

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Samuel Berger and Charles Brain to the President, re: Compensation for Victims of the Embassy Bombings (3 pages)	12/20/1999	P5 7149
002. memo	Draft memo to the President [incomplete] (1 page)	n.d.	P5
003. memo	Draft memo to the President from Samuel Berger and Larry Stein, re: Compensation for Victims of the Embassy Bombings (3 pages)	n.d.	P5
004. memo	Draft memo to the President from Samuel Berger and Chuck Brain, re: Compensation for Victims of the Embassy Bombings (3 pages)	n.d.	P5
005. memo	Draft memo to the President from Samuel Berger and Charles Brain, re: Compensation for Victims of the Embassy Bombings (3 pages)	n.d.	P5
006. memo	Samuel Berger and Charles Brain to the President, re: Compensation for Victims of the Embassy Bombings (3 pages)	n.d.	P5
007. memo	Draft memo to the President from Samuel Berger and Charles Brain, re: Compensation for Victims of the Embassy Bombings (3 pages)	n.d.	P5
008. letter	Mary Bartley to First Lady Hillary Rodham Clinton, re: unresolved issue (2 pages)	10/21/1999	P6/b(6)
009. letter	Mary Bartley to President William Jefferson Clinton, re: unresolved issue (2 pages)	10/21/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
National Security Council
African Affairs (Smith, Gayle/Sanders, Robin/Barks-Ruggles, Erica/Prendergast, John)
OA/Box Number: 2855

FOLDER TITLE:

Bombings [Dar es Salaam, Tanzania and Nairobi, Kenya Embassies] [1]

2007-1596-F

ke1290

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

THE PRESIDENT HAS SEEN

1-3-00

THE WHITE HOUSE

WASHINGTON

December 20, 1999

*Copied
Podesta*

9138

7149

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM:

SAMUEL R. BERGER
CHARLES M. BRAIN

Podesta

*What do you think
about this?*

*Maybe more than compensation
is adequate*

OMB

SUBJECT:

Compensation for Victims of the Embassy Bombings

BC

Purpose

To decide whether to seek funding and authority to make payments to the families of American U.S. Government employees who were victims of the East Africa embassy bombings.

Background

At a recent Congressional Black Caucus event you were asked whether you would support additional compensation for the families of the 12 Americans killed in the East Africa bombings. Before OMB started work on such a proposal, we thought it important to lay out the issue for your decision.

The victims' families have received some benefits and compensation from the government, including a monthly annuity, a death gratuity, funeral and administrative expenses, and income tax relief. We do not currently have the authority to provide more.

Some of the families are seeking legislation that would provide them additional compensation, in the \$1-2 million range. They argue that the U.S. failed to protect adequately the security of embassy personnel and suggest that, for that reason and because we have offered reparations to families of Chinese citizens who lost their lives in the bombing of their embassy in Belgrade, the U.S. government should provide additional compensation to these families.

We have significant policy concerns with legislation that would provide special compensation to the families of these 12 victims. First, it would be inconsistent with positions that

cc: Vice President
Chief of Staff

CLINTON LIBRARY PHOTOCOPY

the U.S. Government has taken in the wake of similar tragedies. As recently as June 1998, for example, the Department of Justice testified against a bill that would have awarded \$100,000 payments to survivors of DOD and civilian employees killed in the 1994 "friendly fire" shootdown of two U.S. helicopters of Iraq. At the same hearing, DOJ testified against a second bill designed to authorize extra compensation for survivors of U.S. Government employees killed in the Ron Brown plane crash.

Second, apart from the problem of inconsistency, advocating special relief for survivors of these 12 families would discriminate not only against families of foreign national U.S. government employees who were victims of the same bombings, but also against the families of U.S. Government employees killed in other tragedies, such as Khobar towers, the Oklahoma City bombing, the "friendly fire" shootdown, the Ron Brown plane crash, and other, less highly publicized incidents. We would very soon be fielding requests from the families of these other victims, and future victims, and would have an extraordinarily difficult time drawing distinctions. What about the hundreds of soldiers who are killed each year in training accident?

Finally, proposing legislation for victims of this tragedy could be perceived to be an admission that the U.S. Government is in some way responsible for the East Africa bombings, which would have litigation consequences in these and other similar cases.

The State and Justice Departments have been reviewing possible improvements in the current system for assistance to and compensation for U.S. Government employees who are victims of tragedies, and for victims of terrorism generally. In addition, the State Department Authorization Act for the year 2000 contained a provision (section 340), which requires you to submit a report to Congress in 180 days on the general subject of benefits and compensation paid to the survivors U.S. Government employees killed in the performance of duty abroad as a result of terrorist acts.

Instead of proposing special compensation for these victims, we believe the Administration should use the process of preparing this report to evaluate and propose recommendations for changes to the existing statutory scheme that would enhance, in an even-handed and fair way, assistance to families of U.S. Government employees that fall victim to terrorism. Potential legislative fixes could involve increasing the level of funding provided under one or more existing statutes, or creating new types of benefits to cover specific expenses. We could explore making

these fixes retroactive, so the families of the East Africa bombing victims could receive these benefits as well.

RECOMMENDATION

That you do not seek funding and authority for special compensation to the families of the victims of the Embassy bombings. That, instead, you direct NSC/OMB to lead an interagency task force to review the existing scheme for compensation of families of U.S. Government employees who are victims of terrorism and develop recommendations for legislation to enhance those benefits.

Approve _____

Disapprove _____

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. letter	President Clinton to Howard Kavalier [partial] (1 page)	07/02/1999	P6/b(6)
001b. letter	President Bill Clinton to Howard Kavalier [partial] (1 page)	07/02/1999	P6/b(6)
001c. letter	Draft letter to Howard Kavalier [partial] (1 page)	05/04/1999	P6/b(6)
001d. letter	Howard Kavalier to the President [partial] (1 page)	03/23/1999	P6/b(6)
001e. letter	Draft letter to Howard Kavalier [partial] (1 page)	05/07/1999	P6/b(6)
002a. email	Miles Lackey to Legal Advisor, re: Compensation for victims of Embassy Bombings (1 page)	12/20/1999	P5 7150
002b. memo	Mary DeRosa to Samuel Berger, re: Compensation to Victims of East Africa Embassy Bombings (1 page)	n.d.	P5 7151
002c. memo	Charles Brain to Samuel Berger, re: Compensation for Victims of the Embassy Bombings (3 pages)	n.d.	P5
003. email	Robert Bradtke to African Affairs, Legal Advisor, and Legislative Affairs, re: embassy bombing victims (1 page)	12/07/1999	P5 7152
004a. memo	Samuel Berger and Larry Stein to the President, re: Letters Concerning Compensation for Victims of the Embassy Bombings (3 pages)	n.d.	P5 7153
004b. letter	To Mary Bartley [partial] (1 page)	ca. 12/1999	P6/b(6)
004c. list	List of addresses of families of victims (1 page)	ca. 12/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
National Security Council
African Affairs (Smith, Gayle/Sanders, Robin/Barks-Ruggles, Erica/Prendergast, John)
OA/Box Number: 2855

FOLDER TITLE:

Bombings [Dar es Salaam, Tanzania and Nairobi, Kenya Embassies] [4]

2007-1596-F

kel199

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006. letter	Mary Bartley to President William Jefferson Clinton, re: unresolved issue (2 pages)	10/21/1999	P6/b(6)
007. email	Robert Bradtke to Legal Advisor, re: Argh (1 page)	11/18/1999	P5 7.154
008a. letter	Clara Aliganga and Leah Colston to Ben Johnson [partial] (1 page)	07/26/1999	P6/b(6)
008b. letter	Clara Aliganga and Leah Colston to President William Jefferson Clinton [partial] (1 page)	07/26/1999	P6/b(6)
008c. letter	Clara Aliganga and Leah Colston to Vice President Albert Gore [partial] (1 page)	07/26/1999	P6/b(6)
008d. letter	Mary Bartley to President William Jefferson Clinton [partial] (2 pages)	07/18/1999	P6/b(6)

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7150

Battenfield, Pat A. (AF)

From: Lackey, Miles M. (LEGIS)
Sent: Monday, December 20, 1999 3:07 PM
To: @LEGAL - Legal Advisor
Cc: @AFRICA - African Affairs; @LEGISLAT - Legislative Affairs; @TRANSNATIONAL - Transnational Threats; @RUDMAN
Subject: FW: Compensation for victims of Embassy Bombings [UNCLASSIFIED]

clear from miles with one minor edit on potus memo

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

From: Rudman, Mara E. (NSA)
Sent: Saturday, December 18, 1999 11:33 AM
To: DeRosa, Mary B. (LEGAL)
Cc: @AFRICA - African Affairs; @TRANSNATIONAL - Transnational Threats; @LEGISLAT - Legislative Affairs; @LEGAL - Legal Advisor; @RUDMAN
Subject: FW: Compensation for victims of Embassy Bombings (UNCLASSIFIED)

see suggested changes.

