

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	James Baker to Charles Allen, James Baker, Mary DeRosa, et al at 2:02 PM. Subject: FW: Sen. Shelby Call. (6 pages)	05/23/2000	P5 2015
002. email	Justin Siberell to June Bartlett, Brooks Bash, Robert Bradtke, et al at 4:17 PM. Subject: Package 3228. (5 pages)	06/16/2000	P5 2016

COLLECTION:

Clinton Presidential Records
NSC Emails
Exchange-Record (Sept 97-Jan 01) ([John Deutch and Security and Investigation])
OA/Box Number: 620000

FOLDER TITLE:

[02/02/2000-06/16/2000]

Van Zbinden
2006-1020-F
vz1607

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]

CLINTON LIBRARY PHOTOCOPY

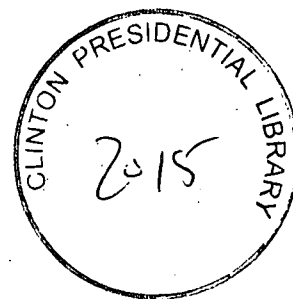
594BA12A.TIN

Exchange Mail

Page 1 of 6

DATE-TIME 05/23/2000 2:02:55 PM
FROM Baker, James E. (LEGAL)
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Sen. Shelby Call [UNCLASSIFIED]
TO

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



CARBON_COPY

TEXT_BODY

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

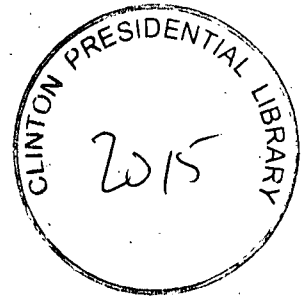
From: Baker, James E. (LEGAL)
Sent: Tuesday,
May 23, 2000 2:02 PM
To: Siberell, Justin H. (NSA); Crocker, Bathsheba
N. (NSA)
Cc: Lackey, Miles M. (LEGIS); Storey, Sharon V. (NSA)
Subject: Sen.
Shelby Call [UNCLASSIFIED]

Attached please find the memo to Sandy
regarding the SSCI's request for the PFIAB report. In the event
Sandy feels he should return the call before the hard copy memo
arrives,
this e-mail will provide additional background and a recommended
position.

However, I am holding the memo until after OLC has
had an opportunity today to physically see the report. They have
previously provided informal advice, based on my oral
representations,
that the President could assert privilege over the document, but
it is their practice to actually review the material in question
before locking down a position, which we should do before the memo
goes to the President or Sandy suggests to Shelby that the President
would assert privilege.

CLINTON LIBRARY PHOTOCOPY

TRANSLATED_ATTACHMENT 3228POTUSPFIABRPT.doc



ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BETH NOLAN

SUBJECT: Response to SSCI's Request for the PFIAB Report Re
Deutch Investigation

Purpose

To decide how to respond to the SSCI's request for a copy of the
PFIAB report on
CIA's handling of the Deutch matter.

Background

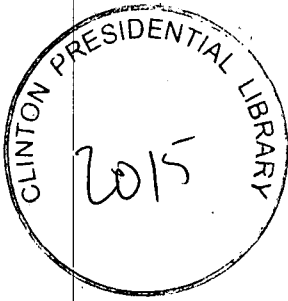
The Senate Select Committee on Intelligence has requested a copy of
the PFIAB's
"Assessment of Proposed Findings by the Central Intelligence Agency

Accountability Review Board in regard to The Investigation into
Improper Handling
of Classified Materials by Former Director of Central Intelligence
John Deutch."

The report, which was transmitted to you on April 27, has been
closely held with
copies provided to only the DDCI, who requested the review, myself,
two members
of the NSC staff, and one copy to Justice.

The DDCI has proceeded with disciplinary action against the five
current, or
former, senior agency staff, specifically cited by the PFIAB. Each of
these
employees will have access to that segment of the report addressing
his or her
actions. In addition, you have spoken directly with George regarding
the CIA's
handling of the Deutch matter. The SSCI has held numerous hearings

CLINTON LIBRARY PHOTOCOPY



on the Deutch computer matter. To accommodate the SSCI's interest in the PFIAB's independent look at the issue, and with our concurrence, Warren briefed the Chairman of the SSCI on his general conclusions in May. (Sen. Bryan was invited, but did not attend the briefing).

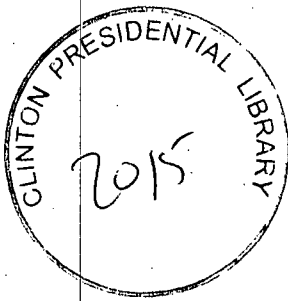
We see three options for responding to the SSCI's request. (We would respond in the same manner to a HPSCI request.)

1. Decline Request/Assert Privilege if necessary.

Your Administration has made unprecedented use of the PFIAB and IOB for intelligence oversight. The boards have proven to be a valuable mechanism for you to get all the background from within the executive branch on difficult issues that do not, or appear to not, warrant Justice investigation. However, increased use has resulted in increased visibility. Where it was once unthinkable that the PFIAB would brief the Congress on any matter, such briefings are now increasingly routine as the Boards seek to accommodate Congressional interest in their work. However, with the exception of the Guatemala and DOE counterintelligence reports, which you intended for public release from their inception, PFIAB/IOB reports have not been shared with the Hill, including those on Somalia, Middle East intelligence analysis, nonproliferation, BWC/CW and Bosnia/Iran.

