

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                         | DATE       | RESTRICTION |
|--------------------------|---------------------------------------------------------------------------------------|------------|-------------|
| 001. email               | Mary Tighe to Gary Samore, re: [SRB Memo] (4 pages)                                   | 11/08/2000 | P1/b(1)     |
| 002. email               | Charles Pritchard to Mary Tighe, re: [SRB Memo] (4 pages)                             | 11/08/2000 | P1/b(1)     |
| 003. email               | Gary Samore to Mary Tighe and Charles Pritchard, re: [SRB Memo] (4 pages)             | 11/08/2000 | P1/b(1)     |
| 004. email               | Bruce Riedel to Justin Siberell, re: [transition] (3 pages)                           | 11/08/2000 | P1/b(1), P5 |
| 005. email               | Elisa Harris to Mary Tighe, re: [Small Group meeting] (4 pages)                       | 11/08/2000 | P1/b(1)     |
| 006. email               | Ian Bowles to Wendy Gray and Mara Rudman, re: Climate change/Loy (2 pages)            | 11/08/2000 | P5 1480     |
| 007. email               | Mary Tighe to Theodore Osius, re: Revised Small Group Paper (4 pages)                 | 11/09/2000 | P1/b(1)     |
| 008. email               | Elisa Harris to Charles Pritchard and Mary Tighe, re: [Small Group meeting] (3 pages) | 11/09/2000 | P1/b(1)     |
| 009. email               | Theodore Osius to Steven Black, re: For clearance ASAP. (4 pages)                     | 11/09/2000 | P1/b(1)     |
| 010. email               | Mary Tighe to Justin Siberell, re: [Small Group Meeting Paper] (4 pages)              | 11/09/2000 | P1/b(1)     |
| 011. email               | Kenneth Jarrett to Charles Pritchard, re: draft note for DLK (2 pages)                | 11/09/2000 | P1/b(1)     |
| 012. email               | Theodore Osius to Leandro Aragoncillo, re: [For Leon's meeting] (4 pages)             | 11/09/2000 | P1/b(1)     |

### COLLECTION:

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

### FOLDER TITLE:

[11/08/2000 - 11/13/2000]

Kara Ellis  
2008-0015-F  
ke1592

### 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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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]  
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

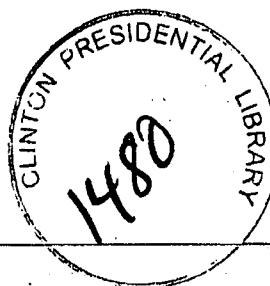
**COPY**

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.

## Exchange Mail



DATE-TIME 11/08/2000 9:24:30 PM  
FROM Bowles, Ian A. (ENV)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT Climate change/Loy [UNCLASSIFIED]  
TO Gray, Wendy E. (NSA)  
Rudman, Mara E. (NSA)

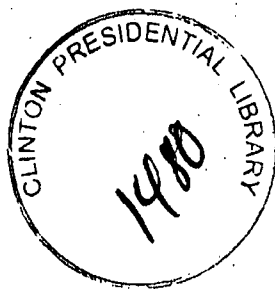
## CARBON\_COPY

## TEXT\_BODY

Mara -- Thanks for taking the time to discuss. I'll draft up a note for Sandy before he leaves for Asia trip & send to you for review. In case this issue comes up tomorrow at the morning staff meetings, I wanted to recap a few points for you:

- \* Less leverage: State  
(both at the political and professional/career negotiator levels) believe they will have less leverage in the upcoming negotiations under the current circumstances (either ambiguous or change of party). In order to make a deal under these conditions, it is possible we would have to compromise beyond what we think would be good policy. I think John needs to hear this from the foreign policy team. I don't expect Roger will tell him straight because he doesn't agree we have less leverage.
- \* Greater likelihood of deadlock: The EU and G77 will have little incentive to compromise. We should adjust any expectations for a successful, big deal on climate change somewhat downward.
- \* Whether to make any signals early: Frank poses the legitimate question of whether we may wish to narrow the agenda somewhat to the technical issues on sinks, design of the CDM, etc & and hold off grappling with some of the larger, more political issues such as limits and taxes on emissions trading. Roger was very dismissive on this discussion. I disagree & think it merits serious consideration. For example, if we make some early signals to narrow the agenda, we could still walk away with a success. If we don't, I think the chances of us being blamed for failure at COP6 are high (the EU would characterize us as trying to gut the Kyoto Protocol with unreasonable new "loopholes" -- this outcome would be good politics for their environment ministers.)
- \* Frank's suggestion of offering a copy for transition team: Recognizing there are numerous unknowables at this moment, I do think this negotiation rises to the level of significance to warrant attention from them. My own view is that it is in the

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foreign policy team's interest to present information on the negotiations in order for a future Administration to have greater familiarity & marginally less ability to simply repudiate our policy. I don't know where John would be on this question. If Sandy does offer this information to the transition contact, I'd be glad to participate with Frank or David. My recommendation would be to make such an offer.

Thanks, Ian

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|--------------------------|-----------------------------------------------------------------------------------------------------------------------|------------|-------------|
| 001. email               | To Robert Bradtke and Dean Haas, re: [personnel] (2 pages)                                                            | 12/20/2000 | P3/b(3)     |
| 002. email               | Richard Wilcox to Eric Schwartz, re: [talking points] (3 pages)                                                       | 12/20/2000 | P1/b(1)     |
| 003. email               | Mary McCarthy to Johannes Binnendijk and Kevin Moran, re: Deputies Lunch (2 pages)                                    | 12/20/2000 | P5 1481     |
| 004. email               | Bonnie Broadwick to L. June Bartlett, et al., re: [Rescheduled Deputies Committee Meeting] (6 pages)                  | 12/20/2000 | P1/b(1)     |
| 005. email               | Cathy Millison to Justin Siberell, re: Transition Papers (18 pages)                                                   | 12/20/2000 | P1/b(1)     |
| 006. email               | Christopher Strickland to Eugene Fishel, re: Request for Chron Listing of RUE documents for History Project (3 pages) | 12/20/2000 | P1/b(1)     |
| 007. email               | Mark Medish to Cathy Millison, re: RUE Transition paper -- revised (10 pages)                                         | 12/20/2000 | P1/b(1)     |
| 008. email               | Andrew Weiss to Christopher Strickland, re: Request for Chron Listing of RUE documents for History Project (4 pages)  | 12/20/2000 | P1/b(1)     |

### COLLECTION:

Clinton Presidential Records  
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Exchange - Record (Sept 97 - Jan 01) ([Transition...])  
OA/Box Number: 620000

### FOLDER TITLE:

[12/20/2000]

Kara Ellis  
2008-0015-F  
kel610

### 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]  
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b(1) National security classified information [(b)(1) of the FOIA]  
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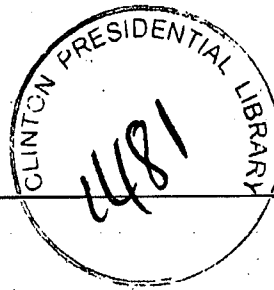
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

## Exchange Mail



DATE-TIME 12/20/2000 11:56:44 AM  
FROM McCarthy, Mary O. (INTEL)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT RE: Deputies Lunch (Tuesday 12/18) [UNCLASSIFIED]  
TO Binnendijk, Johannes A. (Hans) (DEFENSE)  
Moran, Kevin S. (NSA)

## CARBON\_COPY

## TEXT\_BODY

Rich Haver is the transition person for the IC. I will talk to him.  
(Do you know him? He's very pro-program.)

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

From:  
Binnendijk, Johannes A. (Hans) (DEFENSE)  
Sent: Wednesday, December  
20, 2000 11:48 AM  
To: Moran, Kevin S. (NSA)  
Cc: McCarthy, Mary  
O. (INTEL)  
Subject: RE: Deputies Lunch (Tuesday 12/18) [UNCLASSIFIED]

Thanks.  
I think we should really push this for positive decision in this  
administration. Hans

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

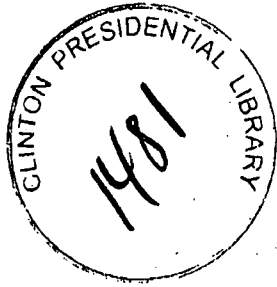
From: Moran,  
Kevin S. (NSA)  
Sent: Wednesday, December 20, 2000 8:43 AM  
To: McCarthy,  
Mary O. (INTEL)  
Cc: Binnendijk, Johannes A. (Hans) (DEFENSE)  
Subject: RE:  
Deputies Lunch (Tuesday 12/18) [UNCLASSIFIED]

READOUT: Gen.  
Kerrick reports Rudy and Myers are making another run at this issue,  
and that "it is not over yet." K

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

From:  
McCarthy, Mary O. (INTEL)

**COPY**



Sent: Monday, December 18, 2000 3:30 PM  
To: Moran, Kevin S. (NSA)  
Cc: Binnendijk, Johannes A. (Hans)  
(DEFENSE)  
Subject: RE: Deputies Lunch (Tuesday 12/18) [UNCLASSIFIED]

Suggest  
you either raise at lunch or with Rudy separately.

On the Navy  
issue that the General raised at last week's lunch:

OMB has informed  
us that the DOD Comptroller has decided that nothing will be done  
now on the funding issue; it will be left to the new Administration  
to handle. That is not what we or OSD/C3I thought was Rudy's view.

Meanwhile, Art Money has drafted an MOA for John McLaughlin and  
Rudy.

Point for Rudy:

\* On the Navy "Gap" issue, OMB tells  
us that DOD Comptroller has made decision not to pursue funding at  
this point, leave for incoming Administration. Know Art Money and  
NSC Staff still think it's critical to start now. What is your view?

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

From: Moran, Kevin S. (NSA)  
Sent: Monday,  
December 18, 2000 2:31 PM  
To: Moran, Kevin S. (NSA); @ALLNSC - NSC  
Staff  
Subject: Deputies Lunch (Tuesday 12/18) [UNCLASSIFIED]

Please  
e-mail me subjects and necessary points for issues you want Gen.  
Kerrick to raise at tomorrow's Deputies lunch by COB today.

Reminder:

This is also one of the last chances you have to send me requests  
for DCs. Requests should include projected date, subject, and summary  
of specific issues for decision. Thanks. k

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| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                        | DATE       | RESTRICTION |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|
| 001. email               | Matthew Mclean to Eric Schwartz, re: [Deputies Committee issues e-mail] (4 pages)                                                    | 12/21/2000 | P1/b(1)     |
| 002. email               | Mark Medish to Hope Harrison, re: Request for Chron Listing of RUE documents for History Project (4 pages)                           | 12/21/2000 | P1/b(1)     |
| 003. email               | John Ficklin to Hope Harrison and Mark Medish, re: Request for Chron Listing of RUE documents for History Project (4 pages)          | 12/21/2000 | P1/b(1)     |
| 004. email               | Eric Schwartz to Wendy Patten, re: interagency anti-trafficking office (timely) (5 pages)                                            | 12/21/2000 | P5 1482     |
| 005. email               | Gayle Smith to Grant Harris, re: [Draft Memcon] (5 pages)                                                                            | 12/21/2000 | P1/b(1)     |
| 006. email               | Mark Medish to Jonathan Elkind, Christopher Strickland, and Eugene Fishel, re: farewell phone calls from potus (3 pages)             | 12/21/2000 | P1/b(1)     |
| 007. email               | Victoria Darnes to John Ficklin, re: Request for Chron Listing of RUE documents fo History Project (5 pages)                         | 12/21/2000 | P1/b(1)     |
| 008. email               | Mark Medish to John Ficklin, re: Request for Chron Listing of RUE documents for History Project (4 pages)                            | 12/21/2000 | P1/b(1)     |
| 009. email               | John Ficklin to Christopher Strickland and Mark Medish, re: Request for Chron Listing of RUE documents for History Project (5 pages) | 12/21/2000 | P1/b(1)     |
| 010. email               | John Ficklin to Roger Cressey, re: Presidential Directives (2 pages)                                                                 | 12/21/2000 | P1/b(1)     |
| 011. email               | John Ficklin to Roger Cressey and William Leary, re: Presidential Directives (2 pages)                                               | 12/21/2000 | P1/b(1)     |

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OA/Box Number: 620000

### FOLDER TITLE:

[12/21/2000]

Kara Ellis  
2008-0015-F  
kel611

### RESTRICTION CODES

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

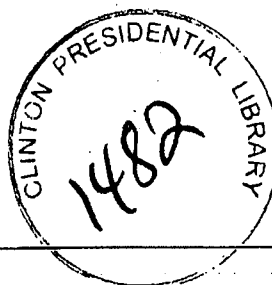
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).  
RR. Document will be reviewed upon request.

## Exchange Mail



DATE-TIME 12/21/2000 2:36:09 PM  
FROM Schwartz, Eric P. (MULTI)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT RE: interagency anti-trafficking office (timely) [UNCLASSIFIED]  
TO Patten, Wendy L. (MULTI)

## CARBON\_COPY

## TEXT\_BODY

You can include this note from me:

I am absolutely convinced that Wendy's concerns are completely justified. She's worked so hard and effectively to get this right; the despair in her note is due to a reasonable conviction that the effort may largely be lost in implementation.