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

From: DeRosa, Mary B. (LEGAL)
Sent: Friday, December 17, 1999 7:25 PM
To: Smith, Gayle E. (AF); Cressey, Roger W. (TNT); Shapiro, Daniel B. (LEGIS)
Cc: @AFRICA - African Affairs; @TRANSNATIONAL - Transnational Threats; @LEGISLAT - Legislative Affairs; @LEGAL - Legal Advisor; @RUDMAN
Subject: FW: Compensation for victims of Embassy Bombings [UNCLASSIFIED]



embassysrb.doc

Here is the memo to Sandy.

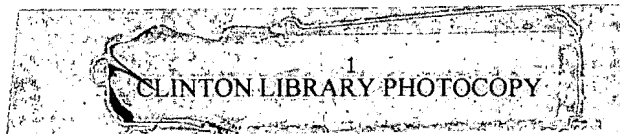
-----Original Message-----

From: DeRosa, Mary B. (LEGAL)
Sent: Friday, December 17, 1999 6:36 PM
To: Smith, Gayle E. (AF); Cressey, Roger W. (TNT); Shapiro, Daniel B. (LEGIS)
Cc: @AFRICA - African Affairs; @TRANSNATIONAL - Transnational Threats; @LEGISLAT - Legislative Affairs; @LEGAL - Legal Advisor; @RUDMAN
Subject: Compensation for victims of Embassy Bombings (UNCLASSIFIED)

According to Mara, we need -- very quickly -- a memo to the President recommending that OMB not seek authority for legislation that would provide special compensation to the victims of the East Africa bombings. Here is a proposed memo to the President. Need your clearance as soon as possible. This will need to go to the President on Monday.



potusembassy.doc



7151

Date

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: JAMES E. BAKER

FROM: MARY B. DEROSA

SUBJECT: Compensation to Victims of East Africa Embassy Bombings

At a recent Congressional Black Caucus event, the President was asked to support legislation that would provide special compensation to the families of U.S. victims of the East Africa Embassy bombings. The President apparently expressed sympathy for the request. ~~and asked~~ Based on what they understand of the President's comments, OMB believes they to review it. ~~OMB now feels it must~~ should seek such authority and funding in its their budget request, unless the President decides otherwise. The attached memo would recommend against special compensation for only these families, but would propose an evaluation of legislation that would improve benefits generally to the families of U.S. Government employees who are victims of terrorism.

Concurrence by: Gayle Smith; Transnational; Legislative

RECOMMENDATION

That you forward the attached Memorandum to the President

Attachment

Tab A Draft Memorandum to the President

Battenfield, Pat A. (AF)

7152

From: Bradtke, Robert A. (EXSEC)
Sent: Tuesday, December 07, 1999 9:51 AM
To: @AFRICA - African Affairs; @LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs
Cc: @EXECSEC - Executive Secretary
Subject: embassy bombing victims [UNCLASSIFIED]

goodie marshall reported to me that the subject of compensation was raised in the meeting between the president and the cbc yesterday. the president, according to marshall, leaned pretty far forward in the direction of saying that he would look into what could be done. jack lew, who was also there, apparently tried, with only some success, to keep the president from promising more.

THE WHITE HOUSE
WASHINGTON

7153

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
LARRY STEIN

SUBJECT: Letters Concerning Compensation for Victims of
the Embassy Bombings

Purpose

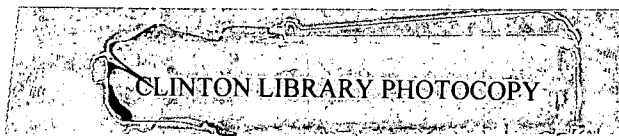
To respond to letters from victims' families and Members of Congress. The letters ask you to intervene personally to see that the victims' families receive additional compensation for their losses. Mary Bartley, whose husband and son were killed in the Nairobi bombing, also requests a meeting with you.

Background

You received a letter from Mary Bartley, which forwarded a letter from a number of other family members of victims of the Embassy bombings. You also received three letters: from Representatives Pelosi and Dixon, Representative Wolf, and 26 Senators and Representatives. All of the letters seek your support for additional compensation for the families of the 12 Americans killed in the bombings. Some of the letters state that the United States failed to protect adequately the security of embassy personnel and suggest that, for that reason and because we have offered reparations to families of Chinese citizens who lost their lives in the bombing of their embassy in Belgrade, the U.S. Government should provide additional compensation to these families.

The victims' families have received some compensation from the Government. Some of the families are seeking legislation that would provide them additional compensation, in the \$1-2 million range. We do not currently have the authority to provide more than we have.

cc: Vice President
Chief of Staff



There are significant policy problems with legislation that would provide special compensation to the families of these 12 victims. This would discriminate not only against the families of other U.S. Government employees who were victims of the same bombings but were foreign nationals, but also against the families of U.S. Government employees killed in other tragedies, such as Khobar towers, the Oklahoma City bombing, and other, less highly publicized incidents.

The State and Justice Departments have been reviewing possible improvements in the current system for assistance to and compensation for U.S. Government employees who are victims of tragedies, and for victims of terrorism generally.

The State Department Authorization Act for the year 2000, which was part of the Omnibus bill you signed this week, contained a provision (section 340), which requires you to submit a report to Congress in 180 days on the benefits and compensation paid to the survivors U.S. Government employees killed in the performance of duty abroad as a result of terrorist acts. This report provides an opportunity to propose recommendations for legislative changes that would enhance assistance to families like the Bartleys.

The letter from Mary Bartley also expresses her unhappiness with the treatment she and the other victims' families received from the State Department in the aftermath of the bombings. State concedes that it was ill-prepared to handle this type of situation, and was not sufficiently responsive to the families' needs. State has taken a number of steps to improve its performance, both with these families and in the event of future tragedies. For example, State has established an Office of Casualty Assistance to respond to the needs of employees and their families when a crisis occurs. In addition, Madeleine and Strobe have both met with the victims' families, as have Janet Reno, Director Freeh, and a number of other State and Justice Department officials.

We do not recommend a meeting with Mrs. Bartley.

In the proposed responses you state that your Administration is reviewing ways to improve assistance to U.S. Government employees who are the victims of terrorism, and their families. In the letter to Mrs. Bartley you acknowledge the early State Department failures in responsiveness, but reassure her that Madeleine and the State Department are committed to improving.

RECOMMENDATION

That you sign the letters at Tabs A, B and C.

Attachment

Tab A Letters to Mary Bartley and Other Victims Families

Tab B Letters to Other Victims Families

Tab C Congressional Letters

7154

Battenfield, Pat A. (AF)

From: Bradtke, Robert A. (EXSEC)
Sent: Thursday, November 18, 1999 2:21 PM
To: @LEGAL - Legal Advisor
Cc: @AFRICA - African Affairs
Subject: FW: Argh [UNCLASSIFIED]

mary,
having finished the attached request for your help, i promptly left you off the addressees. please see below. give me a call if i can help.

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

From: Bradtke, Robert A. (EXSEC)
Sent: Thursday, November 18, 1999 2:19 PM
To: Smith, Gayle E. (AF); Sargeant, Stephen T. (EXSEC)
Subject: RE: Argh [UNCLASSIFIED]

gayle, mary:

mara and i talked this over and spoke with jamie at this morning. we recognize that @legal doesn't need to add more issues to its load, but we would ask that @legal coordinate the response. state is obviously responsible for the basic language, but we need to ensure a reasonably prompt response with an appropriate tone. if @legal is not getting cooperation from state, please let me know. i would be happy to intervene with L or the DG's office to move the process. thanks.

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

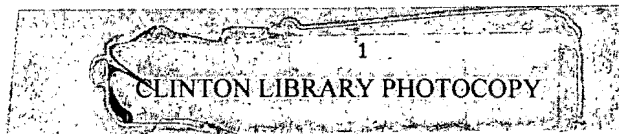
From: Smith, Gayle E. (AF)
Sent: Thursday, November 18, 1999 8:53 AM
To: Bradtke, Robert A. (EXSEC); Sargeant, Stephen T. (EXSEC)
Subject: FW: Argh [UNCLASSIFIED]

I have a real problem here. We got the taskings for letters from the families of the embassy bombings, and now from members of Congress calling for legislation. This is a legal and legislative minefield, about which neither I or this directorate has any knowledge. @Trans handled all of the post security issues, and someone other than us has dealt with us in the past. We need to respond and respond soon, but after having gone through all the legal documentation from State, I have no idea how to respond, nor any precedents to fall back on. Know that at State this is not an AF issue - it is with the DG's office. Would like to wait and hear back from Mary about @legal taking it over, and if she agrees will do what I can to help, but request that in future correspondence on compensation for family victims, even if it happens in Africa, go to legal and not us. I am one of the few people in the building who is not a lawyer...will get back to you, and am not asking for action now, but may need some help here. GS

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

From: Smith, Gayle E. (AF)
Sent: Thursday, November 18, 1999 8:50 AM
To: DeRosa, Mary B. (LEGAL)
Cc: @RUDMAN; Smith, Gayle E. (AF)
Subject: Argh [UNCLASSIFIED]

Mary - I have gone through all the documents on the compensation for the embassy bombings, and still do not have a clue as to how to answer this letter to POTUS. With over 1000 administrative claims filed and the Bartleys still referring to a possible lawsuit, comparisons to Chinese embassy, etc., I think this is a highly legal issue, as opposed to an Africa issue. I am not trying to pass the buck here in recommending - which I am getting close to - that this action be passed over to @legal, but frankly I am out of my depth, having no legal training and no familiarity with either the Chinese embassy issue or the legislative requests/deliberations over the last several months. Actually, I think we ought to task State to draft the language and then put it in POTUS letter form. What do you think? Again - while the documentation is helpful, it simply confirms my awareness of my total inexperience in wading through what we can/should say legally, etc. Please advise, and thanks