Inroads into the written product of the Board, where such product was not intended to be made public, could seriously undermine the viability of the PFIAB as a presidential oversight tool.

* 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.

* 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.

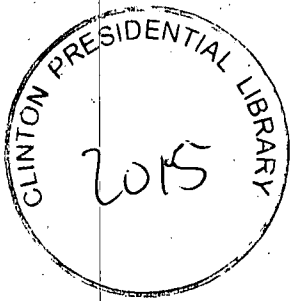
* Finally, we are wary of the PFIAB being enlisted into one side or another of a charged Congressional debate, which could undermine the PFIAB's longstanding tradition of non-partisan objectivity.

The surest way to protect against such risks is to decline to provide the report to the Committees and be prepared to assert privilege if necessary. In the national security context you have asserted privilege once over Haiti documents and were prepared to do so with Bosnia report. As a matter of constitutional law and practice, the Office of Legal Counsel advises, and Beth agrees, you may appropriately assert executive privilege over the report, which is a deliberative and confidential report to the President on, among other things, the performance of a cabinet officer. Such a claim would be particularly well founded where the Executive has already engaged in an effort to accommodate the Committee's interest with a briefing and where the Committee's legitimate need for information for legislative purposes can be fulfilled through its own inquiry of the same witnesses. However, in an effort to further accommodate Congressional interest, we would be prepared to have Warren brief the full Committees on his conclusions.

2. Show the Report to the Chairman and Ranking Members of the Intelligence Committees.

The existence of an appropriate privilege does not necessitate its use.

CLINTON LIBRARY PHOTOCOPY



On the one hand, as a practical matter it may be harder to assert privilege over later PFIAB/IOB reports once a precedent for doing so is set. On the other hand, this report is qualitatively distinguishable from other reports over which you have been prepared to assert privilege because the question presented to the PFIAB came from the DDCI, not the President.

There are two advantages to showing the report to the select Members. First, by providing access to select Members of the Committee the Executive would avoid groundless assertions that the Administration is covering up the matter and deflect any effort to make the White House the issue. Second, this option would avoid the distraction of a Congressional confrontation at this time.

Nonetheless, a show option risks erosion of the PFIAB/IOB's unique presidential status, without the certainty that it would satisfy the Committees' interest; and thus, it will likely return us to options 1 and 3.

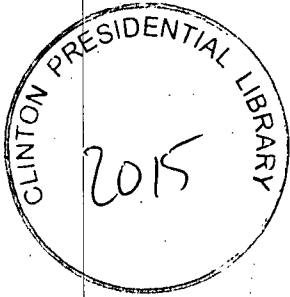
3. Produce and Make Public.

The surest way to avoid Congressional confrontation is to produce the report to the Committees. The PFIAB report is sufficiently comprehensive that it may help to put this issue behind us, allowing focus on prospective procedural remedies rather than retrospective assessment of blame.

However, if we provide the report to the Committees, we would recommend that the report be made public as a matter of fairness. This would eliminate the risk of selective quotation and leaks, giving all actors in this unfortunate situation an opportunity to address the same facts and the same record at the same time.

Warren defers to you on the handling of this report.

RECOMMENDATION



That we decline the Committee's request and subsequent Congressional requests for the PFIAB report.

Approve _____ Disapprove _____

That in the event of significant push back from the Committee, we would be prepared to authorize Warren to brief the full Committees.

Approve _____ Disapprove _____

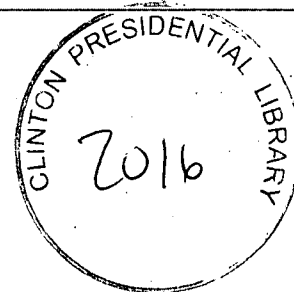
Attachment
Tab A Incoming Correspondence

2
DELIBERATIVE

DELIBERATIVE 3228

cc: Vice President
Chief of Staff

Exchange Mail



DATE-TIME 06/16/2000 4:17:27 PM
FROM Siberell, Justin H. (NSA)
CLASSIFICATION UNCLASSIFIED
SUBJECT package 3228 [UNCLASSIFIED]
TO

Bartlett, L. June (EXSEC)
Bartlett, L. June (EXSEC)
Bash, Brooks L. (EXSEC)
Bradtke, Robert A. (EXSEC)
Gire, Cynthia L. (EXSEC)
Gray, Wendy E. (NSA)
Hilliard, Brenda I. (EXSEC)
Jacobson, Tracey A. (ADMIN)
Joshi, M. Kay (EXSEC)
Millison, Cathy L. (EXSEC)
Powell, Elliott (WHSR/EXSEC)
Wasserman, Elaine P. (EXSEC)

CARBON_COPY

Baker, James E. (LEGAL)
DeRosa, Mary B. (LEGAL)
Hunerwadel, Joan S. (LEGAL)
Krass, Caroline D. (LEGAL)
Scharfen, Jonathan R. (LEGAL)
Williams, Mary C. (ADMIN)

TEXT_BODY

w/srb edits.