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

From: Patten,  
Wendy L. (MULTI)  
Sent: Wednesday, December 20, 2000 7:47 PM  
To: Patten,  
Wendy L. (MULTI); Schwartz, Eric P. (MULTI)  
Subject: RE: interagency  
anti-trafficking office (timely) [UNCLASSIFIED]

Eric -- could  
you review and discuss with me tomorrow? The time to act on this  
is now. I inserted a couple of proposed actions for Bob and Mara,  
so please look at those carefully to see if they make sense. Thanks  
-- WLP

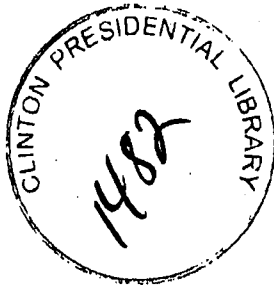
-----Original Message-----

From: Patten, Wendy L. (MULTI)  
  
Sent: Tuesday, December 19, 2000 3:14 PM  
To: Schwartz, Eric P.  
(MULTI)  
Subject: interagency anti-trafficking office (timely) [UNCLASSIFIED]

ES

-- for you to review. Spoke to Miles and he agrees that some key  
co-sponsors will be unhappy. He noted that the key question is not  
congressional reaction but what will be effective in carrying out

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the legislation. I assured him that was the key issue here -- we think the office will not be effective if this decision sticks.

thanks  
-- WLP

TIMELY  
Mara and Bob --

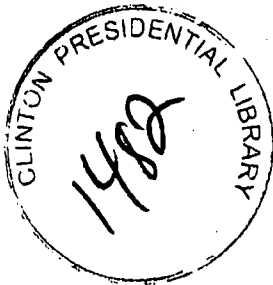
We are following up on our conversation about how best to establish the Interagency Office to Monitor and Combat Trafficking. To recall, this Office is authorized by the newly-enacted trafficking legislation. The Office would provide the real work behind a cabinet-level Interagency Task Force required by the legislation. Its central role would be to support the Task Force and ensure that the USG-wide effort is coherent, coordinated, and achieves the 3 main objectives of the legislation: to increase our enforcement efforts, provide assistance to victims, and carry out prevention programs, both domestically and abroad.

We have just learned that Frank Loy has decided to place the Office within INL. His memo states that he "informed" the Secretary of his decision, so the Secretary was not, as far as we know, consulted about the wisdom (or lack thereof) of this decision.

In reaching this decision, Frank did not consult with any other agency, not even those whose participation on the Task Force is mandated by statute. His decision was therefore informed only by the views of bureaus within State, and does not account for the other agencies' needs and preferences regarding the office that will be coordinating USG-wide implementation of the legislation. This is emblematic of the challenges we have faced all year in working on the bill: State has focused only on its requirements under the legislation, when many other agencies (esp. Justice, Labor, HHS, and AID) have significant responsibilities.

The regional bureaus that provided views (EAP, EUR, SA, AF) oppose its location in a functional bureau (as did PRM and the President's Interagency Council on Women). The regional bureaus told Frank that only the establishment of a high-level office (i.e., one that sits above both regional and functional bureaus) could give this issue the prominence necessary to sustain our current efforts and achieve further progress. As we saw with the our work to develop the Asian Regional Initiative Against Trafficking (which we successfully launched with the Govt of the Philippines in March), the role of the regional bureaus in implementing anti-trafficking initiatives in their regions is critical. The fact that their preferences regarding a high-level

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office were discounted does not bode well for the ability of this office to be effective in its engagements with other countries.

For our part, we have very serious concerns about placing a high-level, interagency office responsible for managing USG-wide implementation efforts in the hands of an office director within INL. After all we have achieved in this area, and with legislation that will just be words on paper unless implemented properly, this is the wrong last step for this Administration to take in the fight against trafficking. We have already heard that key congressional co-sponsors will be unhappy, and we fully expect human rights and anti-trafficking NGOs to oppose its placement in INL. Indeed, one of the leading human rights NGO that advocated for the legislation has already written a letter to the Secretary, protesting the possible placement in INL.

We are asking you to consider two courses of action, with a strong preference for the first:

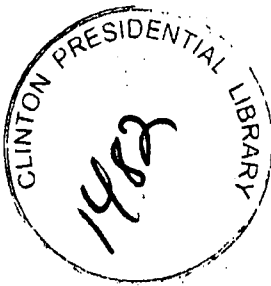
1. convey to MKA our concern with the decision to place the office in INL and ask for her support in establishing it within S (urging her to be mindful of the fact that interagency coordination of a cabinet-level Task Force is at issue, not how best to coordinate State's trafficking work internally within State).
2. alternatively, ask State to hold off on making a final decision of such importance in the Administration's last month. It should be highlighted as an issue for the transition, but in this instance we will need to give thought to how we will continue, in the interim, our present efforts (by me and PICW) to manage interagency implementation of the bill. This presents a problem, and for this reason we strongly prefer option one. This Administration has done far too much on trafficking not to set this up right and leave in place what we know to be the best, most effective way of ensuring continued action and further progress.

Key arguments:

The Office must be high-level and cannot be in a functional bureau because:

\* Only a high-level entity with the institutional stature and the senior-level staff lead the interagency effort. Agencies will not participate in, nor be guided by, a process run by a low-level office. Moreover, such an office will not attract the strongest and most experienced staff from other agencies, who will not perceive a professional gain from serving in a low-level office in a sister agency and will question

**COPY**



their ability to get things done. The office must have a high-ranking director, preferably at the Ambassador level, but at least a high-level special advisor with stature equivalent to that of an Assistant Secretary.

\* The purpose of this Office is to plan and direct an explicitly interagency process to implement the Act. While other locations or models might be appropriate to manage the issue of trafficking within the State Department, placement within a bureau will not give this Office the prominence needed to fulfill its statutory role to support the Task Force to plan and direct a U.S. government-wide effort.

\* The creation of an office below the level of a Deputy Assistant Secretary within a functional bureau sends the wrong signal to the agencies, the Congress, anti-trafficking NGOs, and the public. The key co-sponsors of the legislation, as well as the human rights and faith-based groups that fought for it, will oppose its placement in a bureau because they will see it as a demotion, and clearly contrary to the intent of the legislation to create a high-level office to support the work of a cabinet-level Task Force.

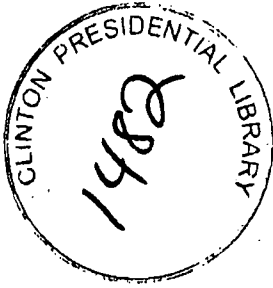
The Office should not be in INL because:

\* The human rights community, anti-trafficking NGOs, and key congressional co-sponsors will not support placement in INL because it will call into question the Administration's commitment to victim assistance and prevention, which is not the expertise of those working on drug trafficking and other international crime issues at INL. (NGOs have already expressed concern about INL's implementation of grant programs to address domestic violence in Russia and the NIS, which in their view do not always fund agencies with expertise on domestic violence program in general, and victim issues in particular).

\* We cannot place both interagency entities that deal with trafficking in INL. Last Friday, we announced the establishment of a Migrant Smuggling and Trafficking in Persons Coordination Center under INL. This is essentially a support center for law enforcement, so it should be within INL given their expertise. However, we will be sharply criticized for also placing a second entity in INL whose job is much broader than law enforcement.

\* The NGOs and members of Congress are right to be concerned about the lack of fit between INL's law enforcement expertise and the expertise required to implement the victim services and prevention program parts of the bill (victim services, victim outreach campaigns, prevention programs, economic development programs for women at risk, eligibility of undocumented victims for publicly-funded services, etc.) Given INL's institutional bias toward law enforcement, an office within INL will not provide adequate attention to the victim issues that are critical to the effectiveness of our efforts. Asking INL to transcend that bias

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makes no more sense than asking a victim service provider to run a prosecution task force. Detailing agency staff to the office will not counter the institutional bias of INL as a whole, and in any event they will not be sufficiently high-level to drive the interagency process around these issues.

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|--------------------------|----------------------------------------------------------------------------------------------|------------|----------------|
| 001. email               | Mara Rudman to Mary DeRosa, et al., re: [Steps Ahead] (7 pages)                              | 12/29/2000 | P1/b(1), P5    |
| 002. email               | Mark Medish to Robert Bradtke, re: transition meeting [partial] (1 page)                     | 12/29/2000 | P3/b(3)        |
| 003. email               | Wendy patten to Wendy Gray, re: interagency trafficking office -- new developments (6 pages) | 12/29/2000 | P5 <b>1483</b> |
| 004. email               | Philip Cullom to Bruce Riedel, re: [Briefer] (6 pages)                                       | 12/29/2000 | P1/b(1)        |
| 005. email               | Philip Cullom to John Wiegmann, re: [Briefer] (6 pages)                                      | 12/29/2000 | P1/b(1)        |
| 006. email               | Philip Cullom to James Smith, re: [Briefer] (6 pages)                                        | 12/29/2000 | P1/b(1)        |
| 007. email               | Philip Cullom to Gayle Smith, re: [Briefer] (6 pages)                                        | 12/29/2000 | P1/b(1)        |
| 008. email               | Philip Cullom to James Smith, et al., re: [Briefer] (6 pages)                                | 12/29/2000 | P1/b(1)        |
| 009. email               | Philip Cullom to Marilyn Scott-Perez, re: [Briefer] (5 pages)                                | 12/29/2000 | P1/b(1)        |
| 010. email               | Robert Bradtke to Ralph Sigler, re: Proposed meeting with Sec-Designate Powell (2 pages)     | 12/29/2000 | P1/b(1)        |

### COLLECTION:

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

### FOLDER TITLE:

[12/29/2000]

Kara Ellis  
2008-0015-F  
kel1615

### RESTRICTION CODES

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

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

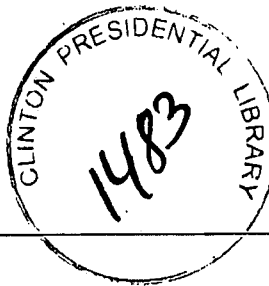
P1 National Security Classified Information [(a)(1) of the PRA]  
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**COPY**

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.

## Exchange Mail



DATE-TIME 12/29/2000 3:26:18 PM  
FROM Patten, Wendy L. (MULTI)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT RE: interagency trafficking office -- new developments [UNCLASSIFIED]  
TO Gray, Wendy E. (NSA)

## CARBON\_COPY

## TEXT\_BODY

thank you

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

From: Gray, Wendy E. (NSA)

Sent: Friday, December 29, 2000 3:23 PM

To: Patten, Wendy L.  
(MULTI)

Subject: RE: interagency trafficking office -- new developments  
[UNCLASSIFIED]

Wendy -- I printed it for her on Tuesday but not  
sure if it's been read. Will reprint today.

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

From:

Patten, Wendy L. (MULTI)

Sent: Friday, December 29, 2000 1:22  
PM

To: Gray, Wendy E. (NSA)

Subject: FW: interagency trafficking  
office -- new developments [UNCLASSIFIED]

Wendy -- do you know  
if Mara has had a chance to read this note? thanks -- WLP

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

From: Patten, Wendy L. (MULTI)

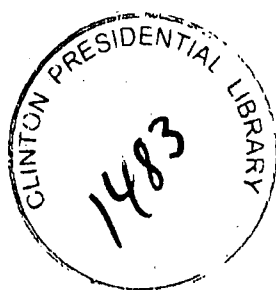
Sent: Tuesday, December  
26, 2000 6:11 PM

To: @RUDMAN

Cc: @MULTILAT - Multilateral and

Humanitarian Affairs; @EXECSEC - Executive Secretary; @LEGISLAT -  
Legislative Affairs

**COPY**



Subject: interagency trafficking office -- new developments [UNCLASSIFIED]

Note from Eric: I am absolutely convinced that Wendy's concerns are completely justified. She's worked so hard and effectively to get this right; the level of concern reflected in her note is due to a reasonable conviction that the effort may largely be lost in implementation.

TIMELY -- for Mara, cc: Bob.

Mara,

The issue of how to establish the Interagency Office to Monitor and Combat Trafficking has taken a troublesome turn. We wanted to update you on it and seek your guidance as to how to handle it.

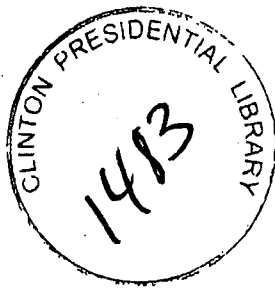
To recall, this Office is authorized by the newly-enacted trafficking legislation. The Office would provide the real work behind a cabinet-level Interagency Task Force required by the legislation. Its central role would be to support the Task Force and ensure that the USG-wide effort is coherent, coordinated, and achieves the 3 main objectives of the legislation: to increase our enforcement efforts, provide assistance to victims, and carry out prevention programs, both domestically and abroad.

Last week, we learned that Frank Loy has decided to place the Office within INL. Frank issued a memo to various bureaus within State announcing his decision to place the interagency office within INL. (We had expected him to make a recommendation to the Secretary for her approval, but as we understand it, she delegated this decision to Frank and he simply made and announced it.) In reaching this decision, Frank sought input from bureaus within State, but did not consult with any other agency, not even those whose participation on the Task Force is mandated by statute. His decision therefore does not account for the other agencies' needs and preferences regarding the office that will be coordinating USG-wide implementation of the legislation. This is emblematic of the challenges we have faced all year in working on the bill: State has focused only on its requirements under the legislation, when many other agencies (esp. Justice, Labor, HHS, and AID) have significant responsibilities under the new law.

Serious concerns about this decision have already been voiced by many, including:

**COPY**

1. key congressional co-sponsors of the legislation



The staffs of the major co-sponsors of the trafficking bill (Wellstone, Gadjensen, Chris Smith, and one other) called State to the Hill last Thursday to discuss this issue. We understand that these staffers expressed serious doubts about the low-level placement of an office that Congress clearly intended to have stature (they view this action as burying the office), as well as about the lack of emphasis on victim assistance and protection issues given the law enforcement orientation of INL. They apparently were unpersuaded by arguments that INL has the necessary resources, countering that State can decide to place those resources wherever it chooses in setting up this office. To create an effective interagency coordinating office with the prominence necessary to ensure things get done, they urged State to reconsider and to place the office directly under the Secretary.