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001. memo	Re: vulnerabilities (5 pages)	08/12/1998	P1/b(1)
002. memo	Re: threats (2 pages)	n.d.	P1/b(1)
003. email	Gayle Smith to Robert Malley, et al., re: POTUS calls (1 page)	08/17/1998	P1/b(1)
004. email	From Cathy Millison, re: Thanks (1 page)	08/13/1998	P1/b(1)
005. email	Cathy Millison to Gayle Smith, re: Phone call to mother of Molly Huckaby Hardy (1 page)	08/12/1998	P6/b(6)
006. email	Erica Barks-Ruggles to African Affairs, re: African videotape (2 pages)	08/12/1998	P5
007. email	Glyn Davies to Erica Barks-Ruggle, re: Families (1 page)	08/12/1998	P6/b(6)
008. email	Mara Rudman to Robert Malley, re: briefs (1 page)	08/11/1998	P1/b(1)
009. email	Gayle Smith to Glyn Davies, et al., re: HEADS UP ON POTENTIAL FAMILY PROBLEMS (1 page)	08/11/1998	P5 7155
010. email	Gayle Smith to Robert Malley, re: Nairobi-Dar Bombings (1 page)	08/12/1998	P1/b(1)
011. email	Erica Barks-Ruggles to Glyn Davies, re: Kenya/Tanzania Video (1 page)	08/13/1998	P5
012. email	Erica Barks-Ruggles to M. Kay Joshi, re: Next of Kin POTUS letters (1 page)	08/17/1998	P6/b(6)

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National Security Council
African Affairs (Smith, Gayle/Sanders, Robin/Barks-Ruggles, Erica/Prendergast, John)
OA/Box Number: 2855

FOLDER TITLE:

Bombings [Dar es Salaam, Tanzania and Nairobi, Kenya Embassies] [9]

2007-1596-F

ke1204

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Battenfield, Pat A.

7155

From: Smith, Gayle E.
Sent: Tuesday, August 11, 1998 6:59 PM
To: Davies, Glyn T.; @KERRICK; @EXECSEC - Executive Secretary; Clarke, Richard A.
Cc: @Transnational - Transnational Threats; @AFRICA - African Affairs
Subject: RE: HEADS UP ON POTENTIAL FAMILY PROBLEMS ~~(CONFIDENTIAL)~~

Glyn -- this did come up at the PC and I have spoken to Susan about it. I think TF is swamped on the task side, hence it being Our Erica who caught it. Was agreed to try to accommodate families as much as possible while also meeting investigatory needs, FBI took note of the need to be thoughtful on it. Talked to State/AF about ensuring constant read of family feelings and status -- but we will unfortunately still need to keep an eye on this as it would be a disaster -- for POTUS and the families -- if this caught us and them by surprise. Have also informed State that we'd appreciate it if TF would return our calls. Will take another look in the morning. GS

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

From: Davies, Glyn T.
Sent: Tuesday, August 11, 1998 1:16 PM
To: Smith, Gayle E.; @KERRICK; @EXECSEC - Executive Secretary; Clarke, Richard A.
Cc: @Transnational - Transnational Threats; @AFRICA - African Affairs
Subject: RE: HEADS UP ON POTENTIAL FAMILY PROBLEMS [UNCLASSIFIED]

Gayle: Agree this is important -- we do not want the President walking into a buzzsaw with the families. Have you spoken with Susan R about this? State is running this Thursday show and it is Albright who will be the first into the lion's den when she flies to Germany tonight, so they have some incentive to see that the family's needs are met. You might prompt Sandy to raise this at the end of the PC. Tx.

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

From: Smith, Gayle E.
Sent: Tuesday, August 11, 1998 12:48 PM
To: @KERRICK; @EXECSEC - Executive Secretary; Davies, Glyn T.; Clarke, Richard A.
Cc: @Transnational - Transnational Threats; @AFRICA - African Affairs
Subject: HEADS UP ON POTENTIAL FAMILY PROBLEMS [UNCLASSIFIED]
Importance: High

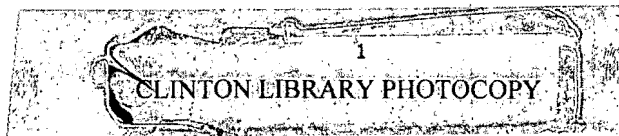
FOR DON and GLYN - PLEASE PASS ON AS APPROPRIATE

We have become aware in the last two hours of possible problems with some of the families of some of the Nairobi victims. Two of the families (the Kirk and O'Connor families) have asked that no autopsies be done. We understand from State that the FBI says autopsies are required because this involves victims at a crime scene. Sgt. Old's family is opting out of the Thursday ceremony and has asked that her body be flown directly to Florida after autopsy - it is in transit to Dover separate from the others at the moment.

We are concerned that there does not yet appear to be a coordinated strategy for working with the families to (1) get them comfortable with the autopsy requirements in a respectful and sensitive way, (2) help them feel included in the planning for Thursday and to make them feel their government is taking their grief and needs into account.

State is looking at holding a meeting on this (possibly at 1:00). We heard about this paranthetically and want to make sure you are aware so that you can participate appropriately. We also do not want the POTUS walking into a crowd of families who are angry at treatment they have received from the USG on Thursday - we are not confident, given developments we are hearing about tangentially, that we are doing enough to make sure this is not the case. Please let us know what we can/should be doing.

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By KDE NARA, Date 11/14/2011
2007-1596-F



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Samuel Berger and Larry Stein to the President, re: Letters Concerning Compensation for Victims of the Embassy Bombings (3 pages)	n.d.	P5 7156
002. paper	Compensation for Families of Victims of the East Africa Bombings (2 pages)	n.d.	P5 7157
003. paper	Compensation for Families of Victims of the East Africa Bombings (2 pages)	n.d.	P5 Dup
004. letter	Mary Bartley to President William Jefferson Clinton (2 pages)	10/21/1999	P6/b(6)
005a. letter	Kendall Montgomery to Sue Bartley, re: Victims of Terrorism Compensation Act (1 page)	06/18/1999	P6/b(6)
005b. letter	Kendall Montgomery to Sue and Edith Bartley [partial] (1 page)	06/23/1999	P6/b(6)
005c. letter	Madeleine Albright to Sue Bartley [partial] (1 page)	05/19/1999	P6/b(6)
005d. list	Employees of the U.S. Government and Family Members Who Died or Were Injured in the East Africa Bombings [partial] (1 page)	n.d.	P6/b(6)
005e. letter	Mary Bartley to Madeleine Albright, re: Barrett Berry (2 pages)	09/28/1998	P6/b(6)
005f. letter	Edith Bartley to Elaine Shocas, re: Barrett Berry (2 pages)	09/28/1998	P6/b(6)
005g. letter	Madeleine Albright to Mary Bartley [partial] (1 page)	11/12/1998	P6/b(6)
005h. letter	Madeleine Albright to Edith Bartley [partial] (1 page)	05/19/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Derosa, Mary)
OA/Box Number: 3408

FOLDER TITLE:

Embassy Bombing Victims Compensation [3]

2007-1596-F

ke1211

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]

7156

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: SAMUEL BERGER
LARRY STEIN

SUBJECT: Letters Concerning Compensation for Victims of
the Embassy Bombings

Purpose

To respond to letters from victims' families and members of Congress. The letters ask you to intervene personally to see that the victims' families receive additional compensation for their losses. Mary Bartley, whose husband and son were killed in the Nairobi bombing, also requests a meeting with you.

Background

You received a letter from Mary Bartley, which forwarded a letter from a number of other family members of victims of the embassy bombings. You also received three letters: from Representatives Pelosi and Dixon, Representative Wolf, and 26 Senators and Representatives. All of the letters seek your support for additional compensation for the families of the 12 Americans killed in the bombings. Some of the letters state that the U.S. failed to protect adequately the security of embassy personnel and suggest that, for that reason and because we have offered reparations to families of Chinese citizens who lost their lives in the bombing of their embassy in Belgrade, the U.S. government should provide additional compensation to these families.

The victims' families have received some compensation from the government. Some of the families are seeking legislation that would provide them additional compensation, in the \$1-2 million range. We do not currently have the authority to provide more than we have.

cc: Vice President
Chief of Staff



There are significant policy problems with legislation that would provide special compensation to the families of these 12 victims. This would discriminate not only against the families of other U.S. government employees who were victims of the same bombings but were foreign nationals, but also against the families of U.S. Government employees killed in other tragedies, such as Khobar towers, the Oklahoma City bombing, and other, less highly publicized incidents.

The State and Justice Departments have been reviewing possible improvements in the current system for assistance to and compensation for U.S. Government employees who are victims of tragedies, and for victims of terrorism generally.

