

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY
001. memo	Preliminary Comments of Office of Legal Counsel on Constitutional Issues Raised by Department of Energy Reorganization Amendment to S. 1009 (2 pages)	06/25/1999	P5 6037
002. paper	Changes to the Kyle-Domenici Amendment (3 pages)	n.d.	P5
003. memo	Burnim, John D. to Legislative Liaison Officer - Rabben, Bob et al., re: Revised Central Intelligence Agency Statement of Administrative Policy on S1009 Intelligence Authorizations, FY 2000 [partial] (1 page)	07/07/1999	b(2), P3/b(3)
004. email	WAVES Operations Center - ACO to Hunerwadel, Joan, re: WAVES Confirmation [partial] (2 pages)	05/27/1999	P6/b(6), b(7)(C)
005. fax	[Language on Congressional Notification of Classified Information Disclosure] (1 page)	05/21/1999	P5
006. fax	Colbon, Paul to Baker, James re: Whistleblower Protection Provision in Defense Authorization Bill (3 pages)	05/21/1999	P5 00000

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor - Mary Derosa
OA/Box Number: 3391

FOLDER TITLE:

China Nuclear/CI/Energy Legislation

Eric Holzer
2006-1022-F
eh326

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
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6037

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**PRELIMINARY COMMENTS OF OFFICE OF LEGAL COUNSEL ON
CONSTITUTIONAL ISSUES RAISED BY DEPARTMENT OF ENERGY
REORGANIZATION AMENDMENT TO S. 1009**

This memorandum sets forth the preliminary comments of the Office of Legal Counsel regarding a proposed amendment to S. 1009 that would reorganize the Department of Energy. The proposed bill presents several significant constitutional concerns.

Subsection (b) of the proposed amendment would add a new section 213 to the Department of Energy Organization Act, creating an Agency for Nuclear Stewardship ("Agency") within the Department of Energy. It would provide for an Under Secretary for Nuclear Stewardship ("Under Secretary"), who would also serve as Director of the Agency. Section 213(b) provides that the Under Secretary "shall be a person who has an extensive background in national security, organizational management, and appropriate technical fields and is especially well qualified to manage the nuclear weapons, non-proliferation, and materials disposition programs of the Department in a manner that advances and protects the national security of the United States." This provision appears so significantly to limit the pool of individuals whom the President may select as Under Secretary that (depending on the factual question as to the extent of the limitation) it could raise concerns under the Appointments Clause of the Constitution.

Section 213(h) would create within the Agency a Chief of Counterintelligence, a Chief of Security, and a Chief of Intelligence, each appointed by the Under Secretary. We believe that each of these Chiefs would be an "officer of the United States" for purposes of the Appointments Clause because each would exercise significant government authority. Accordingly, the vesting of their appointment in the Under Secretary is inconsistent with the Appointments Clause. This constitutional defect could be cured by vesting the appointment of the Chiefs in the Secretary of Energy (who is the "Head of [a] Department") or, alternatively, in the President (with or without the advice and consent of the Senate).

Section 213(i) provides that the Chief of Counterintelligence shall be designated by the Under Secretary "with the approval of the Secretary and the Director of the Federal Bureau of Investigation . . . from among senior executive service employees of the [FBI] who have special expertise in counterintelligence." In addition to unconstitutionally vesting the appointment in the Under Secretary, this provision limits the range of potential appointees in a manner that is inconsistent with the Appointments Clause by requiring the approval of the FBI Director and requiring selection of an FBI employee. We suggest that these restrictions be deleted from the bill.

Section 213(p) provides that the Under Secretary shall submit an annual report to the Secretary, the Director of Central Intelligence, the FBI Director, the Senate, and the House of Representatives. The report "shall provide information on," among other things, "any violation of law, rule, regulation, or other requirement relating to security or counterintelligence at each nuclear weapons production facility and national security laboratory." In order to avoid an impermissible infringement on the Executive's constitutional authority to protect the confidentiality and integrity of ongoing criminal investigations, this provision will need to be

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construed in a fashion that does not require reporting to Congress where inconsistent with the ability of the executive branch to fulfill its constitutional duties. Such a construction would be facilitated by replacing "any violation" with "violations."

Section 213(q) states that the Under Secretary "shall report immediately to the Secretary" and to several congressional committees "regarding any actual or potential significant threat to, or loss of, national security information, unless such information has already been reported to" the Intelligence committees. This provision raises separation of powers problems insofar as it precludes the opportunity for the President to review such reports prior to their submission to Congress and thus infringes upon his authority to supervise executive branch officials in executing the law. In addition, it potentially interferes with executive privilege by preventing the President from determining the time and manner of disclosure of sensitive national security information.

Section 213(s) provides that the Under Secretary "shall not be required to obtain the approval of any officer or employee of the Department of Energy or any other Federal agency or department for the preparation or delivery of any report required by this section." This provision does not present a constitutional problem because it does not prohibit either (a) a requirement that a report be approved by the President, or his White House or National Security Council staff, or (b) review of a report by any executive branch officer or employee. We note that such a broader prohibition would unconstitutionally infringe upon the President's authority to supervise executive officials in executing the law and to control the disclosure of national security and other privileged executive branch information.

Finally, subsection (d) of the bill provides that "[w]henver the Under Secretary . . . submits to the Secretary, the President, or the Office of Management and Budget any legislative recommendation or testimony, or comments on legislation prepared for submission to the Congress, the Under Secretary shall concurrently transmit a copy thereof to the appropriate committees of the Congress." This provision would interfere with the President's ability to receive confidential recommendations and other communications from his subordinates by requiring the transmission to Congress of confidential executive branch communications, and also would violate separation of powers principles by undermining the President's supervision of executive officials and interfering with the performance of his constitutionally assigned functions.

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006. fax	Cólon, Paul to Baker, James re: Whistleblower Protection Provision in Defense Authorization Bill (3 pages)	05/21/1999	P5 6038

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6038

Fax Transmission

United States Department of Justice
Office of Legal Counsel
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Phone: 202-616-5438
Fax: 202-305-8524

MD

I concurred

To: Janie BakerDate: 5/21/99

Office # () _____

Pages: 23 (including cover sheet)Fax#: () 456-9110From: Paul ColtonSubject: Whistleblower Protection Provision in Defense Authorization Bill

Comments:

This provision is nowhere near as problematic as the SSCI provision from last Congress, but we think a signing statement should probably say something about it. So, we also think we should at least alert Congress to the subject before the bill is passed. Thus, we are inclined to propose the attached SAP language.

But we want your thoughts first on whether to have the SAP raise the point. Please call by COB if possible, but if not, then send it by mail.

Bainbridge & Warrington

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Insert at end of "Department of Energy Issues" section of SAP on S. 1059 (Defense Authorization Act):

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Section 3160, which provides for the establishment of a whistleblower protection program at the Department of Energy, could in some applications raise constitutional concerns. The Administration would be happy to discuss these concerns with Congress.

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SEC. 3159. COUNTERINTELLIGENCE ACTIVITIES AT CERTAIN DEPARTMENT OF ENERGY FACILITIES.

(a) **ASSIGNMENT OF COUNTERINTELLIGENCE PERSONNEL-** (1) The Secretary of Energy shall assign to each Department of Energy facility at which Restricted Data is located an individual who shall assess security and counterintelligence matters at that facility.

(2) An individual assigned to a facility under this subsection shall be stationed at the facility.

(b) **SUPERVISION-** Each individual assigned under subsection (a) shall report directly to the Director of the Office of Counterintelligence of the Department of Energy.

SEC. 3160. WHISTLEBLOWER PROTECTION.

(a) **PROGRAM-** The Secretary of Energy shall establish a program to ensure that an employee of the Department of Energy, or a contractor employee, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or entity referred to in subsection (b) information relating to the protection of classified information which the employee or contractor employee reasonably believes to provide direct and specific evidence of a violation described in subsection (c).