TRANSLATED_ATTACHMENT

3228POTUSPFIABRPTRedo_.doc

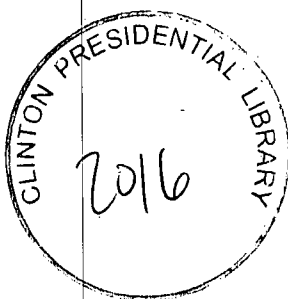
ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BETH NOLAN

SUBJECT: SSCI Request for the PFIAB Deutch Report

CLINTON LIBRARY PHOTOCOPY



Purpose

To decide how to respond to the SSCI's request for a copy of the PFIAB report on CIA's handling of the Deutch matter.

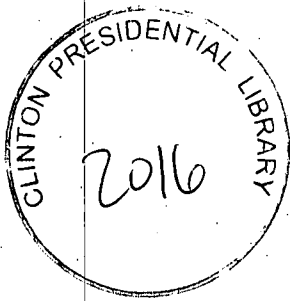
Background

The Senate Select Committee on Intelligence has requested a copy of the PFIAB's Deutch report ("Assessment of Proposed Findings by the Central Intelligence Agency Accountability Review Board in regard to The Investigation into Improper Handling of Classified Materials by Former Director of Central Intelligence John Deutch"). The report, which was transmitted to you on April 27, has been closely held with copies provided to only the DDCI, who requested the review, myself, two members of the NSC staff, and one copy to Justice. The SSCI has held numerous hearings on the Deutch matter. To accommodate the SSCI's interest in the PFIAB's review Warren briefed the Chairman of the SSCI on his conclusions in May. (Senator Bryan was invited, but did not attend the briefing).

We see three options for responding to the SSCI's request. (We would respond in the same manner to a HPSCI request.)

1. Decline Request/Assert Privilege if Necessary

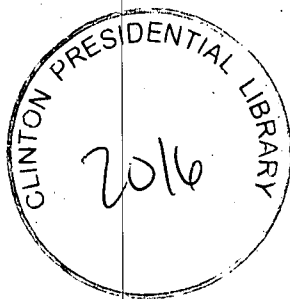
You have made unprecedented use of the PFIAB/IOB for intelligence oversight. The boards have proven valuable mechanisms for getting you background from within the executive branch on difficult issues that do not, or appear to not, warrant Justice investigation. With the exception of the Guatemala and DOE counterintelligence reports, which you specifically intended for public release from their inception, PFIAB/IOB reports have not been shared with the Hill, including those on Somalia, Middle East intelligence analysis, nonproliferation, BWC/CW, and Bosnia/Iran (i.e., Holbrooke, Galbraith).



Inroads into the written product of the Board, where such product was not intended to be made public, could undermine the viability of the PFIAB as a presidential oversight tool. 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 congressional access to the PFIAB's product. The PFIAB itself may consciously or subconsciously modify the manner in which it reports to you. Finally, we are wary of the PFIAB being enlisted into charged Hill debates, which could erode the Board's tradition of nonpartisan objectivity.

The surest way to protect against such risks is to decline to provide the report to the Committees and be prepared to assert privilege. The downside of doing so is that it risks assertions that the Administration is covering up the matter and could make the PFIAB report the issue, rather than the underlying facts; this takes on particular resonance in the context of the larger issue of Administration protection of national security secrets (e.g., DOE, Los Alamos, State).

As a matter of constitutional law and practice, the Office of Legal Counsel advises that a deliberative report of this sort is generally protected by executive privilege. However, we have not yet requested that OLC engage in the formal analysis that is necessary were you to actually assert privilege, including consideration of whether any congressional interest outweighs the executive's interest in deliberative and confidential communications. Beth notes that while the report is in part factual, it is also a deliberative and confidential report to the President on the performance of a cabinet officer. You successfully asserted privilege against an Independent Counsel over a similar



Counsel's Office report regarding Mike Espy's conduct. Thus there is precedent in a parallel, but arguably more difficult grand jury setting, for asserting privilege, which precedent could erode as a practical matter if we pick and choose between those reports we will release. A claim of privilege would be particularly well founded where the Executive has already engaged in an effort to accommodate the Committee's interest with a briefing and where the Committee's legitimate need for information for legislative purposes can be fulfilled through its own inquiry of the same witnesses.

2. Show the Report to the Chairman and Ranking Members of the Intelligence Committees

The existence of an appropriate privilege does not necessitate its use. While it is likely, as a practical matter, to be harder to assert privilege over later PFIAB/IOB reports should we share this report with the Hill, this report could be distinguished from other PFIAB reports because the question presented to the PFIAB came from the DDCI. This option may satisfy the Committee, or it may simply increase the appetite for the whole Committee to review the report, and thus, we may yet return to options 1 and 3.

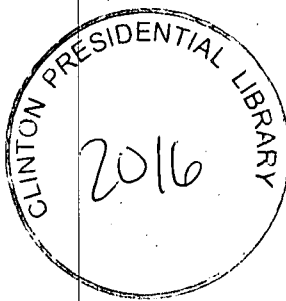
3. Produce and Make Public

The surest way to avoid congressional confrontation is to produce the report. If we provide the report to the Committee, we need also to consider whether to make the report public in order to eliminate the risk of selective quotation and leaks; this, of course, would be highly prejudicial to the individuals dealt with in the report.

Warren defers to you on the handling of this report.

RECOMMENDATION

That we decline the Committee's request and subsequent



congressional requests for
the PFIAB report on the understanding that you would ultimately be
prepared to
assert executive privilege over the report if need be. (If pressed, we
would be
prepared to authorize Warren to brief the full Committees on his
conclusions.)

