerning these broad policy matters. It does not normally deal with particular matters involving specific parties. The Board does not promulgate regulations; it does not award Government grants or contracts; it does not administer Government programs. Thus, the conflict of interest concerns of 18 U.S.C. § 208 rarely, if ever, arise for Board members in the course of their official duties. In cases where particular matters may come before the

Board, the Executive Director for the Board reviews the financial interest records of Board Members in order to advise the members of any need for recusing themselves from participation in those matters before the Board. This has been the usual practice of the Board in the past. The incoming Board plans to memorialize this practice by establishing a written ethics review process for Board members.

2. Potential conflict or appearance problems:

The potential for a conflict or appearance problem for Board members arises when its intelligence oversight activities must deal with particular matters, for example, telecommunication activities in intelligence gathering, computer hardware and software applications in intelligence analysis, or business support services for intelligence gathering agencies, etc. This list is illustrative, not exhaustive. In such settings, financial interests in phone and telecommunications companies, in computer hardware and software companies, or statistical or analytic survey companies, could become particular matters that are reviewed by the Board for inclusion in the recommendations forwarded to the President for action. As stated above, the Executive Director for the Board, would notify any Board members who have a potential conflict or appearance problem and determine the need for a recusal on that matter.

3. Applications of Conflict of Interest and other rules to Board Members:

Since the Board members ~~of~~ are special Government employees (i.e., they provide their services to the Board for less than 130 days in a calendar year, the requirements of title 18 of the United States Code are not as restrictive for them. Nonetheless, even if granted a general 208(b)(3) waiver, Board Members may not participate in particular matters involving specific parties in which a Member is personally and substantially involved during his/her government service. Members are precluded from receiving compensation for representational services (18 U.S.C. § 203). Members will be prohibited from acting as an agent or attorney for a private party (18 U.S.C. § 205). Following Government service, Members will be barred from representing any other party before the United States (18 U.S.C. § 207(a)). [FTS needs to check this last item.] In addition, Members, as special Government employees, are not subject to § 209 regarding salary supplementation. They are only subject to the Hatch Act for 24 hours on any day they serve as special Government employees. However, such employees are covered by 18 U.S.C. § 219 rules governing foreign agent registration, unless the President would certify that a member's service was needed "in the national interest." Such certification has been opposed by the Office of Legal Counsel in DOJ in past administrations.

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

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

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

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

5. Recusal requirements for Board Members still required:

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

6. Ann Caracristi's Interests:

Based on the analysis above, Ms. Caracristi has a couple financial interests that might, at some time, become a particular matter through the Board's deliberations and recommendations. There are AT&T and GTE because they are in telecommunications. However, these interests, like the others on her SF-450, are not currently likely to become particular matters before the Board and even less likely to become specific parties. Thus, the waiver processes coupled with an ethics training session for all Board Members and the operation of the Board's recusal monitoring practices should resolve any future § 208 and 502 questions.

Ms. Caracristi along with a listing of her interests and associations will be included in a general waiver request for all Board Members to be submitted to the Counsel to the President for approval.

Based on all these circumstances, I recommend that Ms. Caracristi's appointment continue though the approval process.