(b) **COVERED PERSONS AND ENTITIES-** A person or entity referred to in this subsection is the following:

(1) A Member of a committee of Congress having primary responsibility for oversight of the department, agency, or element of the Federal Government to which the disclosed information relates.

(2) An employee of Congress who--

(A) is a staff member of a committee of Congress having primary responsibility for oversight of the department, agency, or element of the Federal Government to which the disclosed information relates; and

(B) has an appropriate security clearance for access to the information.

(3) The Inspector General of the Department of Energy.

(4) The Federal Bureau of Investigation.

(5) Any other element of the Federal Government designated by the Secretary as authorized to receive information of the type disclosed.

(c) **COVERED VIOLATIONS-** A violation referred to in subsection (a) is--

(1) a violation of law or Federal regulation;

(2) gross mismanagement, a gross waste of funds, or abuse of authority; or

(3) a false statement to Congress on an issue of material fact.

SEC. 3161. INVESTIGATION AND REMEDIATION OF ALLEGED REPRISALS FOR DISCLOSURE OF CERTAIN INFORMATION TO CONGRESS.

(a) **SUBMITTAL OF ALLEGATIONS TO INSPECTOR GENERAL-** A Department of Energy employee or contractor employee who believes that the employee has been discharged, demoted,

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007. email	Farrar, Jay C. to Baker, James E. et al. re: Draft Fact Sheet for PDD-61 (DOE Counterintelligence) (2 pages)	02/27/1998	P5	6039 Dup.
008. email	Gregory to Farrar et al. re: Draft Fact Sheet for PDD-61... (2 pages)	02/27/1998	P5	6039
009. email	Gregory to Baker, James E. et al. re: Draft Fact Sheet for PDD-61... (2 pages)	02/27/1998	P5	6040
010. report	Department of Energy Counterintelligence Action Plan (10 pages)	n.d.	P1/b(1)	
011a. memo	McCarthy, Mary O. to Waguespack, re: "Foreign Collection Against the Department of Energy: The Threat to U.S. Weapons and Technology (1 page)	12/29/1998	P1/b(1)	
011b. email	Samore, Gary S. to Natl Security Advisor, re: DOE CI Assessment (1 page)	12/14/1998	P1/b(1)	
011c. letter	Dicks, Norm to Berger, re: [Committee Requests for Report] (1 page)	12/07/1998	P1/b(1)	
012a. draft	Presidential Decision Directive/NSC- (4 pages)	n.d.	P1/b(1)	
012b. fax cover sheet	From NSC West Wing Desk, White House Situation Room, re: Draft PDD - DOE Counterintelligence Program [partial] (1 page)	n.d.	b(2)	
012c. memo	Gregory to Berger, re: Department of Energy Counterintelligence (CI) Issues Draft PDD (2 pages)	12/18/1997	P1/b(1)	
013. memo	Farrar to Berger, re: Letter from Representative Goss Requesting a Briefing on PDD-61 (1 page)	03/06/1998	P1/b(1)	

COLLECTION:

Clinton Presidential Records
National Security Council
Records Management
OA/Box Number: 4120

FOLDER TITLE:

PDD-61 [Presidential Decision Directive-61] DOE [Department of Energy]
Counterintelligence Program, February 11, 1998 [2]

Eric Holzer
2006-1022-F
ch308

RESTRICTION CODES

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RR. Document will be reviewed upon request.

Merchant, Brian T.

From: Gregory, Susan J.
Sent: Friday, February 27, 1998 1:15 PM
To: Farrar, Jay C.; Baker, James E.; Samore, Gary S.; Leary, William H.
Cc: @INTEL - Intelligence Programs; @LEGAL - Legal Advisor; Bell, Robert G.
Subject: RE: Draft Fact Sheet for PDD-61 (DOE Counterintelligence) [UNCLASSIFIED]

COPY

Amenable to Jay's suggestions as well, i.e. can the fact sheet and let cleared staffers read the PDD here, since provision of a written fact sheet now post-dates their request for a briefing, and might lead to an incorrect future expectation that if they ask for a briefing they will at least get a fact sheet or some other form of information.

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

From: Farrar, Jay C.
Sent: Friday, February 27, 1998 12:15 PM
To: Baker, James E.; Gregory, Susan J.; Samore, Gary S.; Leary, William H.
Cc: @INTEL - Intelligence Programs; @LEGAL - Legal Advisor; Bell, Robert G.
Subject: RE: Draft Fact Sheet for PDD-61 (DOE Counterintelligence) [UNCLASSIFIED]

Jamie,

Agree. We have not provided anything yet to the Hill. We have received a letter from SSCI Chairman Shelby (to Berger) requesting that appropriately cleared staff be able to review the PDD. That letter was generated as a result of my refusal to allow an "informal" briefing of the PDD by DOE at last weeks DOE- intel budget brief.

I'm your biggest supporter in making the Hill "work" for PDDs, and protecting the President's prerogatives. The briefing paper is something we can use to speak from - remember, DOE has already made a press announcement on the PDD - without NSC clearance. So, in a way, this thing is out there in the public domain.

Having said all the above, in responding to the SSCI request, I recommend having the "cleared" staffers come here, let them read the PDD and we'll answer questions - then let them go "home" and work their magic - whatever that is. I do not think we should provide them a copy of the PDD - even though it is not highly classified. But I don't think we should put them off too long - maybe sometime next week, or the week after.

Thoughts/comments?

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

From: Baker, James E.
Sent: Friday, February 27, 1998 11:14 AM
To: Farrar, Jay C.; Gregory, Susan J.; Samore, Gary S.; Leary, William H.
Cc: @INTEL - Intelligence Programs; @LEGAL - Legal Advisor; Bell, Robert G.
Subject: RE: Draft Fact Sheet for PDD-61 (DOE Counterintelligence) [UNCLASSIFIED]

Time out. What is going on? We are running around in circles. The President has a process for issuing policy direction and statements to the executive branch. These documents are considered very sensitive and are often very deliberative. Normal policy is that they are not provided to the Hill. On rare occasion they are briefed. Now in response to a request for this CI document we are going to do a fact sheet, brief staff, and show staff the document? Why all three? If WE want to issue a fact sheet to explain an important public policy point that is a different matter.

The Hill should not get the impression that everytime we are asked for a PDD we are going to run around making fact sheets and show staff the document. In some instances we might show only the chairman of a relevant committee and so on. Slow down. This should be a thoughtful and deliberate process. The Hill should understand that this is a big deal, involving an extraordinary request, that we treat with the great care that important issues involving the separation of powers between the branches warrant. Asking for a PDD is not like making a phone call.

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

From: Farrar, Jay C.
Sent: Friday, February 27, 1998 11:01 AM
To: Gregory, Susan J.; Samore, Gary S.; Leary, William H.; Baker, James E.
Cc: @INTEL - Intelligence Programs; @LEGAL - Legal Advisor; @NONPRO - Export Controls; @RECORDS & ACCESS MGMT; @LEGISLAT - Legislative Affairs
Subject: RE: Draft Fact Sheet for PDD-61 (DOE Counterintelligence) [UNCLASSIFIED]

I've received the Shelby letter asking that his staff be allowed to "review" the PDD. I'm preparing a written response to Shelby (for all to clear) and arranging a date/time for selected SSCI staff to come over here.

I welcome any thoughts/comments.

COPY

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

From: Gregory, Susan J.
Sent: Friday, February 27, 1998 10:51 AM
To: Samore, Gary S.; Leary, William H.; Baker, James E.; Farrar, Jay C.
Cc: @INTEL - Intelligence Programs; @LEGAL - Legal Advisor; @NONPRO - Export Controls; @RECORDS & ACCESS MGMT; @LEGISLAT - Legislative Affairs
Subject: RE: Draft Fact Sheet for PDD-61 (DOE Counterintelligence) [UNCLASSIFIED]
Importance: High

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DOE and FBI have cleared on fact sheet, as have Records and Nonpro - just waiting to hear from Legal.