Approve _____ Disapprove _____

Attachment
Tab A Incoming Correspondence

2
DELIBERATIVE

DELIBERATIVE 3228

cc: Vice President
Chief of Staff

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	From Mary McCarthy to James Baker at 4:42 PM. Subject: Zee Memos. (6 pages)	05/01/2000	P1/b(1)
002. email	James Baker to Donald Mitchell and Mary McCarthy at 7:11 PM. Subject: PFIAB Memo. (5 pages)	05/22/2000	P5 2017
003. email	James Baker to Mary DeRosa, Joan Hunerwadel, Caroline Krass, et al at 6:01 PM. Subject: PFIAB Report. (6 pages)	06/13/2000	P5 2018

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange-Non-Record (Mar 97- Jan 01) ([John Deutch and Security and Investigation])
 OA/Box Number: 630000

FOLDER TITLE:

[04/11/1999-06/13/2000]

Van Zbinden
 2006-1020-F
 vz582

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]

CLINTON LIBRARY
 COPY

Exchange Mail

DATE-TIME 05/22/2000 7:11:54 PM
FROM Baker, James E. (LEGAL)
CLASSIFICATION UNCLASSIFIED
SUBJECT PFIAB Memo [UNCLASSIFIED]
TO Mitchell, Donald A. (INTEL)
McCarthy, Mary O. (INTEL)

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)
Scharfen, Jonathan R. (LEGAL)
Williams, Mary C. (ADMIN)
Leary, William H. (RECORDS)

TEXT_BODY DELIBERATIVE

Intel. please provide concurrence as soon as possible.

Jo: Can you please put this into memo form from Sandy and Beth.

Thank you.

TRANSLATED_ATTACHMENT

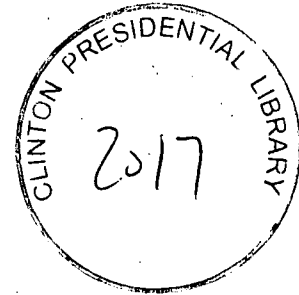
PFIABDeutchReport.doc

Purpose

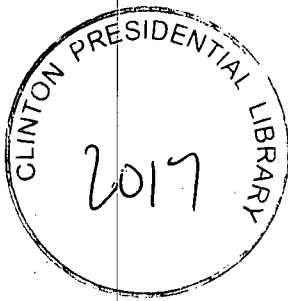
To decide how to respond to the SSCI's request for a copy of the PFIAB report on CIA's handling of the Deutch matter.

Background

The Senate Intelligence Committee has requested a copy of the PFIAB's "Assessment



CLINTON LIBRARY PHOTOCOPY



of Proposed Findings by the Central Intelligence Agency Accountability Review Board in regard to The Investigation into Improper Handling of Classified Materials by Former Director of Central Intelligence John Deutch." The report, which was transmitted to you on April 27, has been closely held with copies provided to only the DDCI, who requested the review, myself, two members of the NSC staff, and one copy to Justice.

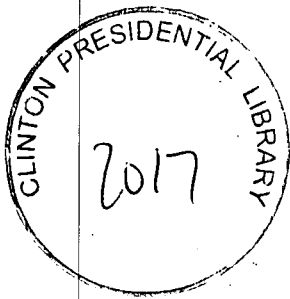
The DDCI has proceeded with disciplinary action against the five current, or former, senior agency staff, specifically cited by the PFIAB. Each of these employees will have access to that segment of the report addressing their actions. In addition, you have spoken directly with George regarding the CIA's handling of the Deutch matter. The SSCI has held numerous hearings on the Deutch computer matter. To accommodate the SSCI's interest in the PFIAB's independent look at the issue, and with our concurrence, Warren briefed the Chairman of the SSCI on his general conclusions in May. (Sen. Bryan was invited, but did not attend the briefing).

Options

We see three options for responding to the SSCI's request.

1. Decline Request/assert privilege if necessary.

Your Administration has made unprecedented use of the PFIAB and IOB for intelligence oversight. The boards have proven to be a valuable mechanism for you to get all the background from within the executive branch on difficult issues that do not, or appear to not, warrant Justice investigation. However, increased use has resulted in increased visibility. Where it was once unthinkable that the PFIAB would brief the Congress on any matter, such briefings are now increasingly routine as the Boards seek to accommodate Congressional interest in their work. However, with the exception of the Guatemala



and DOE counterintelligence reports, which you intended for public release from their inception, PFIAB/IOB reports have not been shared with the Hill, including those on Somalia, Middle East intelligence analysis, nonproliferation, BWC/CW and Bosnia/Iran.

Inroads into the written product of the Board, where such product was not intended to be made public, could seriously undermine the viability of the PFIAB as a presidential oversight tool.

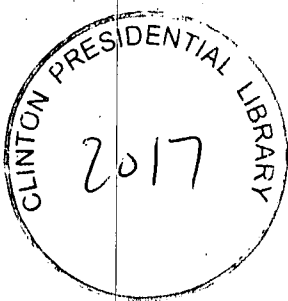
* To the extent the PFIAB is perceived by executive employees as a conduit to the Congress, employees may be chilled from raising concerns to the PFIAB, or chilled in the manner in which they do so.

* 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.

* 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.