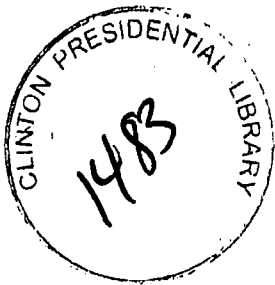
2.  
State's regional bureaus --

The regional bureaus that provided views to Frank Loy (EAP, EUR, SA, AF) oppose its location in a functional bureau (as did PRM and the President's Interagency Council on Women). The regional bureaus asserted that only the establishment of a high-level office (i.e., one that sits above both regional and functional bureaus) could give this issue the prominence necessary to sustain our current efforts and achieve further progress. As we saw with the our work to develop the Asian Regional Initiative Against Trafficking (which we successfully launched with the Govt of the Philippines in March), the role of the regional bureaus in implementing anti-trafficking initiatives in their regions is critical. The fact that their preferences regarding a high-level office were discounted does not bode well for the ability of this office to be effective in its engagements with other countries and regions.

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and human rights groups --

We fully expected human rights and anti-trafficking NGOs to oppose its placement in INL, and indeed they already have. One of the leading human rights groups that worked tirelessly for the legislation has already written a letter to the Secretary, questioning the possible placement in INL. Others have been calling to inquire about how and why this decision was made and to urge that it be reconsidered. It is important to note that these groups are the constituency for this issue, for the legislation, and for our efforts to address trafficking. If these groups are questioning the legitimacy of our efforts to implement the first-ever anti-trafficking law across the world, they will be making their views clear to the Congress and the public.

**COPY**



4. For our part, we have very serious concerns about placing a high-level, interagency office responsible for managing USG-wide implementation efforts in the hands of an office director within INL or any functional bureau. After all we have achieved in this area, and with legislation that will be just words on paper unless implemented properly, this is the wrong last step for this Administration to take in the fight against trafficking. Burying this office in the bureaucracy at INL will vitiate the Administration's accomplishments in passing this legislation and raising the profile of this issue. Our work to combat trafficking could be an enduring accomplishment of this Administration, but that will not happen unless this is handled correctly now.

#### Next Steps

##### 1. OFL telcon with State

The First Lady's Office has already expressed its dismay to State (directly to the Secretary and to Wendy Sherman). Wendy and Frank have a conference call planned with Melanne Verveer, and Melanne would like me to join the call to help explain why placement in INL is not a good idea. I can do that while expressing no NSC view if you have not had time to consider the matter. You could also join the call. Please let me know how you would like to proceed. Melanne is eager to get this call set up.

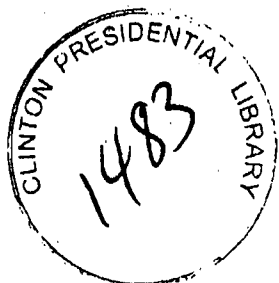
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We are asking you to consider two courses of action, with a strong preference for the first:

1. convey to MKA our concern with the decision to place the office in INL and ask for her support in establishing it within S (urging her to be mindful of the fact that interagency coordination of a cabinet-level Task Force is at issue, not how best to coordinate State's trafficking work internally within State).

2. alternatively, ask State to hold off on making a final decision in the Administration's last month, given the divided views, and highlight the issue for the transition. In this instance, however, we will need to give thought to how we will continue, in the interim, our present efforts (by me and PICW) to manage interagency implementation of the bill. This presents a problem, and for this reason we strongly prefer option one. We should set the office up and leave in place what we know to be the best and most effective way of ensuring continued action and further progress.

COPY



### Key Reasons to Revisit the Decision

The

Office must be high-level and cannot be in a functional bureau because:

\* Only

a high-level entity with the institutional stature and the senior-level staff lead the interagency effort. Agencies will not participate in, nor be guided by, a process run by a low-level office. Moreover, such an office will not attract the strongest and most experienced staff from other agencies, who will not perceive a professional gain from serving in a low-level office in a sister agency and will question their ability to get things done. The office must have a high-ranking director, preferably at the Ambassador level, but at least a high-level special advisor with stature equivalent to that of an Assistant Secretary.

\* The purpose of this Office is to plan and direct an explicitly interagency process to implement the Act. While other locations or models might be appropriate to manage the issue of trafficking within the State Department, placement within a bureau will not give this Office the prominence needed to fulfill its statutory role to support the Task Force to plan and direct a U.S. government-wide effort.

\* The creation of an office below the level of a Deputy Assistant Secretary within a functional bureau sends the wrong signal to the agencies, the Congress, anti-trafficking NGOs, and the public. The key co-sponsors of the legislation, as well as the human rights and faith-based groups that fought for it, will oppose its placement in a bureau because they will see it as a demotion, and clearly contrary to the intent of the legislation to create a high-level office to support the work of a cabinet-level Task Force.

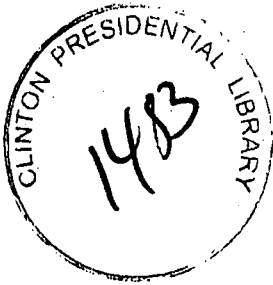
The Office should  
not be in INL because:

\* The human rights community, anti-trafficking NGOs, and key congressional co-sponsors will not support placement in INL because it will call into question the Administration's commitment to victim assistance and prevention, which is not the expertise of those working on drug trafficking and other international crime issues at INL. (NGOs have already expressed concern about INL's implementation of grant programs to address domestic violence in Russia and the NIS, which in their view do not always fund agencies with expertise on domestic violence program in general, and victim issues in particular).

\* We

cannot place both interagency entities that deal with trafficking in INL. Last Friday, we announced the establishment of a Migrant Smuggling and Trafficking in Person Coordination Center under INL. This is essentially a support center for law enforcement, so it should be within INL given their expertise. However, we will be

**COPY**



sharply criticized for also placing a second entity in INL whose job is much broader than law enforcement.

\* The NGOs and members of Congress are right to be concerned about the lack of fit between INL's law enforcement expertise and the expertise required to implement the victim services and prevention program parts of the bill (victim services, victim outreach campaigns, prevention programs, economic development programs for women at risk, eligibility of undocumented victims for publicly-funded services, etc.) Given INL's institutional bias toward law enforcement, an office within INL will not provide adequate attention to the victim issues that are critical to the effectiveness of our efforts. Asking INL to transcend that bias makes no more sense than asking a victim service provider to run a prosecution task force. Detailing agency staff to the office will not counter the institutional bias of INL as a whole, and in any event they will not be sufficiently high-level to drive the interagency process around these issues.

**COPY**

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                | DATE       | RESTRICTION               |
|--------------------------|--------------------------------------------------------------------------------------------------------------|------------|---------------------------|
| 001. email               | Wendy Patten to Wendy Gray and Mara Rudman, re: interagency trafficking office -- new developments (7 pages) | 01/02/2001 | P5 <b>1484</b>            |
| 002. email               | Bruce Riedel to Donald Camp, et al., re: TERRORISM BRIEFING [partial] (1 page)                               | 01/02/2001 | P3/b(3), P6/b(6), b(7)(C) |
| 003. email               | James Smith to Robert Bradtke and Brooks Bash, re: transition query (1 page)                                 | 01/02/2001 | P1/b(1)                   |
| 004. email               | Robert Bradtke to L. June Bartlett, et al., re: TERRORISM BRIEFING [partial] (1 page)                        | 01/02/2001 | P3/b(3), P6/b(6), b(7)(C) |
| 005. email               | Dean Haas to Marsha Dimel, re: [personnel] (3 pages)                                                         | 01/02/2001 | P3/b(3), P6/b(6)          |
| 006. email               | Dean Haas to Mara Rudman, et al., re: [personnel] (2 pages)                                                  | 01/02/2001 | P3/b(3)                   |

### COLLECTION:

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

### FOLDER TITLE:

[01/02/2001]

Kara Ellis  
2008-0015-F  
kel1616

### RESTRICTION CODES

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

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

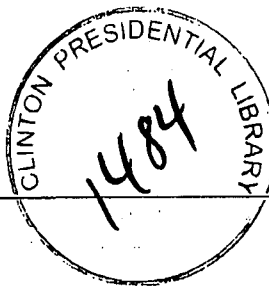
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).  
RR. Document will be reviewed upon request.

## Exchange Mail



**DATE-TIME** 1/2/01 9:49:54 AM  
**FROM** Patten, Wendy L. (MULTI)  
**CLASSIFICATION** UNCLASSIFIED  
**SUBJECT** RE: interagency trafficking office -- new developments [UNCLASSIFIED]  
**TO** Gray, Wendy E. (NSA)  
Gray, Wendy E. (NSA)  
Rudman, Mara E. (NSA)

**CARBON\_COPY** Banbury, Anthony "Tony" N. (MULTI)  
McLean, Matthew K. (MULTI)  
Naplan, Steven J. (MULTI)  
Patten, Wendy L. (MULTI)  
Peterson-Becker, Augustine "Gusti" (ADMIN)  
Schwartz, Eric P. (MULTI)  
Shea, Dorothy C. (MULTILAT)  
Smith, Peter D. R. (MULTI)  
Tierney, Mary "Theresa" T. (MULTI)  
Wilcox, Richard M. (MULTI)

**TEXT\_BODY** that would be great. see you then -- WLP

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

From: Gray,  
Wendy E. (NSA)  
Sent: Tuesday, January 02, 2001 9:49 AM  
To: Patten,  
Wendy L. (MULTI); @RUDMAN  
Cc: @MULTILAT - Multilateral and Humanitarian  
Affairs  
Subject: RE: interagency trafficking office -- new developments  
[UNCLASSIFIED]

Hi Wendy!

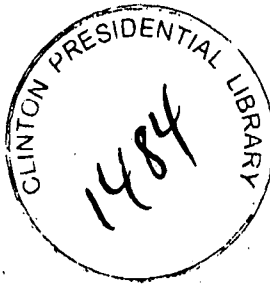
Would noon today work for you?

Thanks

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

From: Patten, Wendy L. (MULTI)  
Sent: Sunday,

**COPY**



December 31, 2000 3:04 PM

To: Rudman, Mara E. (NSA); @RUDMAN

Cc: @MULTILAT

- Multilateral and Humanitarian Affairs; @EXECSEC - Executive Secretary;

@LEGISLAT - Legislative Affairs

Subject: RE: interagency trafficking office -- new developments [UNCLASSIFIED]

Mara -- sounds good.  
thanks very much -- WLP

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

From: Rudman,

Mara E. (NSA)

Sent: Saturday, December 30, 2000 5:12 PM

To: Patten,

Wendy L. (MULTI); @RUDMAN

Cc: @MULTILAT - Multilateral and Humanitarian

Affairs; @EXECSEC - Executive Secretary; @LEGISLAT - Legislative Affairs

Subject: RE: interagency trafficking office -- new developments [UNCLASSIFIED]

wendy--

you make some good points, though i'm not sure i'm entirely convinced on your bottom line: that the right solution is put this task force directly under the secretary. i don't see that it always helps a particular effort to be taken OUT of the existing operational structure (see the counterterrorism office at state and the many fights about its singular existence.) it doesn't surprise me that hill and outside groups fight for that kind of independent structure -- they always will do that on any given issue because they are so certain that "their" issue deserves an entirely separate spotlight.

that said, i am open to discussing further with you. Wendy Gray -- pls set up a meeting for me with wendy p sometime on tuesday? after we talk more, i will give wendy sherman a call -- i have a list of issues to cover with her when she returns from vacation. and you should plan to include me on whatever conference call melanne sets up with wendy on this issue.

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

From: Patten, Wendy L. (MULTI)

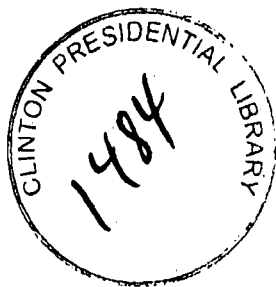
Sent: Tuesday,

December 26, 2000 6:11 PM

To: @RUDMAN

Cc: @MULTILAT - Multilateral

**COPY**



and Humanitarian Affairs; @EXECSEC - Executive Secretary; @LEGISLAT  
- Legislative Affairs  
Subject: interagency trafficking office --  
new developments [UNCLASSIFIED]

Note from Eric: I am absolutely convinced that Wendy's concerns are completely justified. She's worked so hard and effectively to get this right; the level of concern reflected in her note is due to a reasonable conviction that the effort may largely be lost in implementation.

TIMELY -- for  
Mara, cc: Bob.

Mara,

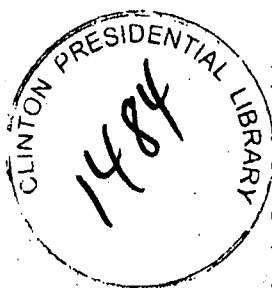
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To recall, this Office is authorized by the newly-enacted trafficking legislation. The Office would provide the real work behind a cabinet-level Interagency Task Force required by the legislation. Its central role would be to support the Task Force and ensure that the USG-wide effort is coherent, coordinated, and achieves the 3 main objectives of the legislation: to increase our enforcement efforts, provide assistance to victims, and carry out prevention programs, both domestically and abroad.

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concerns about this decision have already been voiced by many, including:

**COPY**



1. key congressional co-sponsors of the legislation

The staffs of the major co-sponsors of the trafficking bill (Wellstone, Gadjensen, Chris Smith, and one other) called State to the Hill last Thursday to discuss this issue. We understand that these staffers expressed serious doubts about the low-level placement of an office that Congress clearly intended to have stature (they view this action as burying the office), as well as about the lack of emphasis on victim assistance and protection issues given the law enforcement orientation of INL. They apparently were unpersuaded by arguments that INL has the necessary resources, countering that State can decide to place those resources wherever it chooses in setting up this office. To create an effective interagency coordinating office with the prominence necessary to ensure things get done, they urged State to reconsider and to place the office directly under the Secretary.