The State Department Authorization Act for the year 2000, which was part of the Omnibus bill you signed this week, contained a provision (section 340), which requires you to submit a report to Congress in 180 days on the benefits and compensation paid to the survivors U.S. Government employees killed in the performance of duty abroad as a result of terrorist acts. This report provides an opportunity to propose recommendations for legislative changes that would enhance assistance to families like the Bartleys.

The letter from Mary Bartley also expresses her unhappiness with the treatment she and the other victims' families received from the State Department in the aftermath of the bombings. State concedes that it was ill-prepared to handle this type of situation, and was not sufficiently responsive to the families' needs. State has taken a number of steps to improve its performance, both with these families and in the event of future tragedies. For example, State has established an Office of Casualty Assistance to respond to the needs of employees and their families when a crisis occurs. In addition, Madeleine and Strobe have both met with the victims' families, as have Janet Reno, Director Freeh, and a number of other State and Justice Department officials.

We do not recommend a meeting with Mrs. Bartley.

In the proposed responses you state that your Administration is reviewing ways to improve assistance to U.S. Government employees who are the victims of terrorism, and their families. In the letter to Mrs. Bartley you acknowledge the early State Department failures in responsiveness, but reassure her that Madeleine and the State Department are committed to improving.

and remember who
other
MO:
Let's
discuss
whether
to put it
more of
them
request
which will
indicate to
for us
has been
done
while
so public
are out of
line.

RECOMMENDATION

That you sign the letters at Tabs X - X.

Attachment

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



COMPENSATION OF FAMILIES OF VICTIMS OF THE EAST AFRICA BOMBINGS

Background: Several families have asked the U.S. Government to pay substantial amounts - in the \$1-2 million range - as compensation for the death of family members in the East Africa bombings. The victims' families have received some compensation from the government (a monthly annuity, a death gratuity, funeral and administrative expenses, and income tax relief). We do not currently have the authority to provide more than we have.

There are significant policy problems with legislation that would provide special compensation to the families of these 12 victims. This would discriminate not only against the families of other U.S. government employees who were victims of the same bombings but were foreign nationals, but also against the families of U.S. Government employees killed in other tragedies, such as Khobar towers, the Oklahoma City bombing, and other, less highly publicized incidents.

The State and Justice Departments have been reviewing possible improvements in the current system for assistance to and compensation for U.S. Government employees who are victims of tragedies, and for victims of terrorism generally.

The State Department Authorization Act for the year 2000, which was part of the Omnibus bill you signed this week, contained a provision (section 340), which requires you to submit a report to Congress in 180 days on the benefits and compensation paid to the survivors U.S. Government employees killed in the performance of duty abroad as a result of terrorist acts. This report provides an opportunity to propose recommendations for legislative changes that would enhance assistance to families like the Bartleys.

Points:

- Share your concern about how we treat the families of victims who have lost their lives while serving their country.
- The State and Justice Departments have been reviewing how we might improve the current system for assistance to and compensation for these families.
- Provision in the Omnibus bill that I just signed called for report to Congress within 180 days on the benefits and compensation paid to survivors of USG employees killed as a result of terrorism.

- This will provide a good mechanism for making informed decision about pursuing, through legislation, additional benefits for the families.

If pressed on legislation directed specifically at these families

- I would be concerned about something directed only at these families. It would discriminate against the families of the foreign national USG employees at those embassies and against the families of USG employees killed in other tragedies, such as Khobar towers, the Oklahoma City bombing, and other, less highly publicized incidents.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Samuel Berger and Charles Brain to the President, re: Compensation for Victims of the the Embassy Bombings (3 pages)	n.d.	P5
002. memo	Bob Kyle to the Chief of Staff, re: Benefits for Families of Embassy Bombings (3 pages)	01/06/2000	P5 7158
003a. memo	Samuel Berger and Larry Stein to the President, re: Letters Concerning Compensation for Victims of the Embassy Bombings (2 pages)	n.d.	P5
003b. letter	Draft letter to Mary Bartley [partial] (1 page)	ca. 12/1999	P6/b(6)
003c. letter	Mary Bartley to President William Jefferson Clinton (2 pages)	10/21/1999	P6/b(6)
003d. list	Addresses for letters (1 page)	ca. 12/1999	P6/b(6)
003e. letter	Draft letter to Mary Bartley [partial] (1 page)	ca. 12/1999	P6/b(6)
003f. letter	Draft letter to Mary Bartley [partial] (1 page)	ca. 12/1999	P6/b(6)
004a. memo	Re: Embassy Bombings (8 pages)	04/19/1999	P5
004b. list	Survivor Benefits for Julian "Joel" Bartley, Sr. and Julian "Jay" Bartley, Jr. (1 page)	ca. 04/1999	P6/b(6)
005. email	Mona Sutphen to Legal Advisor, re: Bombing Victims Compensation follow-up (1 page)	02/02/2000	P5 7159
006. memo	Samuel Berger and Charles Brain to the President, re: Compensation for Victims of the Embassy Bombings (3 pages)	n.d.	P5

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Derosa, Mary)
OA/Box Number: 3408

FOLDER TITLE:

Embassy Bombing Victims Compensation [4]

2007-1596-F

ke1212

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

closed
Podesta

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE PRESIDENT HAS SEEN
1-14-00

January 6, 2000 JP

MEMORANDUM FOR THE CHIEF OF STAFF

THROUGH: JACOB J. LEW

FROM: Bob Kyle BK

SUBJECT: Benefits for Families of Embassy Bombings

The only thing (I would say) that is the case of the Embassy bombings and the Ron Brown case, the loss of life is similar to what happens to people in uniform, yet the ~~benefits~~ civilian benefits are substantially less - perhaps we should have a joint policy when dealing to civilians come from danger in the line of duty. If this was applied the benefits would be substantially more. JP

This memorandum provides information on our past treatment of victim relief for Federal employees. Three subjects are described: 1) the normal course of action to compensate the victims and their families; 2) examples of incidents after which we did nothing beyond current law to compensate; and 3) any special relief bills passed to compensate victims and their families for particular incidents.

Benefits Payable under Current Federal Laws

For incidents where the victim was a civilian, something more is needed for college education of all kids - BK

United States law provides survivor and injury benefits for all Federal employees. The attached chart summarizes these authorities. In the case of the military and civilian employees killed in the East Africa bombings, all of the survivors received benefits consistent with existing law.

Survivors of military personnel receive burial assistance and various financial benefits including partial retirement pay if entitled, Social Security death and survivor benefits, and Serviceman's life insurance if entitled.

The survivors of Federal civilian employees receive burial assistance and financial benefits, including death benefits under the Federal Employees Compensation Act (FECA) and Social Security. In response to the Ron Brown plane crash, the Administration proposed and was able to get enacted language allowing additional payments of up to \$10,000 (less amounts provided for reimbursement and expenses) for any Federal employee or their survivors. Although this new benefit was enacted in response to a particular incident, it was not a special relief bill, since it applied to all Federal employees that are victims of any incident.

Examples of Past Incidents

The following list of past incidents involving Federal employees indicates the government has never provided special relief for survivors of victims of particular incidents - in all cases we have

provided only benefits payable to all employees under current Federal law.

- The bombings of the U.S. Embassy in Beirut in 1983 and 1984 - no victims assistance provisions were legislated or requested;
- The bombing of the Murrah Building in Oklahoma City in 1995 - no victims assistance provisions were legislated or requested;
- The "friendly fire" shootdown of two U.S. helicopters in Iraq in 1994 - no victims assistance provisions were requested or have been legislated, although two have been proposed (see below);
- The bombing of Khobar Towers, Saudi Arabia in 1996 - no victims assistance provisions were legislated or requested;
- The Ron Brown plane crash - in response to this incident, Congress authorized additional death gratuities of \$10,000 for civilian employees killed in any incident while in the line of duty (a new benefit for all Federal employees, not just survivors of this incident); and
- The bombing of the U.S. Embassies in Tanzania and Kenya in 1998 - no victims assistance provisions were legislated or requested.

Special Relief Bills

On at least two recent occasions, Congress has tried to enact special relief bills, but has not succeeded. On the first occasion, Congress proposed a bill allowing payments to survivors of Defense employees killed in incidents for which payments were made to foreign nationals killed in the same incident (in this case, the 1994 friendly fire incident in Iraq). This bill did not move beyond committee. On the second occasion, Congress proposed last July another bill authorizing special relief for survivors of the military and civilian employees killed in the 1994 Iraq incident. No action has been taken on this bill, either, except for a subcommittee hearing. The Administration has been consistent in opposing such efforts because they undermine the uniform system of compensation provided for all Federal employees killed or injured while in service.

Embassy
bombing
compensation

THE WHITE HOUSE
WASHINGTON

JP

TO: RUBINMAN
DEROSA
FBI

The only thing I would say is that in the case of the embassy bombings and the Ron Brown case, the loss of life is similar to what happened to people in uniform, yet the civilian benefits seem substantially less - perhaps we should have a parity policy when deaths to civilians come from danger in the line of duty - If the wrong and the benefit aren't disparate, then we probably shouldn't do anything.

I think whenever this occurs something should be given for college education of all kids. - BC

JACK
Sylvia
Kyle
J.C.