The surest way to protect against such risks is to decline to provide the report to the Committees and be prepared to assert privilege if necessary. In the national security context you have asserted privilege once over Haiti documents and were prepared to do so with Bosnia report. As a matter of constitutional law and practice, the Office of Legal Counsel advises, and Beth agrees, you may appropriately assert executive privilege over the report, which is a



deliberative
and confidential report to the President on, among other things, the
performance
of a cabinet officer. Such a claim would be particularly well founded
where the
Executive has already engaged in an effort to accommodate the
Committee's
interest with a briefing and where the Committee's legitimate need for
information for legislative purposes can be fulfilled through its own
inquiry of
the same witnesses. However, in an effort to further accommodate
Congressional
interest, we would be prepared to have Warren brief the full
committees on his
conclusions.

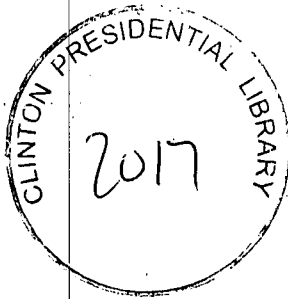
2. Show the Report to the Chairman and Ranking Members of the
Intelligence
Committees.

The existence of an appropriate privilege does not necessitate its use.
On the
one hand, as a practical matter it may be harder to assert privilege
over later
PFIAB/IOB reports once a precedent for doing so is set. On the other
hand, this
report is qualitatively distinguishable from other reports over which
you have
been prepared to assert privilege because the question presented to the
PFIAB
came from the DDCI, not the President.

There are two advantages to showing the report to the select
Members. First, by
providing access to select Members of the Committee the Executive
would avoid
groundless assertions that the Administration is covering up the matter
and
deflect any effort to make the White House the issue. Second, this
option would
avoid a Congressional confrontation, which could distract from the
Administration's legislative agenda [Miles: what do you think?]

Nonetheless, a show option risks erosion of the PFIAB/IOB's unique
presidential
status, without the certainty that it would satisfy the Committees'
interest; and
thus, it will likely return us to options 1 and 3.

3. Produce and make public.



The surest way to avoid Congressional confrontation is to produce the report to the Committees. The PFIAB report is sufficiently comprehensive that it may help to put this issue behind us, allowing focus on prospective procedural remedies rather than retrospective assessment of blame.

However, if we provide the report to the Committees, we would recommend that the report be made public as a matter of fairness. This would eliminate the risk of selective quotation and leaks, giving all actors in this unfortunate situation an opportunity to address the same facts and the same record at the same time.

Warren defers to you on the handling of this report.

Recommendation

That we decline the Committee's request and subsequent Congressional requests for the PFIAB report.

And, that in the event of significant push back from the Committee we would be prepared to authorize Warren to brief the full committees.

4

g:PFIABDeutchreport

Exchange Mail

DATE-TIME 06/13/2000 6:01:49 PM
FROM Baker, James E. (LEGAL)
CLASSIFICATION UNCLASSIFIED
SUBJECT PFIAB Report [UNCLASSIFIED]

TO Baker, James E. (LEGAL)
DeRosa, Mary B. (LEGAL)
Hunerwadel, Joan S. (LEGAL)
Krass, Caroline D. (LEGAL)
Scharfen, Jonathan R. (LEGAL)
Williams, Mary C. (ADMIN)

CARBON_COPY Lackey, Miles M. (LEGIS)
McCarthy, Mary O. (INTEL)
Siberell, Justin H. (NSA)

TEXT_BODY

Jo:

Could you please run this redo package in final. Thank you.

TRANSLATED_ATTACHMENT

3228srbredo.doc

June 13, 2000

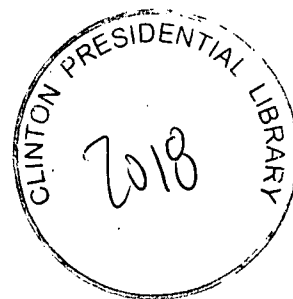
ACTION

MEMORANDUM FOR SAMUEL R. BERGER

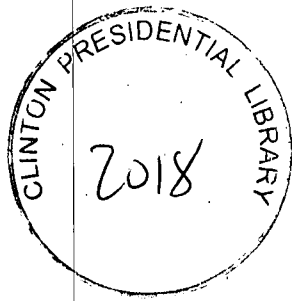
FROM: JAMES E. BAKER

SUBJECT: SSCI's Request for PFIAB Deutch Report

You asked that I shorten the attached memo to three pages and add a paragraph stating the risks of not providing the SSCI access to the report. Beth



CLINTON LIBRARY PHOTOCOPY



reviewed
the earlier draft of the memo and concurs in the recommended course:
that we
decline the Committee's request on the understanding that the
President would be
prepared to assert privilege, following formal DOJ review of the
matter. The
legal discussion on privilege reflects Beth's views and input.

You should know that the SSCI has also requested from CIA copies of
all the
material drawn from DCI Deutch's computer. Consistent with the
Cutler memorandum
practice, CIA has referred approximately 300-400 pages of material
having White
House equities to the NSC for determination as to whether it should
be provided
to the Congress, and if so under what conditions. Included are
memoranda to the
President and the Vice President as well as excerpts from a daily diary
recounting conversations with EOP officials, including the President.
It will
likely take us at least a week to review this material in order to make
an
informed recommendation to you on how we should proceed as I am
the only staff
person CIA has authorized to have access to the documents. Among
other things,
we will need to determine if the memoranda to the President were
actually
received.