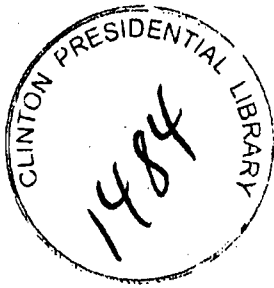
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We fully expected human rights and anti-trafficking NGOs to oppose its placement in INL, and indeed they already have. One of the leading human rights groups that worked tirelessly for the legislation has already written a letter to the Secretary, questioning the possible placement in INL. Others have been calling to inquire about how and why this decision was made and to urge that it be reconsidered. It is important to note that these groups are the constituency for this issue, for the legislation, and for our efforts to address trafficking. If these groups are questioning the legitimacy of our efforts to implement the first-ever

**COPY**



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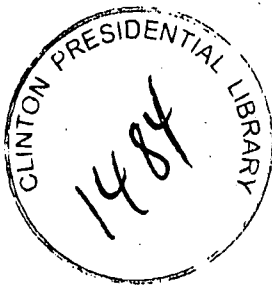
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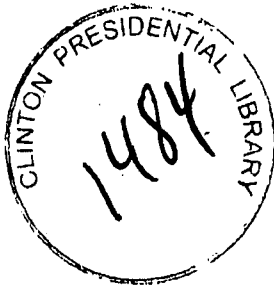
\* The creation of an office below the level of a Deputy Assistant Secretary within a functional bureau sends the wrong signal to the agencies, the Congress, anti-trafficking NGOs, and the public. The key co-sponsors of the legislation, as well as the human rights and faith-based groups that fought for it, will oppose its placement in a bureau because they will see it as a demotion, and clearly contrary to the intent of the legislation to create a high-level office to support the work of a cabinet-level Task Force.

The Office should not be in INL because:

\* The human rights community, anti-trafficking NGOs, and key congressional co-sponsors will not support placement in INL because it will call into question the Administration's commitment to victim assistance and prevention, which is not the expertise of those working on drug trafficking and other international crime issues at INL. (NGOs have already expressed concern about INL's implementation of grant programs to address domestic violence in Russia and the NIS, which in their view do not always fund agencies with expertise on domestic violence programs, general, and victim issues in particular).

\* We cannot place both interagency entities that deal with trafficking in INL. Last Friday, we announced the establishment of a Migrant

**COPY**



Smuggling and Trafficking in Persons Coordination Center under INL. This is essentially a support center for law enforcement, so it should be within INL given their expertise. However, we will be sharply criticized for also placing a second entity in INL whose job is much broader than law enforcement.

\* The NGOs and members of Congress are right to be concerned about the lack of fit between INL's law enforcement expertise and the expertise required to implement the victim services and prevention program parts of the bill (victim services, victim outreach campaigns, prevention programs, economic development programs for women at risk, eligibility of undocumented victims for publicly-funded services, etc.) Given INL's institutional bias toward law enforcement, an office within INL will not provide adequate attention to the victim issues that are critical to the effectiveness of our efforts. Asking INL to transcend that bias makes no more sense than asking a victim service provider to run a prosecution task force. Detailing agency staff to the office will not counter the institutional bias of INL as a whole, and in any event they will not be sufficiently high-level to drive the interagency process around these issues.

**COPY**

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                    | DATE       | RESTRICTION      |
|--------------------------|------------------------------------------------------------------------------------------------------------------|------------|------------------|
| 001. email               | Jonathan Elkind to William Leary, re: Important Deadlines [partial] (1 page)                                     | 01/03/2001 | P6/b(6)          |
| 002. email               | Thomas Maertens to Gary Samore, re: Draft e-mail to Sandy [Atomic Energy Act] (2 pages)                          | 01/03/2001 | P1/b(1), P3/b(3) |
| 003. email               | Wendy Patten to Mara Rudman and Wendy Gray, re: interagency antitrafficking office -- new developments (7 pages) | 01/03/2001 | P5 1485          |
| 004. email               | Mary Tighe to Charles Pritchard, re: for clearance please (3 pages)                                              | 01/03/2001 | P1/b(1), P5      |
| 005. email               | Dorothy Shea to Eric Schwartz, re: Draft note to SRB on unilateral sanctions (3 pages)                           | 01/03/2001 | P5 1486          |
| 006. email               | Gary Samore to Charles Pritchard and Elisa Harris, re: for clearance please (3 pages)                            | 01/03/2001 | P1/b(1), P5      |
| 007. email               | Elisa Harris to Gary Samore and Charles Pritchard, re: for clearance please (3 pages)                            | 01/03/2001 | P1/b(1), P5      |
| 008. email               | Elisa Harris to Maureen Tucker and Gary Samore, re: for clearance please (3 pages)                               | 01/03/2001 | P1/b(1), P5      |
| 009. email               | Elisa Harris to Gary Samore and Charles Pritchard, re: for clearance please (4 pages)                            | 01/03/2001 | P1/b(1), P5      |
| 010. email               | Mary Tighe to Gary Samore, re: for clearance please (3 pages)                                                    | 01/03/2001 | P1/b(1)          |
| 011. email               | Dean Haas to Robert Bradtke, re: clearances (2 pages)                                                            | 01/03/2001 | P1/b(1)          |

### COLLECTION:

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

### FOLDER TITLE:

[01/03/2001]

Kara Ellis  
2008-0015-F  
kel617

### RESTRICTION CODES

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

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

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

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(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]

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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.

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                         | DATE       | RESTRICTION                        |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------|------------|------------------------------------|
| 012. email               | Lisa Gordon-Hagerty to Jack Robinson, re: Briefing the Transition Team Meeting on Counter-Terrorism [partial] (1 page)                | 01/03/2001 | P6/b(6), b(7)(C)                   |
| 013. email               | Judith Russ to Howard Pittman, Thomas Greenwood, and C. Michael Hurley, re: Transition Team Briefing - This Friday [partial] (1 page) | 01/03/2001 | P3/b(3)                            |
| 014. email               | Elisa Harris to Gary Samore and Maureen Tucker, re: for clearance please (4 pages)                                                    | 01/03/2001 | P1/b(1), P5                        |
| 015. email               | Lisa Gordon-Hagerty to L. June Bartlett, re: Briefing the Transition Team Meeting on Counter-Terrorism [partial] (2 pages)            | 01/03/2001 | P6/b(6), b(7)(C)                   |
| 016. email               | Lisa Gordon-Hagerty to Richard Clarke, re: Briefing the Transition Team Meeting on Counter-Terrorism [partial] (1 page)               | 01/03/2001 | P6/b(6), b(7)(C)                   |
| 017. email               | Dorothy Shea to Wendy Patton, re: interagency trafficking office -- new developments (9 pages)                                        | 01/03/2001 | P5 1487                            |
| 018. email               | Wendy Patton to Daniel Shapiro, re: interagency trafficking office -- new developments (9 pages)                                      | 01/03/2001 | P5 1488                            |
| 019. email               | Cathy Millison to Robert Bradtke, re: Briefing the Transition Team Meeting on Counter-Terrorism [partial] (1 page)                    | 01/03/2001 | P3/b(3), P6/b(6), b(7)(C)          |
| 020. email               | Lisa Gordon-Hagerty to Cathy Millison, re: Briefing the Transition Team Meeting on Counter-Terrorism [partial] (1 page)               | 01/03/2001 | P3/b(3), P6/b(6), b(7)(C)          |
| 021. email               | Lisa Gordon-Hagerty to Richard Clarke, re: [two issues] (2 pages)                                                                     | 01/03/2001 | P3/b(3), P6/b(6), b(7)(C), b(7)(E) |
| 022. email               | Joanna Wallace to Michael Hammer, re: [update] (2 pages)                                                                              | 01/03/2001 | P1/b(1)                            |

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OA/Box Number: 620000

### FOLDER TITLE:

[01/03/2001]

Kara Ellis  
2008-0015-F  
kel617

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| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                          | DATE       | RESTRICTION    |
|--------------------------|----------------------------------------------------------------------------------------|------------|----------------|
| 023. email               | Eric Schwartz to Dorothy Shea, re: Draft note to SRB on unilateral sanctions (2 pages) | 01/03/2001 | P5 <b>1489</b> |
| 024. email               | Eric Schwartz to Johannes Binnendijk, re: [Briefer] (4 pages)                          | 01/03/2001 | P1/b(1)        |

### COLLECTION:

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

### FOLDER TITLE:

[01/03/2001]

Kara Ellis  
2008-0015-F  
ke1617

### RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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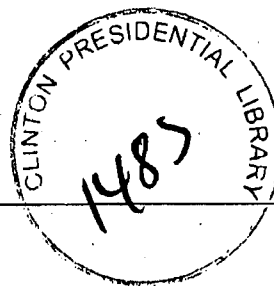
RR. Document will be reviewed upon request.

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

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**COPY**

## Exchange Mail



**DATE-TIME** 1/3/01 12:08:20 PM  
**FROM** Patten, Wendy L. (MULTI)  
**CLASSIFICATION** UNCLASSIFIED  
**SUBJECT** RE: interagency trafficking office -- new developments [UNCLASSIFIED]  
**TO** Rudman, Mara E. (NSA)  
Gray, Wendy E. (NSA)  
Rudman, Mara E. (NSA)  
  
**CARBON\_COPY** Banbury, Anthony "Tony" N. (MULTI)  
McClean, Matthew K. (MULTI)  
Naplan, Steven J. (MULTI)  
Patten, Wendy L. (MULTI)  
Peterson-Becker, Augustine "Gusti" (ADMIN)  
Schwartz, Eric P. (MULTI)  
Shea, Dorothy C. (MULTILAT)  
Smith, Peter D. R. (MULTI)  
Tierney, Mary "Theresa" T. (MULTI)  
Wilcox, Richard M. (MULTI)

**TEXT\_BODY**

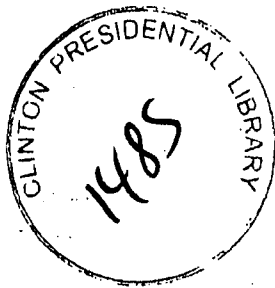
ok -- thanks. I'll let Melanne know and I'll try to get a copy of the letter from HRC. thanks -- WLP

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

From: Rudman,  
Mara E. (NSA)  
Sent: Wednesday, January 03, 2001 11:51 AM  
To: Patten,  
Wendy L. (MULTI); @RUDMAN  
Cc: @MULTILAT - Multilateral and Humanitarian  
Affairs  
Subject: RE: interagency trafficking office -- new developments  
[UNCLASSIFIED]

i think we should stay off the call. i spoke with wendy last night. she told me about the call, but clearly considered it one between her, melanne, and frank. even if melanne invites you/us, i think wendy would not react well. she understands your concerns and is prepared to talk through with melanne, possibly reconsider decision itself, and definitely develop a process that's more inclusive for other agencies. also -- do you know there's an HRC letter that state received on this issue, according to wendy? would be good to have a copy.

**COPY**



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

From: Patten, Wendy  
 L. (MULTI)  
 Sent: Wednesday, January 03, 2001 11:02 AM  
 To: Patten,  
 Wendy L. (MULTI); @RUDMAN  
 Cc: @MULTILAT - Multilateral and Humanitarian  
 Affairs  
 Subject: RE: interagency trafficking office -- new developments  
 [UNCLASSIFIED]

Mara -- we didn't cover one issue yesterday: Melanne's telcon with Wendy and Frank tomorrow morning. As I mentioned in the note below, Melanne had wanted me to participate to help explain the concerns with Frank's decision, and I had wanted to get your thoughts on how to handle. Is it ok if I participate? Would you like to join as well? Or would you rather do only our own call to Wendy as we discussed yesterday? I just need to know what to tell Melanne. thanks -- WLP

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

From: Patten,  
 Wendy L. (MULTI)  
 Sent: Tuesday, December 26, 2000 6:11 PM  
 To: @RUDMAN  
 Cc: @MULTILAT  
 - Multilateral and Humanitarian Affairs; @EXECSEC - Executive Secretary;  
 @LEGISLAT - Legislative Affairs  
 Subject: interagency trafficking  
 office -- new developments [UNCLASSIFIED]

Note from Eric: I am absolutely convinced that Wendy's concerns are completely justified. She's worked so hard and effectively to get this right; the level of concern reflected in her note is due to a reasonable conviction that the effort may largely be lost in implementation.

TIMELY

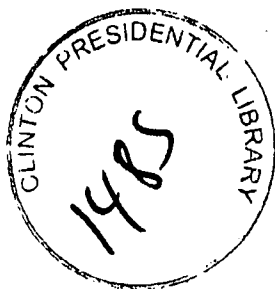
-- for Mara, cc: Bob.

Mara,

The issue of how to establish the Interagency Office to Monitor and Combat Trafficking has taken a troublesome turn. We wanted to update you on it and seek your guidance as to how to handle it.

**COPY**

To recall, this Office is authorized



by the newly-enacted trafficking legislation. The Office would provide the real work behind a cabinet-level Interagency Task Force required by the legislation. Its central role would be to support the Task Force and ensure that the USG-wide effort is coherent, coordinated, and achieves the 3 main objectives of the legislation: to increase our enforcement efforts, provide assistance to victims, and carry out prevention programs, both domestically and abroad.

Last week, we learned that Frank Loy has decided to place the Office within INL. Frank issued a memo to various bureaus within State announcing his decision to place the interagency office within INL. (We had expected him to make a recommendation to the Secretary for her approval, but as we understand it, she delegated this decision to Frank and he simply made and announced it.) In reaching this decision, Frank sought input from bureaus within State, but did not consult with any other agency, not even those whose participation on the Task Force is mandated by statute. His decision therefore does not account for the other agencies' needs and preferences regarding the office that will be coordinating USG-wide implementation of the legislation. This is emblematic of the challenges we have faced all year in working on the bill: State has focused only on its requirements under the legislation, when many other agencies (esp. Justice, Labor, HHS, and AID) have significant responsibilities under the new law.