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From: Samore, Gary S.
Sent: Wednesday, February 25, 1998 12:56 PM
To: Gregory, Susan J.; Leary, William H.; Baker, James E.; Farrar, Jay C.
Cc: @INTEL - Intelligence Programs; @LEGAL - Legal Advisor; @NONPRO - Export Controls; @RECORDS & ACCESS MGMT; @LEGISLAT - Legislative Affairs
Subject: RE: Draft Fact Sheet for PDD-61 (DOE Counterintelligence) [UNCLASSIFIED]

Looks good to me. I suggest you clear with appropriate agencies before we give to Congress so noone complains that we are distorting PDD.

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From: Gregory, Susan J.
Sent: Wednesday, February 25, 1998 11:25 AM
To: Samore, Gary S.; Leary, William H.; Baker, James E.; Farrar, Jay C.
Cc: @INTEL - Intelligence Programs; @LEGAL - Legal Advisor; @NONPRO - Export Controls; @RECORDS & ACCESS MGMT; @LEGISLAT - Legislative Affairs
Subject: Draft Fact Sheet for PDD-61 (DOE Counterintelligence) [UNCLASSIFIED]

Attached is my draft fact sheet for PDD -61, DOE Counterintelligence Program. I lifted the unclassified sections from the PDD, co-mingling some of the PDD's bullets and making some language changes mostly for form. I rewrote or edited out those portions that were classified Confidential. For your review and comment. Thanks. << File: FACT SHEET.doc >>

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Merchant, Brian T.

From: Gregory, Susan J.
Sent: Friday, February 27, 1998 12:38 PM
To: Baker, James E.; Farrar, Jay C.; Samore, Gary S.; Leary, William H.
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I prepared a fact sheet on this PDD based on the opinion of both Intel and Nonpro that the contents of the PDD, and not the internal deliberations which led to those contents, comprised information that we wished the intelligence committees in particular to have. The PDD reflects an effort to address in a serious and effective manner a longstanding and much decried situation at DOE and its national laboratories. The consideration of issuing a fact sheet was a result of your E-mail pointing out that such a venue existed, but that its use depended on the deliberative nature and sensitivity of the PDD, that we needed to make a judgement and recommend how to proceed.

I tried to be efficient in combining Intel's recommendation - a fact sheet - with the draft of same; I did not specify that the venue itself was still a recommendation. My fault alone. My draft preceded SSCI's request for a briefing, but was in fact intended to be a useful replacement. If this activity is detrimental to that PDD process as a whole and Presidential prerogative, consider it moot.

However, Intel still wishes to share the PDD with the Hill, and recommends that they receive an oral skin-only briefing on the PDD using the fact sheet as the talking points and that they receive a copy of the unclassified fact sheet. The fact sheet was drafted with the intent to remove deliberative information, particularly deemphasizing the ganging up on DOE angle, and to remove information on the interrelationships within DOE elements and operational relationships across agency lines. But it's still a draft and can be changed.

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003. email	Gregory to McCarthy, Mary O., re: Update... (3 pages)	01/15/1998	P1/b(1)
004. email	Luzzatto, Anne R. to Davies, Glyn T. et al. re: Possible Press Story for Attn of SRB/JS (2 pages)	02/06/1998	P5
005. email	Gregory to Samore, Gary, re: Update... (5 pages)	02/09/1998	P1/b(1)
006. email	Gregory, Susan J. to Samore, Gary S. re: Your Question re: PDDs and Hill Access (5 pages)	02/19/1998	P5 6041
007. email	Gregory to McCarthy, Mary O. re: DOE Briefing to SSCI (2 pages)	02/19/1998	P5
008. email	Samore, Gary S. to Gregory & McCarthy re: DOE Briefing to SSCI (2 pages)	02/19/1998	P5
009. email	Farrar, Jay C. to Gregory et al., re: HPSCI Reequst for PDD-61 Brief (4 pages)	03/04/1998	P1/b(1)
010. email	Farrar to Gregory et al., re: PDD Briefings (3 pages)	03/05/1998	P1/b(1)
011. email	Bobbitt, Philip C. to Bouchard, Joseph F. re: PDD-YY (3 pages)	03/05/1998	P5

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange-Record (Sept 97- Jan 01) ([Department of Energy and Security...])
 OA/Box Number: 620000

FOLDER TITLE:

[11/28/1997 - 03/05/1998]

Eric Holzer
 2006-1022-F
 eh283

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]
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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]

6041

Exchange Mail

COPY

DATE-TIME 2/19/98 9:28:50 AM
FROM Gregory, Susan J.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Your Question re: PDDs and Hill access [UNCLASSIFIED]
TO Samore, Gary S.

CARBON_COPY

TEXT_BODY

I see Jamie sent this to you. Just to keep you advised, Jay Farrar and I talked, as we clearly don't meet the prerequisites for "briefing a PDD" as discussed in attached E-mail. Clinging to the point that DOE is doing a briefing on the budget and their reorganization (which is incidentally the subject of a PDD), he is going to contact the staff, advise them that we'd like to attend for interest, but that we cannot discuss the PDD itself. I also called NN (Ken Baker) to advise of this. They will attempt to stay away from "briefing the PDD" itself while still outlining the reorganization.

-----Original

Message-----

From: Baker, James E.

Sent: Wednesday, February 18,
1998 7:38 PM

To: Gregory, Susan J.; Samore, Gary S.

Cc: @LEGAL

- Legal Advisor; Leary, William H.; @LEGISLAT - Legislative Affairs

Subject: Your

Question re: PDDs and Hill access [UNCLASSIFIED]

Importance: High

DELIBERATIVE

Susan:

Thanks for checking regarding practice on PDDs.

Please

see attached e-mail for background on PDDs. For tomorrow:

(1)

I recommend that you "take the question" with respect to any request for the PDD tomorrow, there is a process for considering how to respond

COPY

to such requests and we haven't the time to run through it tonight.

(2)

I would object to any proposal to provide a written substitution in response to a request for a PDD, unless we have made a decision to issue a fact sheet, etc. As a general matter, a written substitution is not a satisfactory answer from a Presidential prerogatives perspective; moreover, may well result in endless debates about whether the "substitute" fully and accurately reflects the parent.

COPY

Bill Leary may well want the opportunity to supplement this e-mail, as he is the official custodian of PDDs and an expert in their handling. Thanks.

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

From: Baker, James E.

Sent: Thursday,

February 20, 1997 10:35 AM

To: Boynton, Peter J.

Cc: /R, Record

at A1; Leary, William H.; Verville, Elizabeth G.; @LEGAL - Legal Advisor; @LEGISLAT-Legislative Affairs

Subject: RE: Hill staff briefing
on PDD-14 [UNCLASSIFIED]

There are strict procedures and groundrules we follow regarding access to PDDs. I am less familiar with practice of briefing the contents of PDDs. Briefing does appear the most sustainable position when we are not prepared (as in most cases) to provide access to the underlying document. Key process point here, I believe, should be a written request from committee chair or ranking member for a briefing, which I understand we have in this case.

How you brief depends on the content of the individual document. Some PDDs are generally known and are released in public form almost verbatim (e.g., PDD-29). Others are very closely held. With this latter group, the key is to strike balance between going paragraph by paragraph, which is likely to simply lead to a request for the document, and being so general that staff do not think they have been briefed at all. What you should NOT brief are sections that are intended to be confidential (lower case) communications from the President to his senior advisors and deliberative material (the thought process/recommendations/options leading up to a decision or statement of policy.) This should usually not be a problem in a PDD, which is in theory THE decision rather than a reflection of the thought process to decision. Where we have briefed documents and omit something, we are careful to indicate that we are doing so. (E.g., "This next section addresses the topics of dogs, however,

COPY

this section is considered a confidential communication between the President and Blank, and therefore I am not in a position to brief you on it;" or "As we discussed, I am not going to discuss who took what position, the document, however, indicates that the President decided X based on among other factors . . . ") In short, there should be no hide the ball.