RECOMMENDATION

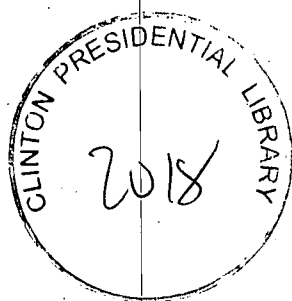
That you sign the memorandum at Tab I.

Attachments
Tab I Memorandum for the President
Tab A Incoming Correspondence
2

3228

TRANSLATED_ATTACHMENT 3228POTUSPFIABRPT.doc

CLINTON LIBRARY PHOTOCOPY



ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BETH NOLAN

SUBJECT: SSCI Request for the PFIAB Deutch Report

Purpose

To decide how to respond to the SSCI's request for a copy of the PFIAB report on CIA's handling of the Deutch matter.

Background

The Senate Select Committee on Intelligence has requested a copy of the PFIAB's "Assessment of Proposed Findings by the Central Intelligence Agency

Accountability Review Board in regard to The Investigation into Improper Handling of Classified Materials by Former Director of Central Intelligence John Deutch."

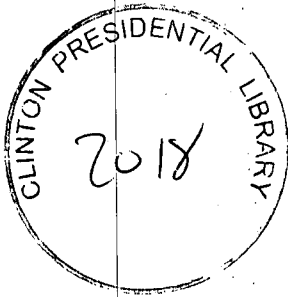
The report, which was transmitted to you on April 27, has been closely held with copies provided to only the DDCI, who requested the review, myself, two members of the NSC staff, and one copy to Justice. The SSCI has held numerous hearings on the Deutch matter. To accommodate the SSCI's interest in the PFIAB's review Warren briefed the Chairman of the SSCI on his conclusions in May. (Sen. Bryan was invited, but did not attend the briefing).

We see three options for responding to the SSCI's request. (We would respond in the same manner to a HPSCI request.)

1. Decline Request/Assert Privilege if necessary.

Your Administration has made unprecedented use of the PFIAB/IOB

CLINTON LIBRARY PHOTOCOPY

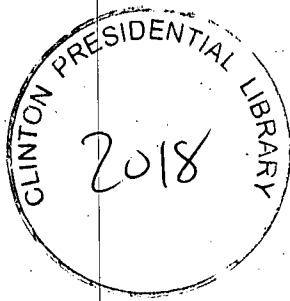


for intelligence oversight. The boards have proven valuable mechanisms for getting you background from within the executive branch on difficult issues that do not, or appear to not, warrant Justice investigation. With the exception of the Guatemala and DOE counterintelligence reports, which you intended for public release from their inception, PFIAB/IOB reports have not been shared with the Hill, including those on Somalia, Middle East intelligence analysis, nonproliferation, BWC/CW and Bosnia/Iran.

Inroads into the written product of the Board, where such product was not intended to be made public, could undermine the viability of the PFIAB as a presidential oversight tool. 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 the PFIAB's product. The PFIAB itself may consciously or subconsciously modify the manner in which it reports to you. Finally, we are wary of the PFIAB being enlisted into charged Hill debates, which could erode the Board's tradition of non-partisan objectivity.

The surest way to protect against such risks is to decline to provide the report to the Committees and be prepared to assert privilege. The downside of doing so is that it risks groundless assertions that the Administration is covering up the matter and could make the PFIAB report the issue, rather than the underlying facts.

As a matter of constitutional law and practice, the Office of Legal Counsel advises that a deliberative report of this sort is generally protected by



executive privilege. However, we have not yet requested that OLC engage in the formal analysis that is necessary were you to actually assert privilege, including consideration of whether any Congressional interest outweighs the

executive's interest in deliberative and confidential communications. Beth notes

that while the report is in part factual, it is also a deliberative and confidential report to the President on the performance of a cabinet officer.

You successfully asserted privilege against an Independent Counsel over a similar

Counsel's Office report regarding Mike Espy's conduct. Thus there is precedent

in a parallel, but arguably more difficult grand jury setting, for asserting

privilege, which precedent could erode as a practical matter if we pick and

choose between those reports we will release. A claim of privilege would be

particularly well founded where the Executive has already engaged in an effort to

accommodate the Committee's interest with a briefing and where the Committee's

legitimate need for information for legislative purposes can be fulfilled through

its own inquiry of the same witnesses.

2. Show the Report to the Chairman and Ranking Members of the Intelligence Committees.

The existence of an appropriate privilege does not necessitate its use. While it

may, as a practical matter be harder to assert privilege over later PFIAB/IOB

reports should we share this report with the Hill, this report is qualitatively

distinguishable from other PFIAB reports because the question presented to the

PFIAB came from the DDCI. This option will deflate any Congressional effort to

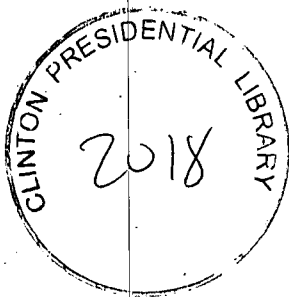
make the PFIAB report the issue, but without certainty that it will satisfy the

Committees' interest; and thus, we may yet return to options 1 and 3.