Serious

concerns about this decision have already been voiced by many, including:

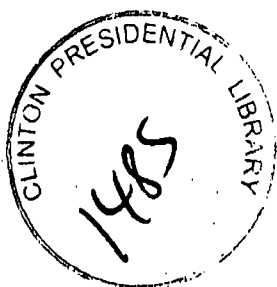
1. key congressional co-sponsors of the legislation

The staffs of the major co-sponsors of the trafficking bill (Wellstone, Gadjensen, Chris Smith, and one other) called State to the Hill last Thursday to discuss this issue. We understand that these staffers expressed serious doubts about the low-level placement of an office that Congress clearly intended to have stature (they view this action as burying the office), as well as about the lack of emphasis on victim assistance and protection issues given the law enforcement orientation of INL. They apparently were unpersuaded by arguments that INL has the necessary resources, countering that State can decide to place those resources wherever it chooses in setting up this office. To create an effective interagency coordinating office with the prominence necessary to ensure things get done, they urged State to reconsider and to place the office directly under the Secretary.

2. State's regional bureaus --

**COPY**

The regional bureaus that provided views to Frank



Loy (EAP, EUR, SA, AF) oppose its location in a functional bureau (as did PRM and the President's Interagency Council on Women). The regional bureaus asserted that only the establishment of a high-level office (i.e., one that sits above both regional and functional bureaus) could give this issue the prominence necessary to sustain our current efforts and achieve further progress. As we saw with the our work to develop the Asian Regional Initiative Against Trafficking (which we successfully launched with the Govt of the Philippines in March), the role of the regional bureaus in implementing anti-trafficking initiatives in their regions is critical. The fact that their preferences regarding a high-level office were discounted does not bode well for the ability of this office to be effective in its engagements with other countries and regions.

3. anti-trafficking NGOs  
and human rights groups --

We fully expected human rights and anti-trafficking NGOs to oppose its placement in INL, and indeed they already have. One of the leading human rights groups that worked tirelessly for the legislation has already written a letter to the Secretary, questioning the possible placement in INL. Others have been calling to inquire about how and why this decision was made and to urge that it be reconsidered. It is important to note that these groups are the constituency for this issue, for the legislation, and for our efforts to address trafficking. If these groups are questioning the legitimacy of our efforts to implement the first-ever anti-trafficking law across the USG, they will be making their views clear to the Congress and the public.

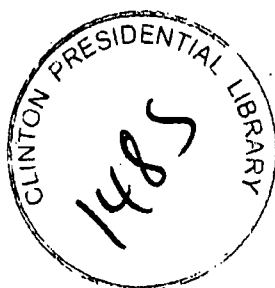
4. For our part, we have very serious concerns about placing a high-level, interagency office responsible for managing USG-wide implementation efforts in the hands of an office director within INL or any functional bureau. After all we have achieved in this area, and with legislation that will be just words on paper unless implemented properly, this is the wrong last step for this Administration to take in the fight against trafficking. Burying this office in the bureaucracy at INL will vitiate the Administration's accomplishments in passing this legislation and raising the profile of this issue. Our work to combat trafficking could be an enduring accomplishment of this Administration, but that will not happen unless this is handled correctly now.

Next Steps

1. OFL telcon with  
State

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The First Lady's Office has already expressed its dismay to State (directly to the Secretary and to Wendy Sherman). Wendy



and Frank have a conference call planned with Melanne Verveer, and Melanne would like me to join the call to help explain why placement in INL is not a good idea. I can do that while expressing no NSC view if you have not had time to consider the matter. You could also join the call. Please let me know how you would like to proceed. Melanne is eager to get this call set up.

## 2. NSC Action

We are asking you to consider two courses of action, with a strong preference for the first:

1. convey to MKA our concern with the decision to place the office in INL and ask for her support in establishing it within S (urging her to be mindful of the fact that interagency coordination of a cabinet-level Task Force is at issue, not how best to coordinate State's trafficking work internally within State).
2. alternatively, ask State to hold off on making a final decision in the Administration's last month, given the divided views, and highlight the issue for the transition. In this instance, however, we will need to give thought to how we will continue, in the interim, our present efforts (by me and PICW) to manage interagency implementation of the bill. This presents a problem, and for this reason we strongly prefer option one. We should set the office up and leave in place what we know to be the best, most effective way of ensuring continued action and further progress.

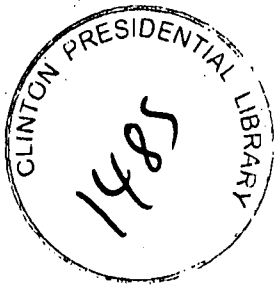
## Key Reasons to Revisit the Decision

The Office must be high-level and cannot be in a functional bureau because:

\* Only a high-level entity with the institutional stature and the senior-level staff lead the interagency effort. Agencies will not participate in, nor be guided by, a process run by a low-level office. Moreover, such an office will not attract the strongest and most experienced staff from other agencies, who will not perceive a professional gain from serving in a low-level office in a sister agency and will question their ability to get things done. The office must have a high-ranking director, preferably at the Ambassador level, but at least a high-level special advisor with stature equivalent to that of an Assistant Secretary.

\* The purpose of this Office is to plan and direct an explicitly interagency process to implement the Act. While other locations or models might be appropriate to manage the issue of trafficking within the State Department, placement within a bureau will not give

**COPY**



this Office the prominence needed to fulfill its statutory role to support the Task Force to plan and direct a U.S. government-wide effort.

\* The creation of an office below the level of a Deputy Assistant Secretary within a functional bureau sends the wrong signal to the agencies, the Congress, anti-trafficking NGOs, and the public. The key co-sponsors of the legislation, as well as the human rights and faith-based groups that fought for it, will oppose its placement in a bureau because they will see it as a demotion, and clearly contrary to the intent of the legislation to create a high-level office to support the work of a cabinet-level Task Force.

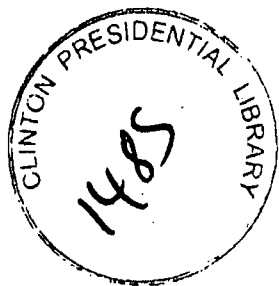
The Office should  
not be in INL because:

\* The human rights community, anti-trafficking NGOs, and key congressional co-sponsors will not support placement in INL because it will call into question the Administration's commitment to victim assistance and prevention, which is not the expertise of those working on drug trafficking and other international crime issues at INL. (NGOs have already expressed concern about INL's implementation of grant programs to address domestic violence in Russia and the NIS, which in their view do not always fund agencies with expertise on domestic violence program in general, and victim issues in particular).

\* We cannot place both interagency entities that deal with trafficking in INL. Last Friday, we announced the establishment of a Migrant Smuggling and Trafficking in Persons Coordination Center under INL. This is essentially a support center for law enforcement, so it should be within INL given their expertise. However, we will be sharply criticized for also placing a second entity in INL whose job is much broader than law enforcement.

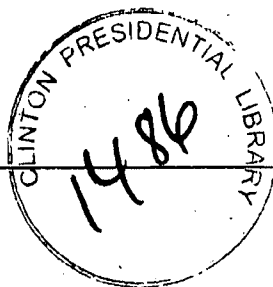
\* The NGOs and members of Congress are right to be concerned about the lack of fit between INL's law enforcement expertise and the expertise required to implement the victim services and prevention program parts of the bill (victim services, victim outreach campaigns, prevention programs, economic development programs for women at risk, eligibility of undocumented victims for publicly-funded services, etc.) Given INL's institutional bias toward law enforcement, an office within INL will not provide adequate attention to the victim issues that are critical to the effectiveness of our efforts. Asking INL to transcend that bias makes no more sense than asking a victim service provider to run a prosecution task force. Detailing agency staff to the office will not counter the institutional bias of INL as a whole, and in any event they will not be sufficiently high-level to drive the interagency process around these issues.

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## Exchange Mail



DATE-TIME 1/3/01 2:03:11 PM  
FROM Shea, Dorothy C. (MULTILAT)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT Draft note to SRB on unilateral sanctions [UNCLASSIFIED]  
TO Schwartz, Eric P. (MULTI)

## CARBON\_COPY

## TEXT\_BODY

Eric: For your review. Mara hasn't gotten back to me with readout on her telcon with Larson yet, but she said to go ahead and draft something; that she'd be able to drop in a sentence with Al's views.  
DCS

Please pass to Sandy  
From Dorothy Shea  
Thru Eric Schwartz  
Concurrences  
from Legal, Intecon, Mara

Sandy:

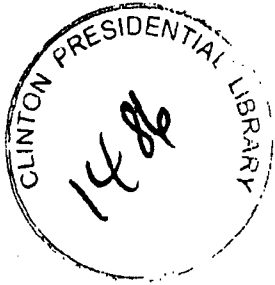
The Issue: Whether to Resuscitate  
a Paper on Unilateral Sanctions

Al Larson has been working on re-crafting as a Presidential Memorandum a paper on unilateral economic sanctions that has been in the works for some time and that Stu Eizenstat originally envisioned as an Executive Order (see attached document). Although the original intent of the initiative largely was to stave off legislative efforts aimed at curbing unilateral economic sanctions, that reason no longer applies. (Legislation that limits unilateral economic sanctions passed, as part of the Agriculture Appropriations Bill.) The question we seek your views on is: Could some iteration of this paper still serve a useful purpose?

Problems in the  
Draft:

As it is currently drafted, the paper still reads like an Executive Order. At this stage in the Administration, it would have to be sufficiently re-worked so it could be billed as a retrospective on how this Administration has handled sanctions issues, including lessons learned. Even if so modified, we think

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the only useful purpose it could serve would be as a transition document, both to inform the incoming Administration about how this Administration has approached the issue of unilateral economic sanctions, and to provide a possible template. We do not think issuing it as a Presidential Memorandum would be appropriate.

Even if changed to read more like a transition paper, however, there are still a number of potential problems, in the draft:

First, this memorandum purports to direct how the incoming Administration should organize itself and conduct internal decisionmaking processes on sanctions. We are not convinced this is an appropriate role for the outgoing Administration to play.

Second, not enough flexibility is built into the prescribed decisionmaking process. While we agree with the need to ensure that mitigating factors are weighed before unilateral economic sanctions are implemented, we think we should err on the side of caution before recommending procedures that could be used to tie the hands of the President.

Finally, if we were to go forward with such a memorandum, there are a number of substantive issues we'd want to take a crack at. For example, as written, the document has a pronounced anti-sanctions tone.

Recommendation:

That we inform State that it is your view that the best use for this document is as a transition document, and that we work with State to make appropriate changes.

\_\_\_\_\_ Agree  
that this should not be issued as a Presidential Memorandum. Work with State to ensure that appropriate revisions are made prior to providing it as a transition document.

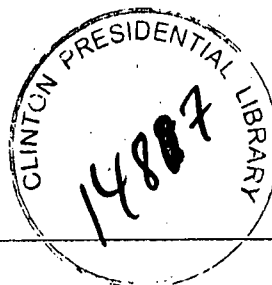
\_\_\_\_\_ Seek appropriate  
revisions, but accommodate State's strong desire to issue this as  
a Presidential Memorandum.

**COPY**



**COPY**

## Exchange Mail



DATE-TIME: 1/3/01 4:42:29 PM  
FROM: Shea, Dorothy C. (MULTILAT)  
CLASSIFICATION: UNCLASSIFIED  
SUBJECT: RE: interagency trafficking office -- new developments [UNCLASSIFIED]  
TO: Patten, Wendy L. (MULTI)

## CARBON\_COPY

## TEXT\_BODY

appreciate that you're trying to have the best of both worlds and playing with the cards state is dealing, but i don't think the director would end up really answering to the 7th floor principal, especially not to s, in this scenario. that's just not the way the bureaucracy works. also, having served in an office that falls under s, i would take issue with the supposed disadvantage that the bureau is too busy servicing the secretary. the real issue is how much juice the office director has. that makes all the difference. being part of s actually contributes to the juice factor.  
just my thoughts...

## -----Original Message-----

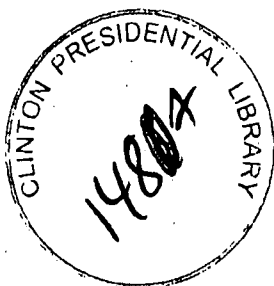
From: Patten, Wendy L. (MULTI)  
Sent: Wednesday,  
January 03, 2001 4:29 PM  
To: Patten, Wendy L. (MULTI); Rudman,  
Mara E. (NSA); @RUDMAN  
Cc: @MULTILAT - Multilateral and Humanitarian  
Affairs  
Subject: RE: interagency trafficking office -- new developments  
[UNCLASSIFIED]

Mara -- I've now thought about this more, and here's what I think. There is a much better way to combine the best of both worlds and accommodate the desire both to anchor this office organizationally and give it prominence on the policy front. We should urge Wendy and Frank to take a middle ground and set the office up with administrative ties to INL but policy ties to S or G.

Why?

The main argument that Dan S. was making to me was that the office would become an orphan in S because it would have to depend on administrative and budget support from within S, where servicing Sec State is obviously the priority. That's not a compelling reason to take this effort

COPY



and place it where it will have the wrong stature and the wrong substantive expertise needed to sustain and further our work, especially not when the administrative problem is easily resolved. We can anchor this office in the bureaucracy, giving it a home and the support it needs to be effective, by having INL provide administrative and budget support. But, the office would not answer to INL on policy and substance. Instead, it would answer to a 7th floor principal (S is my preference but G would work as well). That way the office would have the stature and substantive expertise needed to guide the USG-wide effort and make it effective, but this compromise would still allow INL to give the office a home in State's bureaucracy.

INL

has taken this very same kind of middle course in setting up the newly-created Migrant Smuggling and Trafficking Center, which provides intel and info to law enforcement. If a data center with an explicitly supportive (vice policy making) function has been established with INL funding but outside the INL chain of command (and housed outside of Main State), then how can State argue against creating the interagency policy coordinating entity, which by definition has a broader and more substantive mission than a data center, in a similar way?

While

concerns about anchoring an office structurally are surely important, they do not compel the conclusion to place the office in INL. I believe they are missing the forest for the trees and, in so doing, giving short shrift to the substantive concerns of all the other bureaus that weighed in with very different views (PRM, PICW, and the regional bureaus) and to the views of all the other agencies whose efforts would receive direction from the interagency office but have not been consulted.