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Last point on process, if the PDD is classified and notes are taken, the notes should be retained for classification review and marking by Bill Leary's office and then returned to the staff member. That should be understood as a ground rule.

Finally, in light of Sandy's comments about PDDs yesterday, you should make him aware that you will be briefing X, Y, and Z based on the written request of Blank. This will keep him informed as to how we have handled, and intend to handle, PDD briefing requests in an effort to delimit requests for access to the PDDs themselves.

Thank
you.

From: Boynton, Peter J.
To: Baker, James E.
CC:
/N, NonRecord at A1; Verville, Elizabeth G.; @LEGAL - Legal Advisor
Subject:
Hill staff briefing on PDD-14 [UNCLASSIFIED]
Date: Thursday, February
20, 1997 09:06 AM

Jamie; Gordy has asked me to brief two Hill staff on the contents of PDD-14, per his e-mail below. It is scheduled for tomorrow morning (Friday 21 Feb) at 10 here in Global.

Are
there any rules on how we brief a PDD that I should know about?
I know Gordy has done this sort of thing before, but I have not.

tk

From:
Bendick, Gordon L.
To: Boynton, Peter J.
CC: /R, Record at A1;
@LEGISLAT-Legislative Affairs
Subject: RE: PDD-14 [UNCLASSIFIED]
Date:
Thursday, February 20, 1997 09:01 AM

COPY

Peter

Two of the staff
are coming:

COPY

Chris Marston, Legislative Assistant to Chairman
Hastert

He is new to the Subc on National Security, Internat'l
Affairs and Criminal Justice - but he is
Hastert's guy and they

do have jurisdiction over the drug accounts in the House.

This

is his first brief on the overall drug policy foundation provided
by us here at the NSC.

Also, this will serve as something of a
pre-brief for his boss who will be meeting with Sandy
later this

Spring on a range of National Security issues.

Sean Littlefield,

Professional Staff Member of the House Gov't Reform and Oversight
Cmte

Somewhat more experienced than Chris, but relatively new
to this area. As far as I know, this
is also his initial brief

on overall drug policy at our level. I don't know how much background
that they have received from ONDCP.

Brief should be roughly

30 minutes and allot around 15 minutes for questions. They need
an overall sense of the PDD, an understanding of the direction that
we provide the agencies from here at the NSC, and a sense of the
decision-making that emanates from our direction. We can then illustrate
where they should go next for further info after they get the "big
picture" from us.

As you know, ONDCP comes up for re-authorization

this year. We should make a strong pitch for not only the passage
of re-authorization, but an extension of the life of the ONDCP in
this Bill to 10 to 15 years. In all probability, we won't be successful
- but we should make the effort. This will be helpful to the cause
- when the Hill takes up the re-authorization, we want them to know
that we are strong support of a consistent, continued attack on the
drug problem, led by ONDCP.

This should be fairly easy and straight

forward. Also, I hope to learn from them where they feel that the
Hill is going this year and if the new Chairman has any "Surprises"
waiting for us.

COPY

Gordy

COPY

From: Boynton, Peter
J.
To: Bendick, Gordon L.
CC: /N, NonRecord at A1
Subject: PDD-14
[UNCLASSIFIED]
Date: Wednesday, February 19, 1997 07:28 PM

Gordy;
understand we're on for this Fri at 10:30 in 302 loft.

Can you
send me info on who the staffer is, and I'll see if someone from
ONDCP wants to participate.

tk

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY
001. email	Edwards, Joan K. to Tucker, Maureen E., re: Action Memorandum to the President (2 pages)	03/18/1999	P1/b(1)
002. email	Hachigian, Nina L. to Joshi, M. Kay re: PFI AF (6 pages)	03/18/1999	P5 6042
003. email	Samore, Gary S. to Baker, James E. re: PFI AF (7 pages)	03/18/1999	P5 6043
004. email	Hachigian to Malinowski, Tomasz P. re: Pkg 1924 (7 pages)	03/18/1999	P5 6044
005. email	Hachigian to Joshi et al. re: Final Memo (3 pages)	03/18/1999	P5
006. email	Gobush, Matthew N. to Samore re: Neutron Bomb Story (2 pages)	03/23/1999	P5
007. email	Dempsey, John M. to Lackey, Miles M. re: Notes from Today's Lab Security Meeting (1 page)	04/13/1999	P5
008. email	Joshi, M. Kay to Bartlett, L. June et al., re: Package 2710 - NYT Article on DOE Nuclear Facilities Computer Stand-down (4 pages)	04/19/1999	P1/b(1)
009. email	Epstein, Gerald L. to Hane, Gerald J., re: Sensitive Unclassified Technical Information (2 pages)	04/29/1999	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
Exchange-Record (Sept 97- Jan 01) ([Department of Energy and Security...])
OA/Box Number: 620000

FOLDER TITLE:

[03/17/1999 - 04/30/1999]

Eric Holzer
2006-1022-F
eh285

RESTRICTION CODES

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

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

6042

Exchange Mail

COPY

DATE-TIME 3/18/99 2:57:28 PM
FROM Hachigian, Nina L.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: PFIAF [UNCLASSIFIED]
TO Joshi, M. Kay

CARBON_COPY

TEXT_BODY here is the original

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

From: Hunerwadel,
Joan S.
Sent: Thursday, March 18, 1999 2:57 PM
To: Hachigian,
Nina L.
Subject: PFIAF [UNCLASSIFIED]

Here it is.

TRANSLATED_ATTACHMENT

1924pfiaf.doc

MEMORANDUM FOR WARREN G. RUDMAN
Chairman
President's Foreign Intelligence Advisory Board

SUBJECT: Department of Energy Labs

Protecting the security of the national weapons labs is one of the most important responsibilities of our Administration. As you know, in light of information concerning the possible compromise of information in the 1980s and continuing concerns about the adequacy of lab security to the ongoing threat, last

COPY

year I issued PDD-61 designed to strengthen security at our labs. Because of the priority I attach to making sure all that is necessary is being done, I believe it would be invaluable for the President's Foreign Intelligence Advisory Board (PFIAB) to review the evolution of the threat and the adequacy of measures that have been taken to address it.

The PFIAB is a bipartisan, independent advisory board responsible to the President for assessing, among other things, the quality and adequacy of counterintelligence. Members of the PFIAB are appointed from private life and include a diverse area of expertise, including background in intelligence, the military, science, and the law. Pursuant to executive order, "the heads of departments and agencies of the Federal government, to the extent permitted by law, shall provide the PFIAB access to all information that the PFIAB deems necessary to carry out its responsibilities."

With this background in mind, I am requesting that the PFIAB address the following questions:

(1) What is the nature of the present counterintelligence security threat at the DOE labs and how has it evolved over the past two decades? What steps have the Labs, DOE, and more broadly, the United States Government taken to counter that threat. Is there more that can be done?

(2) This has been a longstanding issue. In understanding the present threat, it would also be useful to understand past challenges and the manner in which the United States Government responded.

Process: Given the particularized interest of the Congress in this matter, I would ask that you consult with appropriate Members of Congress before

COPY

undertaking your review.

I understand that in light of its Presidential status that the PFIAB reports directly to me and does not ordinarily provide its reports outside the immediate Office of the President; however, it is my intention that your report be provided to the Congress at the conclusion of your review, and to the fullest extent consistent with national security, as much information be provided concurrently to the public in an unclassified report.

Given the extraordinary sensitivity of these matters, I would ask that you limit participation in your review to ___ members of the PFIAB, drawing on the special expertise and background that your members bring to the Board.