3. Produce and Make Public.

The surest way to avoid Congressional confrontation is to produce the report.

The PFIAB report is sufficiently comprehensive that it may help put



this issue behind us, allowing focus on prospective procedural remedies rather than retrospective assessment of blame. However, if we provide the report to the Committees, we would recommend that the report be made public. This would eliminate the risk of selective quotation and leaks, giving all actors in this unfortunate situation an opportunity to address the same facts and the same record at the same time.

Warren defers to you on the handling of this report.

RECOMMENDATION

That we decline the Committee's request and subsequent Congressional requests for the PFIAB report on the understanding that you would ultimately be prepared to assert executive privilege over the report if need be. (If pressed, we would be prepared to authorize Warren to brief the full Committees on his conclusions.)

Approve _____ Disapprove _____

Attachment
Tab A Incoming Correspondence

2
DELIBERATIVE

DELIBERATIVE 3228

cc: Vice President
Chief of Staff

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For the President from Samuel Berger and Beth Nolan. Subject: SSCI Request for PFIAB Deutch Report. Record ID: 0003228. (3 pages)	06/16/2000	P5 2019
002. memo	For Samuel Berger from James Baker. Subject: SSCI's Request for PFIAB Deutch Report. Record ID: 0003228 REDO. (1 page)	06/13/2000	P5 2020
003. draft	Annotated draft of 002. (1 page)	05/24/2000	P5 2021
004. draft	Duplicate of 001. (4 pages)	05/24/2000	P5 2019 Dup
005. draft	Annotated draft of 001. (3 pages)	05/2000	P5 2019 Dup.
006. draft	Annotated draft of 001. (3 pages)	05/2000	P5 2019 Dup.
007. draft	Annotated draft of 001. (4 pages)	05/2000	P5 2019 Dup.

COLLECTION:

Clinton Presidential Records
NSC Records Management
[John Deutch and Security and Investigation]
OA/Box Number: 4090

FOLDER TITLE:

0003228

Van Zbinden
2006-1020-F
vz1608

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]

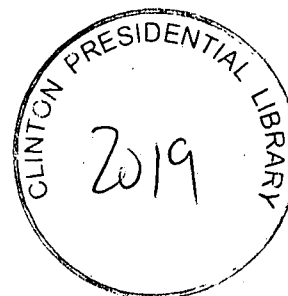
CLINTON LIBRARY PHOTOCOPY

THE WHITE HOUSE

WASHINGTON

June 16, 2000

00 JUN 16 PM 5:25



ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BETH NOLAN

SUBJECT: SSCI Request for the PFIAB Deutch Report

Purpose

To decide how to respond to the SSCI's request for a copy of the PFIAB report on CIA's handling of the Deutch matter.

Background

The Senate Select Committee on Intelligence has requested a copy of the PFIAB's Deutch report ("Assessment of Proposed Findings by the Central Intelligence Agency Accountability Review Board in regard to The Investigation into Improper Handling of Classified Materials by Former Director of Central Intelligence John Deutch"). The report, which was transmitted to you on April 27, has been closely held with copies provided to only the DDCI, who requested the review, myself, two members of the NSC staff, and one copy to Justice. The SSCI has held numerous hearings on the Deutch matter. To accommodate the SSCI's interest in the PFIAB's review Warren briefed the Chairman of the SSCI on his conclusions in May. (Senator Bryan was invited, but did not attend the briefing).

We see three options for responding to the SSCI's request. (We would respond in the same manner to a HPSCI request.)

1. Decline Request/Assert Privilege if Necessary

You have made unprecedented use of the PFIAB/IOB for intelligence oversight. The boards have proven valuable mechanisms for getting you background from within the executive branch on difficult issues that do not, or appear to not, warrant Justice investigation. With the exception of the Guatemala and DOE counterintelligence reports, which you

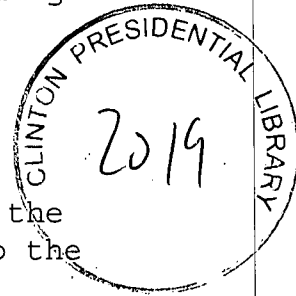
cc: Vice President
CLINTON LIBRARY PHOTOCOPY

specifically intended for public release from their inception, PFIAB/IOB reports have not been shared with the Hill, including those on Somalia, Middle East intelligence analysis, nonproliferation, BWC/CW, and Bosnia/Iran (i.e., Holbrooke, Galbraith).

Inroads into the written product of the Board, where such product was not intended to be made public, could undermine the viability of the PFIAB as a presidential oversight tool. 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 congressional access to the PFIAB's product. The PFIAB itself may consciously or subconsciously modify the manner in which it reports to you. Finally, we are wary of the PFIAB being enlisted into charged Hill debates, which could erode the Board's tradition of nonpartisan objectivity.

The surest way to protect against such risks is to decline to provide the report to the Committees and be prepared to assert privilege. The downside of doing so is that it risks assertions that the Administration is covering up the matter and could make the PFIAB report the issue, rather than the underlying facts; this takes on particular resonance in the context of the larger issue of Administration protection of national security secrets (e.g., DOE, Los Alamos, State).