Next Steps: I understand INL has called a meeting for 4pm tomorrow (internal to State) to talk about the office. Do you think you (or we) could try to talk to Wendy after her call with Melanne but before the 4pm meeting and urge them to consider a middle course like the one I have described?

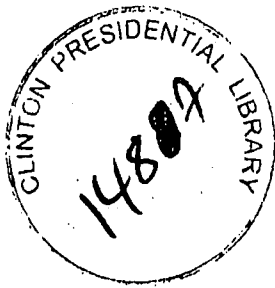
thanks

Mara. I appreciate the time you've given to this issue and your help in trying to get this right. -- WLP

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

From: Patten,  
Wendy L. (MULTI)  
Sent: Wednesday, January 03, 2001 1:53 PM  
To: Rudman,  
Mara E. (NSA); @RUDMAN

**COPY**



Cc: @MULTILAT - Multilateral and Humanitarian  
Affairs  
Subject: RE: interagency trafficking office -- new developments  
[UNCLASSIFIED]

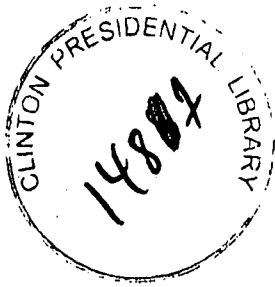
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I'm still not convinced, however, that we've got the right set up. When I sounded Dan out on why they had not consulted with other relevant agencies in arriving at this decision, I found his answer troubling. He said that this office has "an interagency aspect" to it (as opposed to its core mission being interagency coordination). They clearly see this as a State Dept entity, which explains the exclusively inward focus in their pre-decision consultations. I think that misses the mark. It not only misreads congressional intent (an interagency office that supports the work of a high-level interagency task force that manages implementation of the legislation across the USG), but also shifts the focus of the office away from that which is most needed to make progress substantively on this issue. When I pressed Dan on this point, he was careful not to overemphasize the internal State functions, but the fact remains that they see interagency only as part of the mission, rather than as the core mission. After several years of work on this issue, I remain convinced that effective interagency management of the disparate pieces and players is the single most critical issue in sustaining and furthering our progress in the fight against trafficking.

That said, there was a potential ray of hope. Dan said that they envisioned creating not one but two new entities: the Office in INL, and a separate IWG with representation from all relevant agencies. (This was news to me.) The IWG would be run by the Office Director, who will be a career Ambassador if Wendy Chamberlin's efforts bear fruit (she's working on it already). I haven't thought this through completely, but it seems to me that if we could press/support State in creating an IWG that is as formalized and high-level as possible (help get agency buy-in at senior levels, get the best people to come to monthly meetings, career Ambassador Director, etc.), we might be able to combine the best of both worlds: institutional placement within State's bureaucracy and the prominence and muscle that placement in S would have given. What do you think?

I floated with Dan the notion of having Frank try to set up a meeting with the top trafficking folks from the other agencies to talk this thru, find out what they want and need in this entity, and try to get high-level buy-in, and he seemed enthusiastic about the idea.

**COPY**



I told him I'd be glad to help support that effort if Frank should decide to do something along these lines.

What's the next step?

Do you expect to hear from Wendy after their call with Melanne tomorrow?

thanks -- WLP

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

From: Rudman, Mara.

E. (NSA)

Sent: Wednesday, January 03, 2001 11:51 AM

To: Patten,

Wendy L. (MULTI); @RUDMAN

Cc: @MULTILAT - Multilateral and Humanitarian Affairs

Subject: RE: interagency trafficking office -- new developments [UNCLASSIFIED]

i think we should stay off the call. i spoke with wendy last night. she told me about the call, but clearly considered it one between her, melanne, and frank. even if melanne invites you/us, i think wendy would not react well. she understands your concerns and is prepared to talk through with melanne, possibly reconsider decision itself, and definitely look at a process that's more inclusive for other agencies. also -- do you know there's an HRC letter that state received on this issue, according to wendy? would be good to have a copy.

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

From: Patten, Wendy

L. (MULTI)

Sent: Wednesday, January 03, 2001 11:02 AM

To: Patten,

Wendy L. (MULTI); @RUDMAN

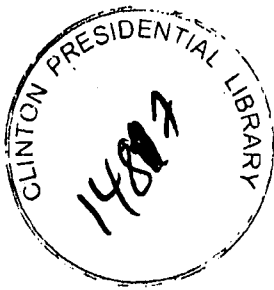
Cc: @MULTILAT - Multilateral and Humanitarian Affairs

Subject: RE: interagency trafficking office -- new developments [UNCLASSIFIED]

Mara -- we didn't cover one issue yesterday: Melanne's telcon with Wendy and Frank tomorrow morning. As I mentioned in the note below, Melanne had wanted me to participate to help explain the concerns with Frank's decision, and I had wanted to get your thoughts on how to handle. Is it ok if I participate? Would you like to join as well? Or would you rather do only our own call to Wendy as we discussed yesterday? I just need to know what to tell Melanne. thanks -- WLP

**COPY**

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



From: Patten,  
Wendy L. (MULTI)  
Sent: Tuesday, December 26, 2000 6:11 PM  
To: @RUDMAN  
Cc: @MULTILAT  
- Multilateral and Humanitarian Affairs; @EXECSEC - Executive Secretary;  
@LEGISLAT - Legislative Affairs  
Subject: interagency trafficking  
office -- new developments [UNCLASSIFIED]

Note from Eric: I am absolutely convinced that Wendy's concerns are completely justified. She's worked so hard and effectively to get this right; the level of concern reflected in her note is due to a reasonable conviction that the effort may largely be lost in implementation.

TIMELY

-- for Mara, cc: Bob.

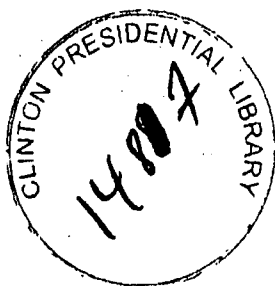
Mara,

The issue of how to establish the Interagency Office to Monitor and Combat Trafficking has taken a troublesome turn. We wanted to update you on it and seek your guidance as to how to handle it.

To recall, this Office is authorized by the newly-enacted trafficking legislation. The Office would provide the real work behind a cabinet-level Interagency Task Force required by the legislation. Its central role would be to support the Task Force and ensure that the USG-wide effort is coherent, coordinated, and achieves the 3 main objectives of the legislation: to increase our enforcement efforts, provide assistance to victims, and carry out prevention programs, both domestically and abroad.

Last week, we learned that Frank Loy has decided to place the Office within INL. Frank issued a memo to various bureaus within State announcing his decision to place the interagency office within INL. (We had expected him to make a recommendation to the Secretary for her approval, but as we understand it, she delegated this decision to Frank and he simply made and announced it.) In reaching this decision, Frank sought input from bureaus within State, but did not consult with any other agency, not even those whose participation on the Task Force is mandated by statute. His decision therefore does not account for the other agencies' needs and preferences regarding the office that will be coordinating USG-wide implementation of the legislation. This is emblematic of the challenges we have faced all year in working on the bill: State has focused only on its requirements under the

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legislation, when many other agencies (esp. Justice, Labor, HHS, and AID) have significant responsibilities under the new law.

Serious concerns about this decision have already been voiced by many, including:

1. key congressional co-sponsors of the legislation

The staffs of the major co-sponsors of the trafficking bill (Wellstone, Gadjensen, Chris Smith, and one other) called State to the Hill last Thursday to discuss this issue. We understand that these staffers expressed serious doubts about the low-level placement of an office that Congress clearly intended to have stature (they view this action as burying the office), as well as about the lack of emphasis on victim assistance and protection issues given the law enforcement orientation of INL. They apparently were unpersuaded by arguments that INL has the necessary resources, countering that State can decide to place those resources wherever it chooses in setting up this office. To create an effective interagency coordinating office with the prominence necessary to ensure things get done, they urged State to reconsider and to place the office directly under the Secretary.

2. State's regional bureaus --

The regional bureaus that provided views to Frank Loy (EAP, EUR, SA, AF) oppose its location in a functional bureau (as did PRM and the President's Interagency Council on Women). The regional bureaus asserted that only the establishment of a high-level office (i.e., one that sits above both regional and functional bureaus) could give this issue the prominence necessary to sustain our current efforts and achieve further progress. As we saw with the our work to develop the Asian Regional Initiative Against Trafficking (which we successfully launched with the Govt of the Philippines in March), the role of the regional bureaus in implementing anti-trafficking initiatives in their regions is critical. The fact that their preferences regarding a high-level office were discounted does not bode well for the ability of this office to be effective in its engagements with other countries and regions.

3. anti-trafficking NGOs and human rights groups --

We fully expected human rights and anti-trafficking NGOs to oppose its placement in INL, and indeed they already have. One of the leading human rights groups that worked tirelessly for the legislation has already written a letter to the Secretary, questioning the possible placement in INL. Others have



been calling to inquire about how and why this decision was made and to urge that it be reconsidered. It is important to note that these groups are the constituency for this issue, for the legislation, and for our efforts to address trafficking. If these groups are questioning the legitimacy of our efforts to implement the first-ever anti-trafficking law across the USG, they will be making their views clear to the Congress and the public.

4. For our part, we have very serious concerns about placing a high-level, interagency office responsible for managing USG-wide implementation efforts in the hands of an office director within INL or any functional bureau. After all we have achieved in this area, and with legislation that will be just words on paper unless implemented properly, this is the wrong last step for this Administration to take in the fight against trafficking. Burying this office in the bureaucracy at INL will vitiate the Administration's accomplishments in passing this legislation and raising the profile of this issue. Our work to combat trafficking could be an enduring accomplishment of this Administration, but that will not happen unless this is handled correctly now.

#### Next Steps

##### 1. OFL telcon with State

The First Lady's Office has already expressed its dismay to State (directly to the Secretary and to Wendy Sherman). Wendy and Frank have a conference call planned with Melanne Verwee, and Melanne would like me to join the call to help explain why placement in INL is not a good idea. I can do that while expressing no NSC view if you have not had time to consider the matter. You could also join the call. Please let me know how you would like to proceed. Melanne is eager to get this call set up.

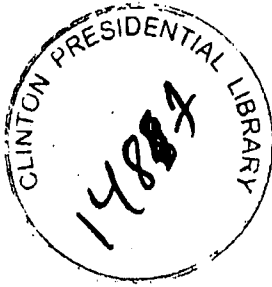
##### 2. NSC Action

We are asking you to consider two courses of action, with a strong preference for the first:

1. convey to MKA our concern with the decision to place the office in INL and ask for her support in establishing it within S (urging her to be mindful of the fact that interagency coordination of a cabinet-level Task Force is at issue, not how best to coordinate State's trafficking work internally within State).

2. alternatively, ask State to hold off on making a final decision in the Administration's last month, given the divided views, and

**COPY**



highlight the issue for the transition. In this instance, however, we will need to give thought to how we will continue, in the interim, our present efforts (by me and PICW) to manage interagency implementation of the bill. This presents a problem, and for this reason we strongly prefer option one. We should set the office up and leave in place what we know to be the best, most effective way of ensuring continued action and further progress.

#### Key Reasons to Revisit the Decision

The Office must be high-level and cannot be in a functional bureau because:

- \* Only a high-level entity with the institutional stature and the senior-level staff lead the interagency effort. Agencies will not participate in, nor be guided by, a process run by a low-level office. Moreover, such an office will not attract the strongest and most experienced staff from other agencies, who will not perceive a professional gain from serving in a low-level office in a sister agency and will question their ability to get things done. The office must have a high-ranking director, preferably at the Ambassador level, but at least a high-level special advisor with stature equivalent to that of an Assistant Secretary.

- \* The purpose of this Office is to plan and direct an explicitly interagency process to implement the Act. While other locations or models might be appropriate to manage the issue of trafficking within the State Department, placement within a bureau will not give this Office the prominence needed to fulfill its statutory role to support the Task Force to plan and direct a U.S. government-wide effort.

- \* The creation of an office below the level of a Deputy Assistant Secretary within a functional bureau sends the wrong signal to the agencies, the Congress, anti-trafficking NGOs, and the public. The key co-sponsors of the legislation, as well as the human rights and faith-based groups that fought for it, will oppose its placement in a bureau because they will see it as a demotion, and clearly contrary to the intent of the legislation to create a high-level office to support the work of a cabinet-level Task Force.

The Office should not be in INL because:

- \* The human rights community, anti-trafficking NGOs, and key congressional co-sponsors will not support placement in INL because it will call into question the Administration's commitment to victim assistance and prevention, which is not the expertise of those working on drug trafficking and other international crime issues at INL. (NGOs have already expressed concern about INL's implementation of grant programs to address domestic violence in Russia and the

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NIS, which in their view do not always fund agencies with expertise on domestic violence program in general, and victim issues in particular).

\* We

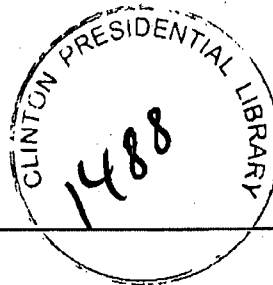
cannot place both interagency entities that deal with trafficking in INL. Last Friday, we announced the establishment of a Migrant Smuggling and Trafficking in Persons Coordination Center under INL. This is essentially a support center for law enforcement, so it should be within INL given their expertise. However, we will be sharply criticized for also placing a second entity in INL whose job is much broader than law enforcement.

\* The NGOs and members

of Congress are right to be concerned about the lack of fit between INL's law enforcement expertise and the expertise required to implement the victim services and prevention program parts of the bill (victim services, victim outreach campaigns, prevention programs, economic development programs for women at risk, eligibility of undocumented victims for publicly-funded services, etc.) Given INL's institutional bias toward law enforcement, an office within INL will not provide adequate attention to the victim issues that are critical to the effectiveness of our efforts. Asking INL to transcend that bias makes no more sense than asking a victim service provider to run a prosecution task force. Detailing agency staff to the office will not counter the institutional bias of INL as a whole, and in any event they will not be sufficiently high-level to drive the interagency process around these issues.