Finally, I would ask that you conclude your review [as soon as possible][no later than 30 days/60 days.]

2
DRAFT

DRAFT

DRAFT 1924

DRAFT

TRANSLATED_ATTACHMENT 1924PFIABTP.doc

POINTS TO BE MADE FOR
TELEPHONE CONVERSATION WITH
SENATOR RUDMAN

- * Calling to ask if the PFIAB would be willing to undertake a review of our security at the DOE labs.
- * As you know, concerns have been raised about the security at the labs, stemming from counterintelligence concerns dating back to the 1980s.
- * Sandy has suggested that you are just the right person to step into this breach. I need someone who I trust, the Congress trusts, and the

COPY

public trusts

to get beyond the Sunday talk shows and look at the hard facts.

* I signed a far ranging Directive on counterintelligence in 1998. I want to

know more about the threat and I want to know whether there is anything more that

we should be doing.

* Sandy has put together some terms of reference. Let me suggest that you review

those terms, and agree on a timetable. From my perspective I want this done as

soon as possible, but I want it done right.

* I know I can count on you. I have done so before so many times.

1

1924

TRANSLATED_ATTACHMENT 1924POTUSPFIAB.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

SUBJECT: PFIAB Review of DOE Lab Security

Purpose

To task Warren Rudman to undertake a PFIAB review of security at the DOE labs.

Background

Protecting the security of the national weapons labs is one of the most important

COPY

responsibilities of our Administration. As you know, in light of information concerning the possible compromise of information in the 1980s and continuing concerns about the adequacy of lab security to the ongoing threat, last year you issued PDD-61 designed to strengthen security at our labs. However, given recent questions regarding security at the Labs and the importance of reassuring the Congress and the public that we are doing all that we should be doing, I believe it would be invaluable for the PFIAB to review the evolution of the threat and the adequacy of measures that have been taken to address it.

However, before tasking the PFIAB I recommend that you first call Warren to make sure he is in a position to conduct the review. We will then sit down with Warren to agree on a timetable and to discuss the scope of his review before you sign the final Terms of Reference.

RECOMMENDATION

That you telephone Warren Rudman and request that the PFIAB undertake a review of the DOE labs.

That we subsequently confer with Warren on the attached draft Terms of Reference.

Approve _____

Disapprove _____

Attachments

Tab A Talking Points for Telephone Conversation
Tab B Draft Terms of Reference

COPY

2

COPY

1924

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT 1924srb.doc

March 18, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: JAMES E. BAKER

SUBJECT: PFIAB Review of DOE Lab Security

Attached is a memorandum for the President, talking points and a draft tasking memorandum for the PFIAB asking Warren Rudman to undertake a PFIAB review of security at the DOE labs.

RECOMMENDATION

That you sign the memorandum for the President at Tab I.

Attachments

Tab I Memorandum for the President

Tab A Talking Points for Telephone Conversation

Tab B Draft Terms of Reference

1

1924

COPY

Exchange Mail

6043

COPY

DATE-TIME 3/18/99 3:28:49 PM
FROM Samore, Gary S.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: PFIAF [UNCLASSIFIED]
TO Baker, James E.
CARBON_COPY Leavy, David C.
TEXT_BODY Jamie. Please talk to David. We need to do a press statement version.

-----Original
Message-----
From: Hachigian, Nina L.
Sent: Thursday, March 18,
1999 3:16 PM
To: Samore, Gary S.
Subject: FW: PFIAF [UNCLASSIFIED]

-----Original
Message-----
From: Hunerwadel, Joan S.
Sent: Thursday, March 18,
1999 2:57 PM
To: Hachigian, Nina L.
Subject: PFIAF [UNCLASSIFIED]

Here
it is.

TRANSLATED_ATTACHMENT

1924pfiaf.doc

MEMORANDUM FOR WARREN G. RUDMAN
Chairman

COPY

President's Foreign Intelligence Advisory Board

SUBJECT: Department of Energy Labs

COPY

Protecting the security of the national weapons labs is one of the most important responsibilities of our Administration. As you know, in light of information concerning the possible compromise of information in the 1980s and continuing concerns about the adequacy of lab security to the ongoing threat, last year I issued PDD-61 designed to strengthen security at our labs. Because of the priority I attach to making sure all that is necessary is being done, I believe it would be invaluable for the President's Foreign Intelligence Advisory Board (PFIAB) to review the evolution of the threat and the adequacy of measures that have been taken to address it.

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COPY

(2)

his has been a longstanding issue. In understanding the present threat, it would also be useful to understand past challenges and the manner in which the United States Government responded.

COPY

Process: Given the particularized interest of the Congress in this matter, I would ask that you consult with appropriate Members of Congress before undertaking your review.

I understand that in light of its Presidential status that the PFIAB reports directly to me and does not ordinarily provide its reports outside the immediate Office of the President; however, it is my intention that your report be provided to the Congress at the conclusion of your review, and to the fullest extent consistent with national security, as much information be provided concurrently to the public in an unclassified report.

Given the extraordinary sensitivity of these matters, I would ask that you limit participation in your review to ___ members of the PFIAB, drawing on the special expertise and background that your members bring to the Board.

Finally, I would ask that you conclude your review [as soon as possible][no later than 30 days/60 days.]

2

DRAFT

DRAFT

DRAFT 1924

DRAFT

TRANSLATED_ATTACHMENT 1924PFIABTP.doc

POINTS TO BE MADE FOR

COPY

TELEPHONE CONVERSATION WITH
SENATOR RUDMAN**COPY**

- * Calling to ask if the PFIAB would be willing to undertake a review of our security at the DOE labs.
- * As you know, concerns have been raised about the security at the labs, stemming from counterintelligence concerns dating back to the 1980s.
- * Sandy has suggested that you are just the right person to step into this breach. I need someone who I trust, the Congress trusts, and the public trusts to get beyond the Sunday talk shows and look at the hard facts.
- * I signed a far ranging Directive on counterintelligence in 1998. But I want to know more about the threat and I want to know whether there is anything more that we should be doing.
- * Sandy has put together some terms of reference. Let me suggest that you review those terms, and agree on a timetable. From my perspective I want this done as soon as possible, but I want it done right.
- * I know I can count on you. I have done so before so many times.

1

1924

TRANSLATED_ATTACHMENT 1924POTUSPFIAB.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

COPY

SUBJECT: PFIAB Review of DOE Lab Security

COPY

Purpose

To task Warren Rudman to undertake a PFIAB review of security at the DOE labs.

Background

Protecting the security of the national weapons labs is one of the most important responsibilities of our Administration. As you know, in light of information concerning the possible compromise of information in the 1980s and continuing concerns about the adequacy of lab security to the ongoing threat, last year you issued PDD-61 designed to strengthen security at our labs. However, given recent questions regarding security at the Labs and the importance of reassuring the Congress and the public that we are doing all that we should be doing, I believe it would be invaluable for the PFIAB to review the evolution of the threat and the adequacy of measures that have been taken to address it.

However, before tasking the PFIAB I recommend that you first call Warren to make sure he is in a position to conduct the review. We will then sit down with Warren to agree on a timetable and to discuss the scope of his review before you sign the final Terms of Reference.

RECOMMENDATION

That you telephone Warren Rudman and request that the PFIAB undertake a review of the DOE labs.

That we subsequently confer with Warren on the attached draft Terms of Reference.

Approve _____

COPY

Disapprove _____

COPY

Attachments

Tab A Talking Points for Telephone Conversation

Tab B Draft Terms of Reference

2

1924

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT 1924srb.doc

March 18, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: JAMES E. BAKER

SUBJECT: PFIAB Review of DOE Lab Security

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RECOMMENDATION

That you sign the memorandum for the President at Tab I.