4/5

(MO)

DeRosa, Mary B. (LEGAL)

No. NOTES from

From: Sutphen, Mona K. (NSA)
Sent: Wednesday, February 02, 2000 12:35 PM
To: @LEGAL - Legal Advisor
Subject: Bombing Victims Compensation follow-up [UNCLASSIFIED]

7159

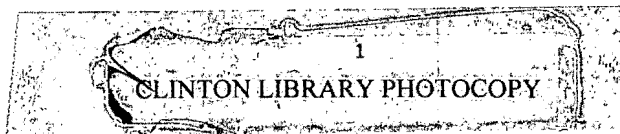
S2B

Follow Up Flag: Follow up
Flag Status: Flagged

Mary -

On the OMB memo w/POTUS' comments, SRB wrote: "what are the options/obstacles for equalizing federal benefits for civilians/military who are killed in the line-of-duty? What about benefits for college education of children?"

Thanks. Mona



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	Handwritten notes re: ARB/DNA issue (1 page)	ca. 02/1999	P5 7160
002. email	Caroline Krass to James Baker, re: ARB Recs: DNA Testing and 4th Amendment (1 page)	02/11/1999	P5 7161
003a. memo	From ARB Task Force, re: Report to the Congress on Accountability Review Boards' (ARB) Recommendations [partial] (1 page)	01/25/1999	P3/b(3), P6/b(6), b(7)(C)
003b. report	First Draft, Report to the Congress on the Accountability Review Boards' (ARB) Recommendations (36 pages)	01/25/1999	P1/b(1)
004a. memo	From the ARB Task Force, re: Report to the Congress on Accountability Review Boards' (ARB) Recommendations [partial] (1 page)	01/25/1999	P3/b(3), P6/b(6), b(7)(C)
004b. report	First Draft, Report to the Congress on Accountability Review Boards' (ARB) Recommendations (36 pages)	01/25/1999	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Krass, Caroline)
OA/Box Number: 3114

FOLDER TITLE:

Embassy Bombings [Kenya, Tanzania]

2007-1596-F

ke1213

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

ARB/

Julie Herr - DNA issue - 647-3280

→ mandatory blood sampling / DNA

→ military does it for active duty personnel
using very general auth of Sec Def to remain
authority (no specific statute)

→ to go overseas have to have a medical clearance

also for spouse
dependants- blood sampling for blood types, urine tests, HIV
- physician can provide HIV or blood type ^{hepatitis}
CBC
don't maintain samples ^{not done}
can get ^{outside}

→ talk to DOS / OLC?

would only be analyzed when time to determine
but record under Privacy Act

court could order production in criminal case

→ ^{State} ~~we~~ would actually have the sample + then do
the DNA analysis when necessary

→ outside labs do it, then report would exist

→ idea is just to provide a blood sample
huge data management issue - have reports for
37,000 + reliability question

could only id victims (3/8 from bombing)

State has a few hooks to hang auth on
- authorities on terrorism

Timeframe: ARB recs tomorrow

could always say "explaining the option" of

2/19 mentioned to Jim Thessin
he has concernsd suggested consulting w/ OLC if they
want to go forward

7161

Krass, Caroline D.

From: Krass, Caroline D.
Sent: Thursday, February 11, 1999 2:35 PM
To: Baker, James E.
Cc: @LEGAL - Legal Advisor
Subject: ARB Recs: DNA Testing and 4th Amendment ~~[SECRET]~~

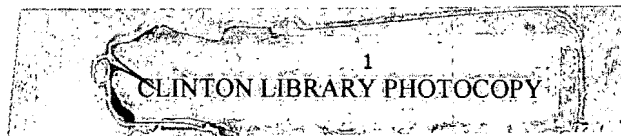
Julie Herr from L/PER called me today to say that they have looked at the DNA testing issue but not from a Fourth Amendment perspective. (They are examining whether State has statutory authority to require such testing.) She pointed out that the military requires DNA testing and that State already requires FSO's and their dependents to give State a Dr.'s report stating that they have had their blood tested for various diseases. She admitted, however, that the recommendation to have State draw blood from each FSO and dependent and then keep it in storage in case DNA testing became necessary after a terrorist incident might pose greater Fourth Amendment concerns than State's current requirements.

Julie asked me to consult with OLC. Apparently she is supposed to clear the draft recommendations by tomorrow, but we agreed that the issue need not be resolved by then because she could add language indicating that State is "exploring the option" of DNA testing.

Should I call Robert since he is working on a different Fourth Amendment issue for us or do you want me to call Beth?

Thanks.

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By KDE NARA, Date 11/14/2011
2007-1596-F



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. paper	Re: Options Paper (7 pages)	ca. 08/1998	P1/b(1)
002a. briefing paper	Recommended Telephone Call (1 page)	08/12/1998	P5 7162
002b. memo	Richard Clarke to Samuel Berger, re: POTUS Calls to Congressional Leadership on Emergency Supplemental for Embassy Bombings (1 page)	08/12/1998	P5
002c. talking points	Draft of Points to be made for Leadership Calls on Embassy Security Supplemental (2 pages)	n.d.	P5 7163
002d. talking points	Draft of Points to be Made for Leadership Calls on Embassy Security Supplemental (2 pages)	n.d.	P5 7164
002e. talking points	Draft of Points to be Made for Leadership Calls on Embassy Security Supplemental (1 page)	n.d.	P5 7165
003. paper	Discussion Paper for Meeting on Emergency Supplemental (9 pages)	ca. 08/1998	P1/b(1)
004. list	Options for Emergency Supplemental (1 page)	08/26/1998	P1/b(1)
005. memo	Steven Simon to Samuel Berger, re: Meeting regarding the Emergency Supplemental Request (5 pages)	08/27/1998	P1/b(1), P5
006a. memo	Terrence Brown to the Acting Administrator, re: USAID Security Supplemental Request (2 pages)	08/28/1998	P1/b(1)
006b. list	USAID Facility Summary Relocation Table (1 page)	08/28/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Transnational Threats (Wechsler, William)
OA/Box Number: 3926

FOLDER TITLE:

Financial Matters - [Embassy Bombings Emergency Supplemental] [1]

2007-1596-F

ke1228

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

7162

98 AUG 12 PM 5:57

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7163

POINTS TO MADE
FOR LEADERSHIP CALLS ON
EMBASSY SECURITY SUPPLEMENTAL

- ① ~~Appreciate your non-partisan ~~analysis~~ remarks on the wake of Friday's bombings~~
- ① Calling to ~~continue~~ discussing ways to improve security at diplomatic posts overseas; ~~following last week's bombing.~~

Want to work closely with you to build a credible and comprehensive security enhancement package we can all support.

Cost of bombings in Nairobi and Dar es Salaam in human life has been enormous. ~~It shows that we have to act now to improve security at many of our posts.~~

- ③ Safety of men and women abroad is paramount concern -- and we need to move quickly to improve security where we can.

Will be long-term damage to our engagement abroad if we don't do what is necessary to maintain a strong presence at our embassies and missions. ~~Determined not to give satisfaction to murderers who did this.~~

On the investigation,

- ② FBI and CIA are working hard on forensic and intelligence issues.

⑤ Have asked my team for proposal for upgrading ^{embassy} security at the embassies.

In near-term,

- ④ Need to get our Embassies in Dar es Salaam and Nairobi up and running ~~again~~ ^{examine} improve security at other vulnerable posts, help Kenyans and Tanzanians recover, and improve our ability to respond to events like these.

Embassies in both cities have essentially been destroyed. Although structures are standing, they are not intact. Crucial equipment at both was destroyed.

- Rapid replacement will show that we can't be intimidated by terrorists.
- We need to look hard at security of our posts around the world. Number of them are vulnerable.
- Need to harden our posts against attack and take other measures to improve their security.

- Need ^{also} to help Kenyans and Tanzanians. Hundreds have been killed. ~~-- many of them were our local guards kept the attackers at a distance.~~

~~st. Kenya and Tanzania~~

- Both governments have cooperated completely. Owe them gratitude, and need to show that our bilateral relations have been strengthened by this act of terror.
- Will need additional humanitarian aid and perhaps assistance for their law enforcement.
- Finally, many of these measures will create recurring costs. Would like to work with Congress to maintain a commitment to fund these costs in the coming years.
- Will get summary and cost assessment for all these things. Know Congress has great deal to accomplish when it returns. We can work together to enact this emergency supplemental request as quickly as possible.