**COPY**

## Exchange Mail



DATE-TIME 1/3/01 4:44:57 PM  
FROM Patten, Wendy L. (MULTI)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT FW: interagency trafficking office -- new developments [UNCLASSIFIED]  
TO Shapiro, Daniel B. (LEGIS)

## CARBON\_COPY

## TEXT\_BODY

I'm not dead yet...

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

From: Patten,  
Wendy L. (MULTI)  
Sent: Wednesday, January 03, 2001 4:29 PM  
To: Patten,  
Wendy L. (MULTI); Rudman, Mara E. (NSA); @RUDMAN  
Cc: @MULTILAT  
- Multilateral and Humanitarian Affairs  
Subject: RE: interagency  
trafficking office -- new developments [UNCLASSIFIED]

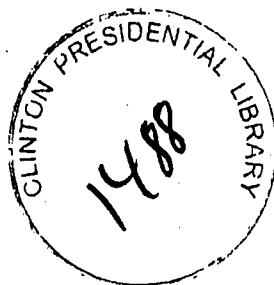
Mara --

I've now thought about this more, and here's what I think. There is a much better way to combine the best of both worlds and accommodate the desire both to anchor this office organizationally and give it prominence on the policy front. We should urge Wendy and Frank to take a middle ground and set the office up with administrative ties to INL but policy ties to S or G.

Why? The main argument that

Dan Smith was making to me was that the office would become an orphan in S because it would have to depend on administrative and budget support from within S, where servicing Sec State is obviously the priority. That's not a compelling reason to take this effort and place it where it will have the wrong stature and the wrong substantive expertise needed to sustain and further our work, especially not when the administrative problem is easily resolved. We can anchor this office in the bureaucracy, giving it a home and the support it needs to be effective by having INL provide administrative and budget support. But, the office would not answer to INL on policy and substance. Instead, it would answer to a 7th floor principal (S is my preference but G would work as well). That way the office would have the stature and substantive expertise needed to guide

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called a meeting for 4pm tomorrow (internal to State) to talk about the office. Do you think you (or we) could try to talk to Wendy after her call with Melanne but before the 4pm meeting and urge them to consider a middle course like the one I have described?

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Mara. I appreciate the time you've given to this issue and your help in trying to get this right. -- WLP

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To: Rudman,

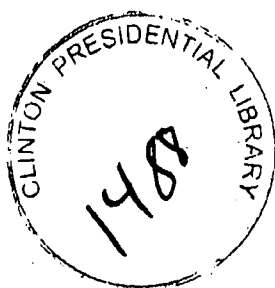
Mara E. (NSA); @RUDMAN

Cc: @MULTILAT - Multilateral and Humanitarian Affairs

Subject: RE: interagency trafficking office -- new developments [UNCLASSIFIED]

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**COPY**



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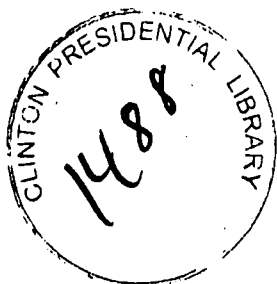
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What's the next step?  
Do you expect to hear from Wendy after their call with Melanne tomorrow?

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E. (NSA)  
Sent: Wednesday, January 03, 2001 11:51 AM  
To: Patten,  
Wendy L. (MULTI); @RUDMAN  
Cc: @MULTILAT - Multilateral and Humanitarian  
Affairs  
Subject: RE: interagency trafficking office -- new developments  
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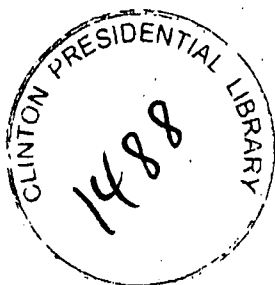
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L. (MULTI)  
Sent: Wednesday, January 03, 2001 11:02 AM  
To: Patten,  
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Wendy L. (MULTI)  
Sent: Tuesday, December 26, 2000 6:11 PM  
To: @RUDMAN  
Cc: @MULTILAT  
- Multilateral and Humanitarian Affairs; @EXECSEC - Executive Secretary;  
@LEGISLAT - Legislative Affairs  
Subject: interagency trafficking  
office -- new developments [UNCLASSIFIED]

**COPY**



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The issue of how to establish the Interagency Office to Monitor and Combat Trafficking has taken a troublesome turn. We wanted to update you on it and seek your guidance as to how to handle it.

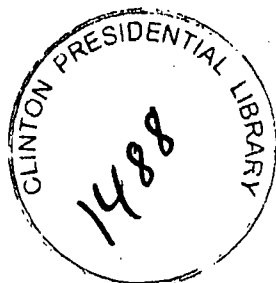
To recall, this Office is authorized by the newly-enacted trafficking legislation. The Office would provide the real work behind a cabinet-level Interagency Task Force required by the legislation. Its central role would be to support the Task Force and ensure that the USG-wide effort is coherent, coordinated, and achieves the 3 main objectives of the legislation: to increase our enforcement efforts, provide assistance to victims, and carry out prevention programs, both domestically and abroad.

Last week, we learned that Frank Loy has decided to place the Office within INL. Frank issued a memo to various bureaus within State announcing his decision to place the interagency office within INL. (We had expected him to make a recommendation to the Secretary for her approval, but as we understand it, she delegated this decision to Frank and he simply made and announced it.) In reaching this decision, Frank sought input from bureaus within State, but did not consult with any other agency, not even those whose participation on the Task Force is mandated by statute. His decision therefore does not account for the other agencies' needs and preferences regarding the office that will be coordinating USG-wide implementation of the legislation. This is emblematic of the challenges we have faced all year in working on the bill: State has focused only on its requirements under the legislation, when many other agencies (esp. Justice, Labor, HHS, and AID) have significant responsibilities under the new law.

Serious concerns about this decision have already been voiced by many, including:

1. key congressional co-sponsors of the legislation

**COPY**



The staffs of the major co-sponsors of the trafficking bill (Wellstone, Gadjensen, Chris Smith, and one other) called State to the Hill last Thursday to discuss this issue. We understand that these staffers expressed serious doubts about the low-level placement of an office that Congress clearly intended to have stature (they view this action as burying the office), as well as about the lack of emphasis on victim assistance and protection issues given the law enforcement orientation of INL. They apparently were unpersuaded by arguments that INL has the necessary resources, countering that State can decide to place those resources wherever it chooses in setting up this office. To create an effective interagency coordinating office with the prominence necessary to ensure things get done, they urged State to reconsider and to place the office directly under the Secretary.

2. State's regional  
bureaus --

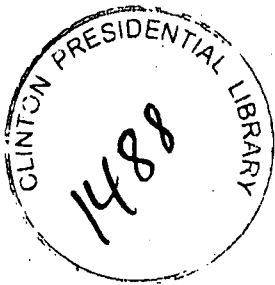
The regional bureaus that provided views to Frank Loy (EAP, EUR, SA, AF) oppose its location in a functional bureau (as did PRM and the President's Interagency Council on Women). The regional bureaus asserted that only the establishment of a high-level office (i.e., one that sits above both regional and functional bureaus) could give this issue the prominence necessary to sustain our current efforts and achieve further progress. As we saw with the our work to develop the Asian Regional Initiative Against Trafficking (which we successfully launched with the Govt of the Philippines in March), the role of the regional bureaus in implementing anti-trafficking initiatives in their regions is critical. The fact that their preferences regarding a high-level office were discounted does not bode well for the ability of this office to be effective in its engagements with other countries and regions.

3. anti-trafficking NGOs  
and human rights groups --

We fully expected human rights and anti-trafficking NGOs to oppose its placement in INL, and indeed they already have. One of the leading human rights groups that worked tirelessly for the legislation has already written a letter to the Secretary, questioning the possible placement in INL. Others have been calling to inquire about how and why this decision was made and to urge that it be reconsidered. It is important to note that these groups are the constituency for this issue, for the legislation, and for our efforts to address trafficking. If these groups are questioning the legitimacy of our efforts to implement the first-ever anti-trafficking law across the USG, they will be making their views clear to the Congress and the public.

COPY

4. For our part, we have



very serious concerns about placing a high-level, interagency office responsible for managing USG-wide implementation efforts in the hands of an office director within INL or any functional bureau. After all we have achieved in this area, and with legislation that will be just words on paper unless implemented properly, this is the wrong last step for this Administration to take in the fight against trafficking. Burying this office in the bureaucracy at INL will vitiate the Administration's accomplishments in passing this legislation and raising the profile of this issue. Our work to combat trafficking could be an enduring accomplishment of this Administration, but that will not happen unless this is handled correctly now.

#### Next Steps

##### 1. OFL telcon with State

The First Lady's Office has already expressed its dismay to State (directly to the Secretary and to Wendy Sherman). Wendy and Frank have a conference call planned with Melanne Vermeer, and Melanne would like me to join the call to help explain why placement in INL is not a good idea. I can do that while expressing no NSC view if you have not had time to consider the matter. You could also join the call. Please let me know how you would like to proceed. Melanne is eager to get this call set up.

##### 2. NSC Action

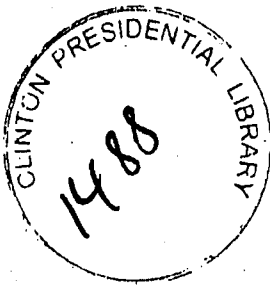
We are asking you to consider two courses of action, with a strong preference for the first:

1. convey to MKA our concern with the decision to place the office in INL and ask for her support in establishing it within S (urging her to be mindful of the fact that interagency coordination of a cabinet-level Task Force is at issue, not how best to coordinate State's trafficking work internally within State).

2. alternatively, ask State to hold off on making a final decision in the Administration's last month, given the divided views, and highlight the issue for the transition. In this instance, however, we will need to give thought to how we will continue, in the interim, our present efforts (by me and PICW) to manage interagency implementation of the bill. This presents a problem, and for this reason we strongly prefer option one. We should set the office up and leave in place what we know to be the best and most effective way of ensuring continued action and further progress.

**COPY**

#### Key Reasons to Revisit the Decision



The Office must be high-level and cannot be in a functional bureau because:

\* Only

a high-level entity with the institutional stature and the senior-level staff lead the interagency effort. Agencies will not participate in, nor be guided by, a process run by a low-level office. Moreover, such an office will not attract the strongest and most experienced staff from other agencies, who will not perceive a professional gain from serving in a low-level office in a sister agency and will question their ability to get things done. The office must have a high-ranking director, preferably at the Ambassador level, but at least a high-level special advisor with stature equivalent to that of an Assistant Secretary.

\* The purpose of this Office is to plan and direct an explicitly interagency process to implement the Act. While other locations or models might be appropriate to manage the issue of trafficking within the State Department, placement within a bureau will not give this Office the prominence needed to fulfill its statutory role to support the Task Force to plan and direct a U.S. government-wide effort.

\* The creation of an office below the level of a Deputy Assistant Secretary within a functional bureau sends the wrong signal to the agencies, the Congress, anti-trafficking NGOs, and the public. The key co-sponsors of the legislation, as well as the human rights and faith-based groups that fought for it, will oppose its placement in a bureau because they will see it as a demotion, and clearly contrary to the intent of the legislation to create a high-level office to support the work of a cabinet-level Task Force.

The Office should not be in INL because:

\* The human rights community, anti-trafficking NGOs, and key congressional co-sponsors will not support placement in INL because it will call into question the Administration's commitment to victim assistance and prevention, which is not the expertise of those working on drug trafficking and other international crime issues at INL. (NGOs have already expressed concern about INL's implementation of grant programs to address domestic violence in Russia and the NIS, which in their view do not always fund agencies with expertise on domestic violence program in general, and victim issues in particular).

\* We

cannot place both interagency entities that deal with trafficking in INL. Last Friday, we announced the establishment of a Migrant Smuggling and Trafficking in Persons Coordination Center under INL. This is essentially a support center for law enforcement, so it should be within INL given their expertise. However, we will be sharply criticized for also placing a second entity in INL whose

**COPY**



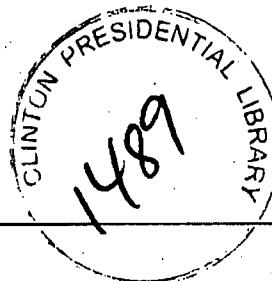
job is much broader than law enforcement.

\* The NGOs and members

of Congress are right to be concerned about the lack of fit between INL's law enforcement expertise and the expertise required to implement the victim services and prevention program parts of the bill (victim services, victim outreach campaigns, prevention programs, economic development programs for women at risk, eligibility of undocumented victims for publicly-funded services, etc.) Given INL's institutional bias toward law enforcement, an office within INL will not provide adequate attention to the victim issues that are critical to the effectiveness of our efforts. Asking INL to transcend that bias makes no more sense than asking a victim service provider to run a prosecution task force. Detailing agency staff to the office will not counter the institutional bias of INL as a whole, and in any event they will not be sufficiently high-level to drive the interagency process around these issues.

**COPY**

## Exchange Mail



DATE-TIME 1/3/01 8:53:57 PM  
FROM Schwartz, Eric P. (MULTI)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT RE: Draft note to SRB on unilateral sanctions [UNCLASSIFIED]  
TO Shea, Dorothy C. (MULTILAT)

## CARBON\_COPY

## TEXT\_BODY

this is how I would have changed it. i may have made it too short.  
but you get th eidea.