Attachments

Tab I Memorandum for the President

COPY

Tab A Talking Points for Telephone Conversation
Tab B Draft Terms of Reference
1

COPY

1924

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Exchange Mail

COPY

DATE-TIME 3/18/99 3:30:48 PM
FROM Hachigian, Nina L.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Pkg 1924 [UNCLASSIFIED]
TO Malinowski, Tomasz P.

CARBON_COPY

TEXT_BODY David will call you. Close hold

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

From: Joshi,
M. Kay
Sent: Thursday, March 18, 1999 3:23 PM
To: Hachigian, Nina
L.
Subject: Pkg 1924 [UNCLASSIFIED]

Here's the final:

TRANSLATED_ATTACHMENT

1924pfia.doc

MEMORANDUM FOR WARREN G. RUDMAN
Chairman
President's Foreign Intelligence Advisory Board

SUBJECT: Department of Energy Labs

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COPY

concerns about the adequacy of lab security to the ongoing threat, last year I issued PDD-61 designed to strengthen security at our labs. Because of the priority I attach to making sure all that is necessary is being done, I believe it would be invaluable for the President's Foreign Intelligence Advisory Board (PFIAB) to review the evolution of the threat and the adequacy of measures that have been taken to address it.

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(2) This has been a longstanding issue. In understanding the present threat, it would also be useful to understand past challenges and the manner in which the United States Government responded.

Process: Given the particularized interest of the Congress in this matter, I would ask that you consult with appropriate Members of Congress

COPY

before
undertaking your review.

COPY

I understand that in light of its Presidential status that the PFIAB reports directly to me and does not ordinarily provide its reports outside the immediate Office of the President; however, it is my intention that your report be provided to the Congress at the conclusion of your review, and to the fullest extent consistent with national security, as much information be provided concurrently to the public in an unclassified report.

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Finally, I would ask that you conclude your review [as soon as possible][no later than 30 days/60 days.]

2
DRAFT

DRAFT

DRAFT 1924

DRAFT

TRANSLATED_ATTACHMENT 1924PFIABTP.doc

POINTS TO BE MADE FOR
TELEPHONE CONVERSATION WITH
SENATOR RUDMAN

* Calling to ask if the PFIAB would be willing to undertake a review of our security at the DOE labs.

* As you know, concerns have been raised about the security at the labs, stemming from counterintelligence concerns dating back to the 1980s.

* Sandy has suggested that you are just the right person to step into this

COPY

breach. I need someone who I trust, the Congress trusts, and the public trusts to get the hard facts.

* I signed a far ranging Directive on counterintelligence in 1998. Bill Richardson has taken a number of steps to implement it. But I want to be sure

we've correctly assessed the threat and I want to know whether there is anything more that we should be doing.

* Sandy has suggested terms of reference. We've suggested a timetable of 60 days. From my perspective I want this done as soon as possible, but I want it done right.

* I know I can count on you. I have done so before so many times.

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TRANSLATED_ATTACHMENT 1924POTUSPFIAB.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

SUBJECT: PFIAB Review of DOE Lab Security

Purpose

To task Warren Rudman to undertake a PFIAB review of security at the DOE labs.

COPY

Background

COPY

Protecting the security of the national weapons labs is one of the most important responsibilities of our Administration. As you know, in light of information concerning the possible compromise of information in the 1980s and continuing concerns about the adequacy of lab security to the ongoing threat, last year you issued PDD-61 designed to strengthen security at our labs. However, given recent questions regarding security at the Labs and the importance of reassuring the Congress and the public that we are doing all that we should be doing, I believe it would be invaluable for the PFIAB to review the evolution of the threat and the adequacy of measures that have been taken to address it.

However, before tasking the PFIAB I recommend that you first call Warren to make sure he is in a position to conduct the review.

RECOMMENDATIONS

That you telephone Warren Rudman and request that the PFIAB undertake a review of the DOE labs.

Approve _____

Disapprove _____

That we subsequently confer with Warren on the attached draft Terms of Reference.

Approve _____

Disapprove _____

COPY

Attachments

Tab A Talking Points for Telephone Conversation
Tab B Draft Terms of Reference

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1924

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT 1924srb.doc

March 18, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: JAMES E. BAKER

SUBJECT: PFIAB Review of DOE Lab Security

Attached is a memorandum for the President, talking points and a draft tasking memorandum for the PFIAB asking Warren Rudman to undertake a PFIAB review of security at the DOE labs.

RECOMMENDATION

That you sign the memorandum for the President at Tab I.

Attachments

Tab I Memorandum for the President
Tab A Talking Points for Telephone Conversation
Tab B Draft Terms of Reference

COPY

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Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY
001. email	Binnendijk, Johannes A. to Gobush, Matthew N. re: Draft Stockpile Stewardship Review Roll-Out (3 pages)	12/08/1999	P5
002. email	DeRosa, Mary B. to Gladura, Timothy L. et al. re: Def Auth Bill (3 pages)	01/05/2000	P5 6045
003. email	Tucker, Maureen E. to Gladura, Timothy L., re: DC Discussion Paper (6 pages)	02/02/2000	P1/b(1)
004. email	Pimentel, Betsy J. to Cullom, Phillip H. & Binnendijk, Johannes A. (Hans), re: Draft of Memo on Paducah Plant (5 pages)	02/14/2000	P1/b(1)
005. email	Gladura to Tucker, re: DC Meeting, Background Paper for Jim (4 pages)	02/15/2000	P1/b(1), P5
006. email	Tucker to Gladura & Baker, James E., re: DC Meeting, Background Paper for Jim (5 pages)	02/17/2000	P1/b(1), P5
007. email	Tucker to DeRosa, Mary B., re: DC Meeting, Background Paper for Jim (7 pages)	02/22/2000	P1/b(1), P5
008. email	Gladura to Shapiro, Daniel B. re: Request for Concurrence, Delegation of Presidential Authority (2 pages)	03/07/2000	P5
009. email	Almon, Timothy C. to Burrell, Christina L. re: Request for Concurrence, Delegation of Presidential Authority (2 pages)	06/05/2000	P5
010. email	Langley, Janice M. to McCarthy, Mary O., re: [Foreign Collection Against the Department of Energy Review] (3 pages)	06/20/2000	P1/b(1)
011. email	Langley to Baker, re: [Foreign Collection Against the Department of Energy Review] (4 pages)	06/23/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange-Record (Sept 97- Jan 01) ([Department of Energy and Security...])
 OA/Box Number: 620000

FOLDER TITLE:

[12/08/1999 - 06/26/2000]

Eric Holzer
 2006-1022-F
 eh288

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]

6045

Exchange Mail

COPY

DATE-TIME 01/05/2000 6:28:20 PM
FROM DeRosa, Mary B. (LEGAL)
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: Def Auth Bill [UNCLASSIFIED]
TO Gladura, Timothy L. (INTEL)
Baker, James E. (LEGAL)
McCarthy, Mary O. (INTEL)
Lackey, Miles M. (LEGIS)

CARBON_COPY Curts, Brenda E. (INTEL)
Gladura, Timothy L. (INTEL)
Howerton, Barbara E. (INTEL)
Knepper, Charlotte (INTEL)
McCarthy, Mary O. (INTEL)
Merchant, Brian T. (RECORDS/INTEL)
Mitchell, Donald A. (INTEL)
Smith, James A. (WHSR)
Allen, Charles A. (LEGAL)
Baker, James E. (LEGAL)
DeRosa, Mary B. (LEGAL)
Hunerwadel, Joan S. (LEGAL)
Krass, Caroline D. (LEGAL)

TEXT_BODY

Because this Board was authorized by Congress, there is no constitutional problem with Congress assigning it a new duty. Therefore no problem with the provision that assigns the CIPB to prepare and submit the report. Let me know if you have any other questions.