7164

POINTS TO MADE
FOR LEADERSHIP CALLS ON
EMBASSY SECURITY SUPPLEMENTAL

IP

- Calling to continue discussing ways to improve security at diplomatic posts overseas following last week's bombing. • Want to work closely with you to build a credible and comprehensive security ~~enforcement~~ ^{Emergency} package we can all support. • ~~The Cost of the bombings in Nairobi and Dar es Salaam in human life has been enormous. It shows that we have to act now to improve security at many of our posts.~~
- ~~Clearly, the~~ Safety of ~~our~~ men and women abroad is a paramount concern -- and we need to move quickly ^{to improve security where we can.}
- ~~In addition, there will be~~ ^{will be} long-term damage to our engagement abroad if we don't do what is necessary to maintain a strong presence at our embassies and missions. ~~I'm determined not to give any satisfaction to the murderers who did this.~~
- ~~The FBI and CIA are working hard on the forensic and intelligence issues. I'd like to tell you now about what we will propose for upgrading security at the embassies.~~
- ~~Have asked my team for proposals~~
- ~~Specifically, we need to get our Embassies in Dar es Salaam and Nairobi up and running again, ensure that security at other vulnerable posts is upgraded as soon as possible, help the Kenyans and Tanzanians recover, from the blow they have suffered and improve our ability to respond to events like these.~~
- ~~Let me take you through each of these essential needs, recognizing that the details of these proposals will be worked out over the next few days.~~
- ~~The Embassies in both cities have essentially been destroyed. Although structures are standing, they are not intact. Crucial equipment at both was destroyed.~~
- Rapid replacement will show that we can't be intimidated by terrorists.
- ~~It's clear that we~~ need to look hard at security ~~at many of our posts around the world. We can already identify a number of them that are vulnerable to attack.~~

Need to

- ~~We need to take steps to~~ *improve* harden our posts against attack and take other measures to ensure their security, especially those that cannot be upgraded.
- ~~We need to get some help to~~ *W* the Kenyans and Tanzanians. Hundreds have been killed -- many of them were our local guards who ~~were keeping~~ *kept* the attackers at a distance.
- Both governments have cooperated completely. ~~We owe them a debt of~~ *Q* gratitude, and ~~we~~ need to show that our bilateral relations have been strengthened by this act of terror.
- ~~we will~~ *W* need additional humanitarian aid and perhaps assistance for their law enforcement.
- Finally, many of these measures will create recurring costs. ~~I would~~ *I* like to work with Congress to maintain a commitment to fund these costs in the coming years.
- ~~I will get you a detailed~~ *W* summary and cost assessment for all these things. ~~I know~~ *Q* Congress has ~~a~~ great deal to accomplish when it returns. ~~I know~~ *W* we can work together to enact this emergency supplemental request as quickly as possible.

word to work closely with you to build
a credible and comprehensive security ~~center~~ 5713
Enforcement
policy we can
all support.

POINTS TO MAKE
FOR LEADERSHIP CALLS ON
EMBASSY SECURITY SUPPLEMENTAL

- calling to continue discussing ways to improve security at diplomatic posts overseas following last week's bombings.

~~Glad to have this chance to speak with you.~~ The cost of the bombings in Nairobi and Dar es Salaam in human life has been enormous. It shows that we have to act now to improve security at many of our posts.

- Clearly, the safety of our men and women abroad is a paramount concern -- and we need to move quickly. ~~to ensure that we aren't attacked again. That possibility is real and urgent.~~
- In addition, there will be long-term damage to our engagement abroad if we don't do what is necessary to maintain a strong presence at our embassies and missions. I'm determined not to give any satisfaction to the murderers who did this.
- The FBI and CIA are working hard on the forensic and intelligence issues. I'd like to tell you now about what we will propose for upgrading security at the embassies.
- Specifically, we need to get our Embassies in Dar es Salaam and Nairobi up and running again, ensure that security at other vulnerable posts is upgraded as soon as possible, help the Kenyans and Tanzanians recover from the blow they have suffered and improve our ability to respond to events like these.
- Let me take you through each of these essential needs, recognizing that the details of these proposals will be worked out over the next few days.
- The Embassies in both cities have essentially been destroyed. Although structures are standing, they are not intact. Crucial equipment at both was destroyed.
- Rapid replacement will show that we can't be intimidated by terrorists.
- It's clear that we need to look hard at security at many of our posts around the world. We can already identify a number of them that are vulnerable to attack. ~~possibly from the same group that attacked Nairobi and Dar es Salaam.~~

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	William Wechsler to Jamie Metzl, re: [Al-Shifa] (5 pages)	09/09/1998	P1/b(1)
002. email	Judith Russ to Richard Clarke and Bruce Riedel, re: [Letter to the President] (3 pages)	09/14/1998	P1/b(1)
003. email	Judith Russ to Daniel Benjamin, et al., re: Clearance on Memo #5961 (4 pages)	09/17/1998	P1/b(1)
004. email	Philip Bobbitt to Steven Simon, re: [Carter] (3 pages)	09/17/1998	P5 7164
005. email	David Leavy to Glyn Davies, et al., re: tic-toc (5 pages)	09/17/1998	P1/b(1)
006. email	John Prendergast to Erica Barks-Ruggles, et al., re: [counterterrorism] (6 pages)	09/19/1998	P1/b(1)
007. email	Marc Hurwitz to Steven Simon, re: CT efforts (3 pages)	09/24/1998	P1/b(1)
008. email	Steven Simon to Mark Montgemery, re: Slides (3 pages)	10/05/1998	P1/b(1)
009. email	Richard Clarke to Steven Simon, re: Call from Karl Vick, WP (8 pages)	10/22/1998	P1/b(1), P5
010. email	Steven Simon to L. June Bartlett, et al., re: [PC memos] (19 pages)	10/22/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange-Non-Record (Mar 97-Jan 01) ([Kenya; Tanzania...])
 OA/Box Number: 630000

FOLDER TITLE:

[09/03/1998 - 12/24/1998]

2007-1596-F

ke1268

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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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)]

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Exchange Mail

7166

DATE-TIME 9/17/98 6:30:44 PM
FROM Bobbitt, Philip C.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: Oh yeah, Carter's on the case... [UNCLASSIFIED]
TO Simon, Steven N.

CARBON_COPY

TEXT_BODY

He didn't have full information. He is a former President and ought to have been fully briefed just to prevent this sort of thing; but in any case, wouldn't you like the chance to at least mitigate any future remarks he may make?

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

From: Simon,
Steven N.
Sent: Thursday, September 17, 1998 6:11 PM
To: Bobbitt,
Philip C.
Subject: RE: Oh yeah, Carter's on the case... [UNCLASSIFIED]

Carter
is not persuadable. His comments are over the top, no?

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

From: Bobbitt, Philip C.
Sent: Thursday, September
17, 1998 6:05 PM
To: Simon, Steven N.
Subject: FW: Oh yeah, Carter's
on the case... [UNCLASSIFIED]

Would you like me to arrange a
briefing for President Carter similar to the one you did yesterday?
You were exceedingly effective.

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

From: Wechsler,
William F.
Sent: Thursday, September 17, 1998 5:18 PM

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To: @TRANSNATIONAL
- Transnational Threats
Cc: @INTEL - Intelligence Programs
Subject: Oh
yeah, Carter's on the case... [UNCLASSIFIED]

Carter calls for
probe of Sudan bombing target

ATLANTA, Sept 17 (Reuters) -
Former U.S. President Jimmy
Carter on Thursday urged Sudan and the
United States to conduct
a full investigation into whether a Khartoum
factory destroyed
by U.S. missiles was making ingredients for chemical
weapons as
Washington charged.

"The Sudanese government has
called upon the United Nations
or any other authoritative agency
to send a qualified technical
team to investigate the nature of
the facility," Carter said.

"Despite early American reluctance
to support this request,
this is something that now needs to be
done," he said.

Carter said many foreign leaders have questioned
the U.S.

claim that the El Shifa factory, which was bombed Aug.
20 by

U.S. cruise missiles in retaliation for terrorist attacks
on

U.S. embassies in Kenya and Tanzania, was manufacturing Empta,
a

key ingredient in the deadly VX nerve agent.

The suspected

mastermind of the embassy bombings, Osama Bin
Laden, was expelled

from Sudan in 1996, but the United States
contends he was using
companies there as fronts for carrying out
terrorist activities.

The assertion by Washington was based on a soil sample taken
by

a CIA agent that purportedly showed traces of Empta.

High-ranking

officials in both Britain and Germany have

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questioned that claim,
however.

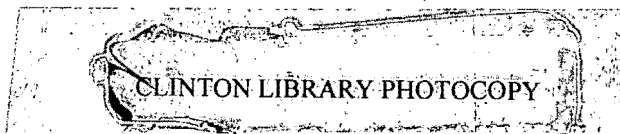
"The credibility of our nation in international circles is being adversely affected by these doubts," Carter said in a statement.

He called for a physical inspection of the plant, which Khartoum insists manufactured 60 percent of the medicines and veterinary treatments used in Sudan. Carter said the inspection should include analysis of remaining chemicals and pharmaceuticals and sampling of soil and building materials.

"If the evidence shows the Sudanese are guilty, they should be condemned both for lying and for contributing to terrorist activities," Carter, who left office in 1981, said. "Otherwise we should admit our error and make amends to those who have suffered loss or injury."

Sudan's President Omar Hassan al-Bashir accused Washington last week of blocking the U.N. Security Council from sending a fact-finding mission to verify Sudanese claims that the plant did not make chemical weapons.

A senior Sudanese official was also quoted as saying last week that the Khartoum government wanted the United States to "publicly admit" that the attack on the plant was a mistake and to pay compensations.



Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	REDACTION COPY
001a. letter	Madeleine Albright to Edith Bartley [partial] (1 page)	05/19/1999	P6/b(6)
001b. letter	Madeleine Albright to Sue Bartley [partial] (1 page)	05/19/1999	P6/b(6)
001c. list	Charts listing survivor benefits of Prabhi Kavalier, Ann M. O'Connor, Julian ("Jay") Bartley Jr., and Julian "Joel" Bartley Sr. (4 pages)	ca. 08/1999	P6/b(6)
001d. memo	From Ronald Bettauer, re: Embassy Bombings - Proposal from Bartley family attorneys (8 pages)	04/19/1999	P5 6057
001e. list	Chart listing survivor benefits for Julian ("Joel") Bartley, Sr. and Julian ("Jay") Bartley, Jr. (1 page)	ca. 04/1999	P6/b(6)
001f. list	Employees of the U.S. Government and Family Members Who Died or Were Injured in the East Africa Bombings [partial] (1 page)	n.d.	P6/b(6)
001g. letter	Mary Bartley to Madeline Albright, re: Barrett Berry (2 pages)	09/28/1998	P6/b(6)
001h. letter	Edith Bartley to Elaine Shocas, re: Barrett Berry (2 pages)	09/28/1998	P6/b(6)
001i. letter	Madeleine K. Albright to Mary Bartley [partial] (1 page)	11/12/1998	P6/b(6)
001j. letter	Kendall Montgomery to Sue Bartley, re: Victims of Terrorism Compensation Act (1 page)	06/18/1999	P6/b(6)
001k. letter	Kendall Montgomery to Sue and Edith Bartley [partial] (1 page)	06/23/1999	P6/b(6)
001l. letter	Clara Aliganga and Leah Colston to Ben Johnson [partial] (1 page)	07/26/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
National Security Council
African Affairs (Smith, Gayle/Sanders, Robin/Barks-Ruggles, Erica/Prendergast, John)
OA/Box Number: 2855

FOLDER TITLE:

Bombings [Dar es Salaam, Tanzania and Nairobi, Kenya Embassies] [3]

Kara Ellis
2007-1596-F
ke1198

RESTRICTION CODES

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

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

RR. Document will be reviewed upon request.

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Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	
001m. letter	Clara Aliganga and Leah Colston to President William Jefferson Clinton [partial] (1 page)	07/26/1999	P6/b(6)
001n. letter	Clara Aliganga and Leah Colston to Vice President Albert Gore [partial] (1 page)	07/26/1999	P6/b(6)
001o. letter	Mary Bartley to President William Jefferson Clinton [partial] (2 pages)	07/18/1999	P6/b(6)
001p. list	Nairobi-Dar es Salaam Family Meeting, Victims Represented at the Meeting [partial] (1 page)	06/23/1999	P6/b(6)
001q. list	Nairobi-Dar es Salaam Family Meeting Participants (4 pages)	06/17/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
National Security Council
African Affairs (Smith, Gayle/Sanders; Robin/Barks-Ruggles, Erica/Prendergast, John)
OA/Box Number: 2855

FOLDER TITLE:

Bombings [Dar es Salaam, Tanzania and Nairobi, Kenya Embassies] [3]

Kara Ellis
2007-1596-F
kel198

RESTRICTION CODES

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

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United States Department of State

Washington, D.C. 20520

April 19, 1999

COPY

SENSITIVE BUT UNCLASSIFIED

TO: L - Mr. Andrews

THROUGH: L - Mr. Matheson

FROM: L/CID - Ronald J. Bettauer *RTB*

SUBJECT: Embassy Bombings--Proposal from Bartley family attorneys

Summary

FSO Julian Bartley, Sr. and his son, Julian "Jay" Bartley, Jr. (a summer employee of the Department) were among those killed in the August 1998 bombing of Embassy Nairobi. Attorneys for their survivors are seeking additional compensation for the Bartley family, in an amount akin to a tort recovery. They indicated that they may elect to sue the USG down the line, but that they would prefer to "team up" with the Department to (1) seek a legislative appropriation; or (2) bring a civil lawsuit, with the USG as co-plaintiff, against Osama bin Laden. We told the attorneys that we would get back to them with a response after surveying the other Department offices with an interest in the matter. The Department has now scheduled a conference for victims of the East Africa bombings and their families for May 5-6, 1999; we believe it important to deliver a response in advance of that meeting.

While there is sympathy at all levels for the Bartley family, both proposals are problematic. The proposed appropriation raises a number of questions of policy and equity as to who would be covered, how much their beneficiaries would receive, and the underlying justification for any payment beyond existing statutory compensation for families of FSOs/USG employees killed in the line of duty. And while the prospect of obtaining financial compensation directly from bin Laden is attractive, there are numerous pragmatic and legal problems with a civil law suit that make recovery unlikely. More importantly, by bringing such a suit, the USG would be subject to discovery concerning its investigation and knowledge of bin Laden's involvement in the bombings, which could jeopardize efforts at criminal prosecution.

For these reasons, our recommendation is that we inform the Bartley family attorneys that the Department will not join them in a civil suit against bin Laden, but that, while not optimistic, we would of course be willing to review and discuss any specific legislative proposal. While the attorneys probably anticipate such a response, we do not expect them or the family to be pleased.

Background

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Per your request, on December 11, 1998, we met with attorneys from Williams & Connolly--Brendan Sullivan, Robert Barnett and Dane Butswinkas--who represent survivors of Joel and Jay Bartley, both killed in the bombing of the Nairobi embassy. Joel Bartley was a Foreign Service Officer (FSO) serving as Consul General; Jay Bartley, his son, was a college student employed at the embassy for the summer through a purchase order contract.

The Williams & Connolly attorneys are seeking to obtain additional financial recovery for the Bartley family, beyond the standard benefits for which the family is already eligible. They are not excluding the possibility of bringing suit against the USG; however, the purpose of the December meeting was to explore whether they might instead "team up" with the Department to (1) seek a special appropriation or authority from Congress; or (2) bring a civil suit, with the USG as co-plaintiff, against Osama bin Laden. They also asked for our suggestions as to any other means of obtaining additional funds for the Bartleys.

The attorneys were deliberately vague about the details of both proposals. With respect to the appropriation, for example, they indicated that they were not necessarily seeking special treatment for the Bartley family alone, but they had no suggestion for defining the class of people that would benefit from any appropriation. Likewise, they disclaimed any expertise in international law, and declined to specify by what legal mechanism and in what forum they might bring suit against bin Laden. However, the attorneys were very clear about the bottom line: the family is interested in certain and substantial recovery, rather than a symbolic gesture. Although they refused to specify the amount of compensation they believed would be appropriate, they indicated that they would seek to use formulas for tort damages as a standard.

We expressed our sympathy and concern for the family, and stated that the proposals raised complicated questions involving numerous bureaus within the Department. In particular, with respect to the civil suit, we discussed the fact that bin Laden assets subject to U.S. jurisdiction have been blocked pursuant to an Executive Order, and that to date, the USG has consistently opposed the use of blocked assets to satisfy private judgments. We indicated that we would take their proposals under consideration, discuss them with the relevant offices within the Department, and get back to the attorneys with a response. They expressed an understanding that this intra-Department review would take some time. We have been in touch with them via telephone to let them know that our review is still in progress.

Since that meeting, we have discussed the matter with attorneys in L/EMP, L/LM, L/BA, L/NEA, and L/LEI. Reactions have also been solicited from PER, NEA, S/CT, H, and FMP.¹ Outside the Department, we have consulted with attorneys from the Department of Labor, the Treasury Department's Office of Foreign Assets Control ("OFAC"), and various offices within the Department of Justice Civil Division

¹ L/AF and AF were also invited to respond, but did not wish to comment.

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(Affirmative Litigation, Federal Programs, Foreign Litigation, and Torts). The analysis below reflects comments received from all of these offices.

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Analysis

A. Legislative Appropriation or Authority

The existing legislative framework for providing compensation and benefits to families such as the Bartleys is outlined at Tab 1. Central among these statutes is the Federal Employees' Compensation Act (FECA), 5 U.S.C. §8101 et seq., which was designed to provide automatic, uniform compensation for dependent survivors of all federal employees killed in the line of duty. Pursuant to FECA, Mrs. Bartley (wife of Julian, mother of Jay) is receiving a monthly annuity payment of \$3,626. The Foreign Service Act of 1980 provides an additional gratuity to dependents of FSOs killed in the line of duty in the amount of one year's salary. The death gratuity paid to Mrs. Bartley under that Act is \$94,287. The Victims of Terrorism Compensation Act provides a death gratuity for employees and family members not covered by the Foreign Service Act; Mrs. Bartley's benefit under this statute has yet to be determined. Additional statutory benefits include allowances for funeral and administrative expenses (\$20,000 in the case of Mrs. Bartley), and income tax relief for 1998 and 1997. See Tab 1.

From the perspective of personnel policy, a legislative proposal for additional compensation for the Bartleys or similarly situated families would preferably address this existing framework, which approaches the question of compensation from a variety of angles. To the extent that the Bartleys feel this framework is inadequate, it would be useful to know whether they have a specific need that is not being met. Potential legislative fixes could involve retroactively increasing the level of funding provided under one or more existing statutes, or creating new types of benefits to cover specific expenses (e.g., educational benefits for surviving dependents, as was recently enacted for federal law enforcement agents killed in the line of duty).