As a matter of constitutional law and practice, the Office of Legal Counsel advises that a deliberative report of this sort is generally protected by executive privilege. However, we have not yet requested that OLC engage in the formal analysis that is necessary were you to actually assert privilege, including consideration of whether any congressional interest outweighs the executive's interest in deliberative and confidential communications. Beth notes that while the report is in part factual, it is also a deliberative and confidential report to the President on the performance of a cabinet officer. You successfully asserted privilege against an Independent Counsel over a similar Counsel's Office report regarding Mike Espy's conduct. Thus there is precedent in a parallel, but arguably more difficult grand jury setting, for asserting privilege, which precedent could erode as a practical matter if we pick and choose between those reports we will release. A claim of privilege would be particularly well founded where the Executive



has already engaged in an effort to accommodate the Committee's interest with a briefing and where the Committee's legitimate need for information for legislative purposes can be fulfilled through its own inquiry of the same witnesses.

2. Show the Report to the Chairman and Ranking Members of the Intelligence Committees

The existence of an appropriate privilege does not necessitate its use. While it is likely, as a practical matter, to be harder to assert privilege over later PFIAB/IOB reports should we share this report with the Hill, this report could be distinguished from other PFIAB reports because the question presented to the PFIAB came from the DDCI. This option may satisfy the Committee, or it may simply increase the appetite for the whole Committee to review the report, and thus, we may yet return to options 1 and 3.

3. Produce and Make Public

The surest way to avoid congressional confrontation is to produce the report. If we provide the report to the Committee, we need also to consider whether to make the report public in order to eliminate the risk of selective quotation and leaks; this, of course, would be highly prejudicial to the individuals dealt with in the report.

Warren defers to you on the handling of this report.

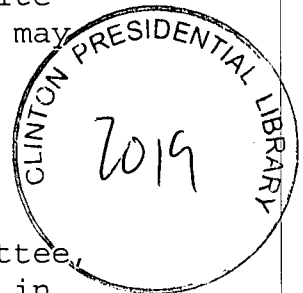
RECOMMENDATION

That we decline the Committee's request and subsequent congressional requests for the PFIAB report on the understanding that you would ultimately be prepared to assert executive privilege over the report if need be. (If pressed, we would be prepared to authorize Warren to brief the full Committees on his conclusions.)

Approve _____ Disapprove _____

Attachment

Tab A Incoming Correspondence



NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

3228 Redo

June 13, 2000

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: JAMES E. BAKER *JB*

SUBJECT: SSCI's Request for PFIAB Deutch Report

You asked that I shorten the attached memo to three pages and add a paragraph stating the risks of not providing the SSCI access to the report. Beth reviewed the earlier draft of the memo and concurs in the recommended course: that we decline the Committee's request on the understanding that the President would be prepared to assert privilege, following formal DOJ review of the matter. The legal discussion on privilege reflects Beth's views and input.

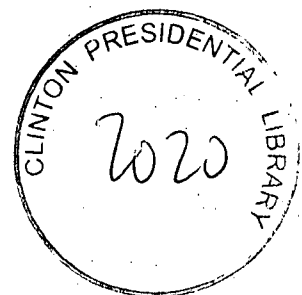
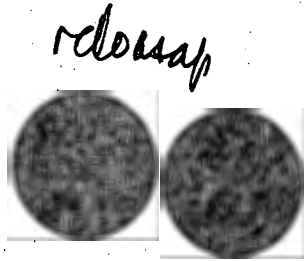
You should know that the SSCI has also requested from CIA copies of all the material drawn from DCI Deutch's computer. Consistent with the Cutler memorandum practice, CIA has referred approximately 300-400 pages of material having White House equities to the NSC for determination as to whether it should be provided to the Congress, and if so under what conditions. Included are memoranda to the President and the Vice President as well as excerpts from a daily diary recounting conversations with EOP officials, including the President. It will likely take us at least a week to review this material in order to make an informed recommendation to you on how we should proceed as I am the only staff person CIA has authorized to have access to the documents. Among other things, we will need to determine if the memoranda to the President were actually received.

RECOMMENDATION

That you sign the memorandum at Tab I.

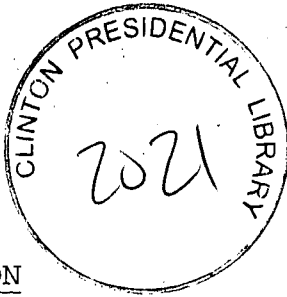
Attachments

Tab I Memorandum for the President
Tab A Incoming Correspondence



CLINTON LIBRARY PHOTOCOPY

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504



May 24, 2000

Janie-
o Need to out to 3p
o Need to add
one para of
risk/downside
to option one.

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: JAMES E. BAKER *JB*

SUBJECT: Response to SSCI's Request for the PFIAB Report
Re Deutch Investigation

The SSCI has requested a copy of the PFIAB's report on the findings by the CIA's Accountability Review Board regarding the Deutch investigation on the handling classified material. At Tab I is a memorandum for the President recommending he decline the Committee's request. Beth has reviewed the memo in draft and concurs in the recommended course: that we decline the Committee's request on the understanding that the President would be prepared to assert privilege, following formal DOJ review of the matter. The legal discussion on privilege reflects Beth's views as well as my own.

The NSC received the incoming correspondence on May 11, 2000.

Concurrence by: *JB* Mary McCarthy and Miles Lackey

RECOMMENDATION

That you sign the memorandum at Tab I.

Attachments

Tab I Memorandum for the President
Tab A Incoming Correspondence