-----Original

Message-----

From: Gladura, Timothy L. (INTEL)

Sent: Wednesday,

January 05, 2000 5:30 PM

To: Baker, James E. (LEGAL); DeRosa, Mary

B. (LEGAL); McCarthy, Mary O. (INTEL); Lackey, Miles M. (LEGIS)

Cc: @INTEL

- Intelligence Programs; @LEGAL - Legal Advisor

Subject: RE: Def

Auth Bill [UNCLASSIFIED]

Jamie, Chuck dug it out for me and Mary

D. Title 50 USC Section 402a. The section was enacted as part of

COPY

the Counterintelligence and Security Enhancements Act of 1994

COPY

-----Original

Message-----

From: Baker, James E. (LEGAL)

Sent: Wednesday, January

05, 2000 4:42 PM

To: DeRosa, Mary B. (LEGAL); McCarthy, Mary O.
(INTEL); Lackey, Miles M. (LEGIS)

Cc: @INTEL - Intelligence Programs;

@LEGAL - Legal Advisor

Subject: RE: Def Auth Bill [UNCLASSIFIED]

POTUS

did first in form of PDD, Congress enshrined in post Ames legislation.

I have a copy from 1994-95 if needed. Can't remember the specific
citation.

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

From: DeRosa, Mary B.

(LEGAL)

Sent: Tuesday, January 04, 2000 4:51 PM

To: McCarthy,

Mary O. (INTEL); Lackey, Miles M. (LEGIS)

Cc: @INTEL - Intelligence

Programs; @LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs

Subject: RE:

Def Auth Bill [UNCLASSIFIED]

Mary/Tim -- OLC tells me that the

National Counterintelligence Policy Board was actually established

by legislation. I don't have a cite (I'm trying to get it), but

according to the message I got, the legislation states that "There

shall be in the Executive Branch an Counterintelligence Policy Board

that reports to the President." That means the PDD was carrying

out the legislative directive. If that's the case, then there is

no problem with Congress adding to the Board's duties.

I don't

know the Board's history. Does this sound right to you?

-----Original

Message-----

From: McCarthy, Mary O. (INTEL)

Sent: Tuesday, January

04, 2000 3:24 PM

To: DeRosa, Mary B. (LEGAL); Lackey, Miles M.
(LEGIS)

Cc: @INTEL - Intelligence Programs; @LEGAL - Legal Advisor;

@LEGISLAT - Legislative Affairs

COPY

Subject: Def Auth Bill [UNCLASSIFIED]

The
Ex Comm (with DOE rep.) of the National Counterintelligence Policy
Bd met today to discuss the requirement in the Def Auth Bill to produce
a report on the vulnerabilities of computers at specific DOE facilities.
(March 1 deadline)

COPY

While Legal is still exploring the Executive
Branch's approach to this tasking, the experts will convene to discuss
how best to get this study done.

The Chairman kept returning
to the idea that he should consult with Hill Staff to see exactly
what they want. I and a couple others kept dissuading him, and we
believe that's where we've left it.

Mary DeR: the sooner we
can get some good legal, the better! One idea that occurred to me
was to have SRB delegate the Congressional tasking to the agencies
on a permanent basis. (Don't think there's lang. in the law that
precludes that.)

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION COPY
001. email	Almon, Timothy C. to Baker, James E. & Lackey, Miles M., re: DOE Views on HR 3906 [partial] (1 page)	06/30/2000	P6/b(6)
002. email	Andreasen, Steven P. to Gordon-Hagerty, Lisa E. re: Baker-Hamilton Review (3 pages)	07/20/2000	P5 6046
003. email	Gordon-Hagerty to Baker, James E. & DeRosa, Mary B. re: Baker-Hamilton Review (2 pages)	07/31/2000	P5 6047
004. email	Langley, Janice M. to Baker & Mitchell, Donald A., re: [Foreign Collection Against the Department of Energy Review] (4 pages)	07/10/2000	P1/b(1)
005. email	Kurtz, Paul B. to Montgomery, Mark C., re: POTUS Memo (3 pages)	08/07/2000	P1/b(1)
006. email	Tucker, Maureen E. to Almon, re: Action Memorandum for NSC (4 pages)	08/23/2000	P1/b(1)
007. email	Almon to Tucker, re: Action Memorandum for NSC (4 pages)	08/29/2000	P1/b(1)
008. email	Tucker to Almon, re: Action Memorandum for NSC (5 pages)	09/07/2000	P1/b(1)
009. email	Tucker to Almon, re: Action Memorandum for NSC (5 pages)	09/07/2000	P1/b(1)
010. email	Almon to Langley, re: Action Memorandum for NSC (5 pages)	09/07/2000	P1/b(1)
011. email	Tucker to Almon & Samore, Gary S., re: Action Memorandum for NSC/Bellows Report (6 pages)	09/18/2000	P1/b(1)
012. email	Naplan, Steven J. to Shea, Dorothy C. & Schwartz, Eric P., re: Cox Report/Daily Guidance Update (2 pages)	09/21/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange-Record (Sept 97- Jan 01) ([Department of Energy and Security...])
 OA/Box Number: 620000

FOLDER TITLE:

[06/27/2000 - 10/16/2000]

Eric Holzer
 2006-1022-F
 eh289

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]
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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

- b(1) National security classified information [(b)(1) 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]

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.

6046

Exchange Mail

COPY

DATE-TIME 07/20/2000 11:48:36 AM
FROM Andreassen, Steven P. (DEFENSE)
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: Baker-Hamilton Review [UNCLASSIFIED]
TO Gordon-Hagerty, Lisa E. (TNT)

CARBON_COPY

TEXT_BODY

Thanks ... let's chat when you return.

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

From: Gordon-Hagerty,
Lisa E. (TNT)
Sent: Friday, July 14, 2000 2:46 PM
To: Andreassen,
Steven P. (DEFENSE)
Subject: FW: Baker-Hamilton Review [UNCLASSIFIED]

Wanted

to give you a heads up that Gary Samore was named the POC for the lost hard drives at LANL- kind of curious, I suggested to Jamie and Mara that it would be more appropriately TNT or Defense Policy-0 they seem to always equate DOE to nonpro stuff. This is between you and me- thanks

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

From: Gordon-Hagerty,
Lisa E. (TNT)
Sent: Friday, July 14, 2000 2:43 PM
To: Baker,
James E. (LEGAL); Clarke, Richard A. (TNT)
Cc: @LEGAL - Legal
Advisor; @RUDMAN; Samore, Gary S. (NONPRO)
Subject: RE: Baker-Hamilton
Review [UNCLASSIFIED]

Jamie/Mary, wanted to follow-up on the meeting I had with Sen Baker and Cong Hamilton earlier today. We spoke for about 1 hour and the subject was strictly "NEST" (Nuclear Emergency Search team- the nuclear counterterrorism team). Their focus: (1) who's in charge; (2) how/from whom does NEST take direction at DOE/HQ, field, Lab staff; and (3) what was my opinion of the current state of morale at LANL (horrible).

COPY

I filled them in on a good deal of detail about the structure and function of the program and its mission(s). There was no/no discussion of my, or generally, the NSC role, but I would suggest that if they do ask to speak with someone (Gary as POC?) from NSC about NEST, that perhaps you might ask them what their frame of reference will be since NEST is a counterterrorism program.

COPY

Finally, they left me with the impression that they may wish to speak with me again. I told them they needed to go through the normal chain over here.

Let me know if you need any more info.
LGH

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

From: Baker, James E. (LEGAL)

Sent: Thursday, July 13, 2000 4:33 PM

To: Gordon-Hagerty, Lisa

E. (TNT)

Cc: @LEGAL - Legal Advisor

Subject: Baker-Hamilton Review

[UNCLASSIFIED]

Lisa:

Thank you for bringing to my attention the request of the Baker-Hamilton Review to interview you regarding your duties while assigned at DOE as a nuclear physicist. I understand that your interview is scheduled for tomorrow morning.