Our conversation with the Bartley family attorneys suggests that they are not looking to tinker with the existing statutory scheme, but instead, are seeking some type of special compensation for the Bartleys (or embassy bombing victims in general) in an amount comparable to recovery in a wrongful death suit.² This type of

² In fact, a provision that would direct the Secretary to pay \$1.5 million in compensation for each of the 12 Americans killed in the Nairobi bombing was circulated last week as a proposed amendment to the FY 2000-2001 Foreign Relations Authorization Act during last week's House International Relations Committee markup. Department officers persuaded the sponsor to offer a substitute amendment, which would merely direct the Secretary to review the current benefit structure for survivors of U.S. Government employees who are killed while serving at U.S. diplomatic facilities abroad as a result of terrorist acts. However, the original amendment could resurface on the Senate side or on the floor of the House.

proposal raises several concerns. As an initial matter, such incident-specific compensation would be inconsistent with position taken by the USG in the face of similar tragedies. As recently as June 1998, for example, the Department of Justice testified against a bill that would have awarded \$100,000 payments to survivors of DOD and civilian employees killed in the 1994 "friendly fire" shootdown of two U.S. helicopters over Iraq. At the same hearing, DOJ testified against a second bill designed to authorize extra compensation for survivors of USG employees killed in the Ron Brown plane crash. See Tab 2. Special legislation for the embassy bombing victims would also run counter to the legal position taken by the USG in tort suits brought by its employees--namely, that employees covered by FECA are not entitled to additional redress from the government. Incident-specific compensation risks eroding judicial support for this "exclusive remedy" principle, which has heretofore been strictly upheld by the courts.

Apart from the problem of inconsistency per se, from a policy perspective, the Department's position concerning a new legislative authority or special appropriation would depend in part upon how the class of beneficiaries was defined. There seems to be no reason for the Department to advocate special relief for the Bartleys, as opposed to the other families who suffered similar losses. In proposing that the class of beneficiaries might be broader, the Bartleys' attorneys seemed to have in mind the survivors of the other American citizens killed in the bombing; however, many more Foreign Service Nationals (FSNs) were killed and injured than American employees. PER would not look favorably on an initiative which treated FSNs differently from FSOs and Civil Service employees. Concerns of equitable treatment also arise in relation to other groups, including:

- Department employees killed in the line of duty at other posts or under different circumstances;
- employees injured but not killed in the bombing (whose benefits are also currently restricted to those provided under FECA);
- other USG employees (stationed at an embassy or elsewhere);
- civilians--American and non-American--injured or killed in attacks against U.S. embassies; and
- victims of domestic terrorism (i.e., Oklahoma City).

Finally, it is impossible to assess the budgetary impact of a legislative proposal without more specifics as to who would be covered and what type of compensation they would receive. Since even a "one-time" measure to benefit victims of the embassy bombings will serve as a precedent for future crises, the budgetary impact must be considered to be long-term. Internal support for such a measure would also depend greatly upon the source of funding. There is a specific concern that compensation for victims of terrorism would inevitably come out of funds that would otherwise be used to support anti-terrorism activities.

Notwithstanding the above caveats, the relevant Department offices (in conjunction with DOJ) would be willing to review and comment upon a more specific proposal from the Bartley family attorneys. It would be unusual for the Department to propose such a measure, but, subject to OMB review, the Administration might support to a bill introduced by a sympathetic member of Congress, if the

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substance was consistent with the legal and policy concerns expressed above.

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B. Civil Suit Against bin Laden

Filing a civil suit against bin Laden would be consistent with USG policy of fighting terrorism on all fronts. However, a civil suit by the USG is unlikely to have any effect on bin Laden and his associates, and may, in fact, jeopardize USG efforts at criminal prosecution. These considerations, discussed below, appear to be determinative; discussion of numerous additional objections to the proposal has thus been omitted.

1. The USG is unlikely to prevail in a civil suit against bin Laden. In theory, the USG could seek to recover damages from bin Laden by filing a tort suit, either in the United States or abroad. However, in practice, there are numerous pragmatic and legal obstacles to any such suit which make a judgment against bin Laden extremely unlikely.

Within the United States, it appears that the only cause of action open to the USG as a plaintiff would be a state law tort claim. (There is a federal cause of action for victims of terrorism, 18 U.S.C. §2331, but it is limited to "nationals of the United States."). Assuming that an action by the USG would be filed in the District of Columbia, the substantive law governing the case would be the law of Kenya, under applicable choice of law rules. However, personal jurisdiction would be a difficult, if not insurmountable, barrier to pursuing such litigation: even if bin Laden were located and served with civil process, it would be hard to establish that his activities fall within the scope of the District of Columbia's long-arm jurisdiction statute, or meet the U.S. Constitutional standard for "minimum contacts" with the forum state.

If such litigation were pursued abroad, the next most likely forum would be Kenya; however, personal jurisdiction would be equally difficult to establish under Kenyan law. The standing of the USG to bring such a suit in Kenya is also doubtful. Doctrinal issues aside, Kenya is not an attractive litigation forum, as the judiciary is neither well-functioning nor assuredly independent. Even less hospitable would be the courts of any of the countries where bin Laden is rumored to be located or have assets: Saudi Arabia, Afghanistan, Pakistan, etc.

2. Enforcement and execution of any civil judgment against bin Laden is unlikely. Even if the USG (or the Bartleys) were to obtain a judgment against bin Laden, identification of bin Laden assets against which such a judgment could be executed is unlikely. Moreover, even if such assets were identified in the future, recovery would still be problematic. Any bin Laden assets under U.S. jurisdiction (either in the U.S. or abroad) are blocked pursuant to E.O. 13099; consistent with our position in other civil cases, the USG would oppose any attempt to execute a civil judgment against blocked assets. To the extent that assets were identified in institutions not subject to U.S. jurisdiction, enforcement of such a judgment would likely be difficult in a foreign court (e.g., Saudi Arabia), due to the jurisdictional

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problems with the underlying suit discussed above.

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3. By filing a civil suit, the USG would open itself to discovery of its investigation of bin Laden. Not only is a civil suit by the USG likely to be unsuccessful, but it risks compromising the criminal investigation and prosecution of bin Laden and his counterparts. As a party to a civil suit either in the United States or abroad, the USG would be subject to broad discovery concerning its knowledge of bin Laden and his involvement in the embassy bombings. By contrast, if the Bartleys or other potential plaintiffs were to proceed with a federal suit on their own, the Attorney General would have the authority under 18 U.S.C. §2336 to request a stay of discovery--or of the entire action--until the completion of criminal proceedings.

C. General Comments

There is enormous sympathy for the Bartley family within the Department and other government agencies. At the same time, there is a good deal of skepticism, particularly among the litigators, as to whether the Williams & Connolly proposals for "joint efforts" with the Department should be taken at face value. An assertion by the self-proclaimed "top litigation firm in the country" that they know nothing about mechanisms for filing a civil suit in these circumstances seems disingenuous. Likewise, the proposals are so vague that it seems unlikely they could reasonably expect the USG to agree. Finally, although they claim to have "some theories" about how they could sue the USG, this seems to be an empty threat, as the prospects for recovery under current law appear minimal at best.³ There is concern that the proposal for a joint undertaking may be a pro forma gesture, designed to elicit a "refusal to cooperate" from the Department that the lawyers can use to their advantage for future public relations purposes.

There is a consensus that we should be cautious in our dealings with the firm. To the extent we are unable to offer a positive response to these proposals--and perhaps even if we were--we believe that the Bartleys and their attorneys will expeditiously pursue plans to sue the Department, and/or lobby Congress for additional legislative compensation.

³ Both Julian and Jay Bartley are covered by the Federal Employees' Compensation Act (FECA), which provides standard benefits to families of employees killed in the line of duty, and precludes them from pursuing a tort claim. Even if FECA did not apply, we believe recovery under the Federal Tort Claims Act would still be still unlikely. Acts occurring abroad do not give rise to liability under the Federal Tort Claims Act. Moreover, even where claimants allege that "headquarters negligence" led to their injury abroad, actions taken in the United States that are within the discretionary authority of an employee or agency--e.g., decisions as to appropriate security measures for a given embassy--do not give rise to liability. See 28 U.S.C. §2680(a).

Recommendation

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In view of the foregoing, we recommend conveying the following response, orally, to the Williams & Connolly attorneys:

- 1) The USG will not pursue a civil action against Osama bin Laden at this time, because doing so would jeopardize its efforts at criminal prosecution, by making its investigation subject to civil discovery.
 - If asked whether the Department would support a suit brought by the Bartley family alone: The Department could consider requests for information or other appropriate assistance, to the extent consistent with national security and other policy interests of the United States, as well as applicable laws. The Department does not have the legal authority, nor the resources, to provide litigation support for private civil actions.
 - If pressed for information about the existence of blocked assets: The existence of any assets subject to the OFAC blocking order is not public information; however, in any event, we believe recovery of bin Laden assets pursuant to any civil judgment to be unlikely.
- 2) The Department cannot take a position on a legislative appropriation or authority without a more detailed proposal, including the class of intended beneficiaries and the amount of compensation proposed. Such a proposal should take into account the existing legislative framework for compensating employee victims of terrorism. The Department would be willing to review and discuss a more specific proposal with the Bartley family attorneys before they seek introduction of such legislation in Congress. However, the USG has previously opposed incident-specific compensation above and beyond existing statutory benefits. Moreover, there may be irreconcilable tensions within the Department between budgetary constraints and equity concerns that will preclude support for any additional appropriation.

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by KAW
4-19-99