It is appropriate for you to accept the invitation to appear before the Baker-Hamilton review and to assist this important review. I have consulted with DOE/GC to make sure that they are aware of your interview as well as to ensure that you are aware of any special guidelines or practices with respect to DOE employees being interviewed by outside entities. Deputy GC Eric Figi indicated that they had no special guidance or rules. However, you should be aware that you may ask for a DOE lawyer to sit in if you would like.

I subsequently telephoned Dan Poneman, who serves as principal staff officer to Mr. Hamilton to ensure I understood the process and that you did. As I believe you already understand, interviews are conducted informally without oath or transcript, or other indicia of a formal hearing. We also discussed the scope of the interview. While Dan indicated that they may have questions related to NSC views on past practice

COPY

and corrective measures to further strengthen security procedures for the future, as well as questions about NSC views and involvement on this issue, the scope of your interview will be limited to DOE matters. This understanding will avoid raising any concern about your desire to cooperate with the Review should you be asked about the NSC. If you are asked questions regarding the NSC, Dan should note that those questions should be reserved and referred to the NSC POC for response. If Dan does not do so you should indicate that you understood from me that the scope of the interview was limited to DOE matters, but that if the Panel wanted to ask NSC questions there was a POC and the NSC would be happy to address the questions.

COPY

Finally, I have informed Mara of this matter. She understands and concurs in the approach described above.

Please let me know
should you have any questions.

COPY

6047

Exchange Mail

COPY

DATE-TIME 07/31/2000 11:34:56 AM
FROM Gordon-Hagerty, Lisa E. (TNT)
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: Baker-Hamilton Review [UNCLASSIFIED]
TO Baker, James E. (LEGAL)
DeRosa, Mary B. (LEGAL)

CARBON_COPY**TEXT_BODY**

Jamie: I received a follow-up request for additional information, however this time they would like me to answer several questions in writing. I am comfortable with the questions and believe I could provide further valuable insight by answering them; of course Would state from the outset that the responses reflect my personal opinion of the NEST program, not that of the NSC or DOE.

I called Dan

Poneman for further background and he told me that follow-up questions were sent to 8-10 individuals (my understanding is that they interviewed about 50).

As much as putting anything in writing that refers to a subject this touchy could come back to bite me big time, I am more concerned that the persons and the program will be so badly affected by the on-going witch hunt (not by the Hamilton-baker group but by everyone else) that our national nuclear emergency response program will no longer exist. I believe it is my responsibility as the former director of the program to ensure that they are provided with facts from which they can draw their own conclusions, rather than having to base their findings on hearsay. I consider this to be my obligation to my country, my friends and to my colleagues.

I will bring a copy of the Q's to your office if you wish.
Your sage advice please. As always, thanks

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

From: Baker,
James E. (LEGAL)
Sent: Thursday, July 13, 2000 4:33 PM
To: Gordon-Hagerty,
Lisa E. (TNT)
Cc: @LEGAL - Legal Advisor

COPY

Subject: Baker-Hamilton
Review [UNCLASSIFIED]

COPY

Lisa:

Thank you for bringing to my attention the request of the Baker-Hamilton Review to interview you regarding your duties while assigned at DOE as a nuclear physicist. I understand that your interview is scheduled for tomorrow morning.

It is appropriate for you to accept the invitation to appear before the Baker-Hamilton review and to assist this important review. I have consulted with DOE/GC to make sure that they are aware of your interview as well as to ensure that you are aware of any special guidelines or practices with respect to DOE employees being interviewed by outside entities. Deputy GC Eric Figi indicated that they had no special guidance or rules. However, you should be aware that you may ask for a DOE lawyer to sit in if you would like.

I subsequently telephoned Dan Poneman, who serves as principal staff officer to Mr. Hamilton to ensure I understood the process and that you did. As I believe you already understand, interviews are conducted informally without oath or transcript, or other indicia of a formal hearing. We also discussed the scope of the interview. While Dan indicated that they may have questions related to NSC views on past practice and corrective measures to further strengthen security procedures for the future, as well as questions about NSC views and involvement on this issue, the scope of your interview will be limited to DOE matters. This understanding will avoid raising any concern about your desire to cooperate with the Review should you be asked about the NSC. If you are asked questions regarding the NSC, Dan should note that those questions should be reserved and referred to the NSC POC for response. If Dan does not do so you should indicate that you understood from me that the scope of the interview was limited to DOE matters, but that if the Panel wanted to ask NSC questions there was a POC and the NSC would be happy to address the questions.

Finally, I have informed Mara of this matter. She understands and concurs in the approach described above.

Please let me know should you have any questions.

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
			COPY	
001a. memo	Berger, Samuel to the President re: PFIAB Review of DOE Lab Security (2 pages)	03/18/1999	P5	
001b. talking points	Points to be Made for Telephone Conversation with Senator Rudman (1 page)	n.d.	P5	
002. memo	For Rudman, Warren G. re: Department of Energy Labs [draft] (2 pages)	n.d.	P5	
003a. memo	Berger, Samuel to the President re: PFIAB Review of DOE Lab Security [draft] (2 pages)	n.d.	P5	6048
003b. talking points	Points to be Made for Telephone Conversation with Senator Rudman [draft] (1 page)	n.d.	P5	6049

COLLECTION:

Clinton Presidential Records
 NSC Records Management
 ([Department of Energy and Security...])
 OA/Box Number: 2717

FOLDER TITLE:

9901924

Eric Holzer
 2006-1022-F
 eh689

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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- 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]

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

THE WHITE HOUSE
WASHINGTON**COPY**ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

SUBJECT: PFIAB Review of DOE Lab Security

Purpose

To task Warren Rudman to undertake a PFIAB review of security at the DOE labs.

Background

Protecting the security of the national weapons labs is one of the most important responsibilities of our Administration. As you know, in light of information concerning the possible compromise of information in the 1980s and continuing concerns about the adequacy of lab security to the ongoing threat, last year you issued PDD-61 designed to strengthen security at our labs. However, given recent questions regarding security at the Labs and the importance of reassuring the Congress and the public that we are doing all that we should be doing, I believe it would be invaluable for the PFIAB to review the evolution of the threat and the adequacy of measures that have been taken to address it.

However, before tasking the PFIAB I recommend that you first call Warren to make sure he is in a position to conduct the review. ~~We will then sit down with Warren to agree on a timetable and to discuss the scope of his review before you sign the final Terms of Reference.~~

cc: Vice President
Chief of Staff**COPY**

RECOMMENDATION**COPY**

That you telephone Warren Rudman and request that the ~~PFIA~~ undertake a review of the DOE labs.

That we subsequently confer with Warren on the attached draft Terms of Reference.

Approve _____

Disapprove _____

Attachments

Tab A Talking Points for Telephone Conversation
Tab B Draft Terms of Reference

COPY

POINTS TO BE MADE FOR
TELEPHONE CONVERSATION WITH
SENATOR RUDMAN

COPY

- Calling to ask if the PFIAB would be willing to undertake a review of our security at the DOE labs.
- As you know, concerns have been raised about the security at the labs, stemming from counterintelligence concerns dating back to the 1980s.
- Sandy has suggested that you are just the right person to step into this breach. I need someone who I trust, the Congress trusts, and the public trusts to get ~~beyond the Sunday talk shows and look at the hard facts.~~ *be sure we've correctly assessed*
- I signed a far ranging Directive on counterintelligence in 1998. *be sure we've correctly assessed* But I want to ~~know more about~~ the threat and I want to know whether there is anything more that we should be doing.
- Sandy has ~~put together~~ *suggested* some terms of reference. ~~Let me suggest that you review those terms, and agree on a timetable.~~ *We've suggested* From my perspective I want this done as soon as possible, but I want it done right. *We've suggested*
- I know I can count on you. I have done so before so many times. *01*
60 days

Bill R has taken a number of steps to implement it.

Bill R has taken a number of steps to implement it

COPY