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

From: Shea,  
Dorothy C. (MULTILAT)  
Sent: Wednesday, January 03, 2001 2:03 PM  
To: Schwartz,  
Eric P. (MULTI)  
Subject: Draft note to SRB on unilateral sanctions  
[UNCLASSIFIED]

Eric: For your review. Mara hasn't gotten back  
to me with readout on her telcon with Larson yet, but she said to  
go ahead and draft something; that she'd be able to drop in a sentence  
with Al's views. DCS

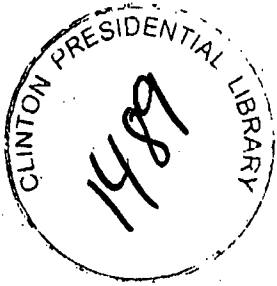
Please pass to Sandy  
From Dorothy Shea  
Thru  
Eric Schwartz  
Concurrences from Legal, Intecon, Mara

Sandy:

The  
Issue: Whether to Resuscitate a Paper on Unilateral Sanctions

Al  
Larson has been working on re-crafting as a Presidential Memorandum  
a paper on unilateral economic sanctions that has been in the works  
for some time and that Su Bizer originally envisioned as an  
Executive Order (see attached document). The paper would set out  
a range of standards and procedures to which the Adminsitration would  
bind itself in consideration of sanctions, such as benefit/cost evaluations,

COPY



etc.

We have several concerns about the EO at this point:

First,  
this memorandum purports to direct how the incoming Administration should organize itself and conduct internal decisionmaking processes on sanctions. This does not seem appropriate.

Second, some  
of us still question the value of an EO in which the Administration is essentially binding the President to procedures he might not always want to engage before making a decision. The EO made much more sense when we were considering it demonstrate to a Congress considering sanctions reform legislation that we could get our own house in order.

Finally, if we were to go forward with such a memorandum, there are a number of substantive issues we'd want to review in the draft. For example, as written, the document seems have a rather pronounced anti-sanctions tone.

Recommendation:

That we inform State  
that it is your view that the best use for this document is as a transition document, and that we work with State to make appropriate changes.

\_\_\_\_\_ Agree that this should not be issued as a Presidential Memorandum. Work with State to ensure that appropriate revisions are made prior to providing it as a transition document.

\_\_\_\_\_ Seek appropriate revisions, but accommodate State's strong desire to issue this as a Presidential Memorandum.

**COPY**

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                        | DATE       | RESTRICTION               |
|--------------------------|----------------------------------------------------------------------------------------------------------------------|------------|---------------------------|
| 001. email               | Judson Bruns to Richard Samans, re: Draft note to SRB on unilateral sanctions (3 pages)                              | 01/04/2001 | P5 1490                   |
| 002. email               | Gary Samore to Robert Bradtke, re: [Issues] (4 pages)                                                                | 01/04/2001 | P1/b(1), P5               |
| 003. email               | Justin Siberell to Elisa Harris, re: [Issues] (3 pages)                                                              | 01/04/2001 | P1/b(1), P5               |
| 004. email               | Beverly Roundtree to Paul Kurtz, re: CIGG (3 pages)                                                                  | 01/04/2001 | P1/b(1)                   |
| 005. email               | Dean Haas to Wendy Gray, re: [personnel] (3 pages)                                                                   | 01/04/2001 | P3/b(3)                   |
| 006. email               | Judson Bruns to Richard Samans, re: Draft note to SRB on unilateral sanctions (3 pages)                              | 01/04/2001 | P5 1491                   |
| 007. email               | Dorothy Shea to John Wiegmann, re: Draft note to SRB on unilateral sanctions (3 pages)                               | 01/04/2001 | P5 1492                   |
| 008. email               | Dorothy Shea to Mary Tierney, re: Points for Meeting with Mort and David (2 pages)                                   | 01/04/2001 | P1/b(1)                   |
| 009. email               | Donna Lieberman to Cathy Millison, re: Briefing The Transition Team Meeting on Counter-Terrorism [partial] (2 pages) | 01/04/2001 | P3/b(3), P6/b(6), b(7)(C) |
| 010. email               | Eric Pierce to Michael Fenzel, re: Transition Info (1 page)                                                          | 01/04/2001 | P1/b(1)                   |
| 011. email               | Cathy Millison to Donna Lieberman, re: Briefing The Transition Team Meeting on Counter-Terrorism [partial] (4 pages) | 01/04/2001 | P3/b(3), P6/b(6), b(7)(C) |
| 012. email               | Kevin Moran to Eric Schwartz, et al., re: Briefer for DC (4 pages)                                                   | 01/04/2001 | P1/b(1)                   |

### COLLECTION:

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

### FOLDER TITLE:

[01/04/2001]

Kara Ellis  
2008-0015-F  
kc1618

### RESTRICTION CODES

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

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

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

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]

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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.

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                                               | DATE       | RESTRICTION               |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|---------------------------|
| 013. email               | Dorothy Shea to Judson Bruns, re: Draft note to SRB on unilateral sanctions (4 pages)                                                                       | 01/04/2001 | P5 1493                   |
| 014. email               | Cathy Millison to Beverly Roundtree, re: Briefing The Transition Team Meeting on Counter - Terrorism [partial] (2 pages)                                    | 01/04/2001 | P3/b(3), P6/b(6), b(7)(C) |
| 015. email               | Donna Lieberman to Roger Cressey, et al., re: Briefing the Transition Team Meeting on Counter - Terrorism [partial] (2 pages)                               | 01/04/2001 | P3/b(3), P6/b(6), b(7)(C) |
| 016. email               | Cathy Millison to Roger Cressey, Richard Clarke, and Beverly Roundtree, re: Briefing The Transition Team Meeting on Counter - Terrorism [partial] (3 pages) | 01/04/2001 | P3/b(3), P6/b(6), b(7)(C) |
| 017. email               | Cathy Millison to Robert Cressey, Richard Clarke, and Beverly Roundtree, re: Briefing The Transition Team on Counter - Terrorism [partial] (3 pages)        | 01/04/2001 | P3/b(3), P6/b(6), b(7)(C) |
| 018. email               | Lisa Gordon-Hagarety to Beverly Roundtree, re: Briefing The Transition Team on Counter - Terrorism [partial] (1 page)                                       | 01/04/2001 | P3/b(3), P6/b(6), b(7)(C) |
| 019. email               | Cameron Munter to Mary Quinn, re: Important Deadlines (5 pages)                                                                                             | 01/04/2001 | P1/b(1)                   |
| 020. email               | Eric Schwartz to Matthew Mclean, re: [summary of conclusions -- draft] (3 pages)                                                                            | 01/04/2001 | P1/b(1), P6/b(6)          |
| 021. email               | From Philip Collum, re: [timeline] (2 pages)                                                                                                                | 01/04/2001 | P1/b(1)                   |

### COLLECTION:

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

### FOLDER TITLE:

[01/04/2001]

Kara Ellis  
2008-0015-F  
ke1618

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

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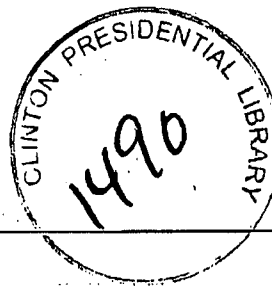
COPY

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.

## Exchange Mail



DATE-TIME 1/4/01 9:36:24 AM  
FROM Bruns, Judson L. (Jay) (INTECON)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT FW: Draft note to SRB on unilateral sanctions [UNCLASSIFIED]  
TO Samans, Richard (INTECON)

## CARBON\_COPY

## TEXT\_BODY

Rick- I'd like some process advice from you on this. I'll come see you in a little while. Jay

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

From: Shea,

Dorothy C. (MULTILAT)

Sent: Thursday, January 04, 2001 9:09 AM

To: DeRosa,

Mary B. (LEGAL); Wiegmann, John B. "Brad" (LEGAL); Bruns, Judson L. (Jay) (INTECON)

Cc: Schwartz, Eric P. (MULTI); @LEGAL - Legal Advisor; @RUDMAN

Subject: RE: Draft note to SRB on unilateral sanctions [UNCLASSIFIED]

Mary, Brad, Jay:

Please review this draft note

to SRB on the sanctions issue. Mara will get back to me with a line or two following her conversation with Larson, but in the meantime, she wanted us to get going on the memo.

Thanks,

Dorothy

Please

pass to Sandy

From Dorothy Shea

Thru Eric Schwartz

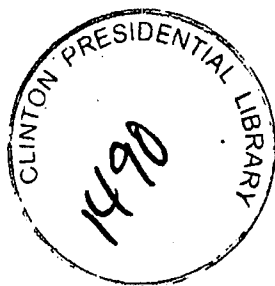
Concurrences

from Legal, Intecon, Mara

Sandy:

The Issue: Whether to Resuscitate  
a Paper on Unilateral Sanctions

**COPY**



Al Larson has been working on re-crafting as a Presidential Memorandum a paper on unilateral economic sanctions that has been in the works for some time and that Stu Eizenstat originally envisioned as an Executive Order (see attached document). The paper would set out a range of standards and procedures to which the Administration would bind itself in consideration of sanctions, such as benefit/cost evaluations, etc.

We have several concerns about the paper at this point:

First, this memorandum purports to direct how the incoming Administration should organize itself and conduct internal decisionmaking processes on sanctions. This does not seem appropriate.

Second, some of us still question the value of a directive in which the Administration is essentially binding the President to procedures he might not always want to engage in before making a decision. The EO made much more sense when we were considering it to demonstrate to a Congress considering sanctions reform legislation that we could get our own house in order. We think the most useful purpose this document could serve would be as a transition document, both to inform the incoming Administration about how this Administration has approached the issue of unilateral economic sanctions, and to provide a possible template.

Finally, if we were to go forward with such a memorandum, there are a number of substantive issues we'd want to review in the draft. For example, as written, the document seems have a rather pronounced anti-sanctions tone.

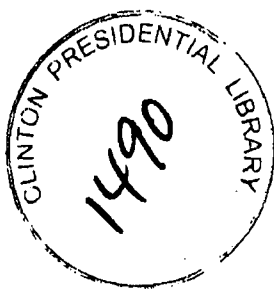
#### Recommendation:

That we inform State that it is your view that the best use for this document is as a transition document, and that we work with State to make appropriate changes.

\_\_\_\_ Agree  
that this should not be issued as a Presidential Memorandum. Work with State to ensure that appropriate revisions are made prior to providing it as a transition document.

\_\_\_\_ Seek appropriate  
revisions, but accommodate State's strong desire to issue this as

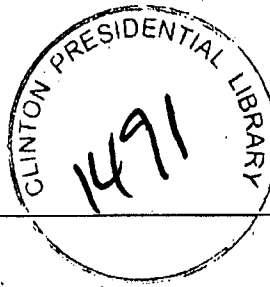
**COPY**



a Presidential Memorandum.

**COPY**

## Exchange Mail



**DATE-TIME** 1/4/01 1:46:47 PM  
**FROM** Bruns, Judson L. (Jay) (INTECON)  
**CLASSIFICATION** UNCLASSIFIED  
**SUBJECT** FW: Draft note to SRB on unilateral sanctions [UNCLASSIFIED]  
**TO** Samans, Richard (INTECON)

**CARBON\_COPY****TEXT\_BODY**

FYI. Jay

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

From: Wiegmann, John B.

"Brad" (LEGAL)

Sent: Thursday, January 04, 2001 1:44 PM

To: Shea,

Dorothy C. (MULTILAT); DeRosa, Mary B. (LEGAL); Bruns, Judson L.

(Jay) (INTECON)

Cc: Schwartz, Eric P. (MULTI); @LEGAL - Legal

Advisor; @RUDMAN

Subject: RE: Draft note to SRB on unilateral sanctions  
[UNCLASSIFIED]

This looks good. I have made a few suggested revisions below for your consideration. I would think we would want a couple of sentences as to why State really thinks this is a good idea at this time, and our rebuttal of this, to the extent it is not already covered. But that may come from Mara after she discusses this with Larson.

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

From: Shea, Dorothy C.

(MULTILAT)

Sent: Thursday, January 04, 2001 9:09 AM

To: DeRosa,

Mary B. (LEGAL); Wiegmann, John B. "Brad" (LEGAL); Bruns, Judson L. (Jay) (INTECON)

Cc: Schwartz, Eric P. (MULTI); @LEGAL - Legal

Advisor; @RUDMAN

Subject: RE: Draft note to SRB on unilateral sanctions  
[UNCLASSIFIED]

**COPY**

Mary, Brad, Jay:



Please review this draft note to SRB on the sanctions issue. Mara will get back to me with a line or two following her conversation with Larson, but in the meantime, she wanted us to get going on the memo.

Thanks,  
Dorothy

Please  
pass to Sandy  
From Dorothy Shea  
Thru Eric Schwartz  
Concurrences  
from Legal, Intecon, Mara

Sandy:

The Issue: Whether to Resuscitate  
a Paper on Unilateral Sanctions

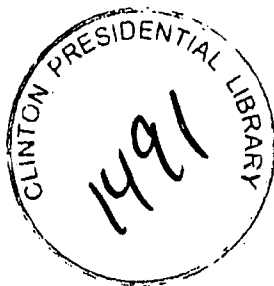
Al Larson has been working on re-crafting as a Presidential Memorandum a paper on unilateral economic sanctions that has been in the works for some time and that Stu Eizenstat originally envisioned as an Executive Order (see attached document). The draft paper states that multilateral economic sanctions are to be "strongly preferred to unilateral economic sanctions," but that there can be a role for unilateral sanctions where multilateral sanctions or other policies are not feasible or where it is important for the U.S. to lead by example. It then sets out a range of procedures for the Executive Branch to follow in considering use of unilateral economic sanctions, including requirements to undertake a cost/benefit evaluation, to consider various factors related to the design and scope of the sanctions, to consult with the Congress before making any decisions, and to review annually the effectiveness of and need for the sanctions.

We have several concerns about the paper at this point:

First, since the memorandum would be signed with less than three weeks remaining in this Administration, it essentially operates to direct how the incoming Administration should organize itself and conduct internal decisionmaking processes on this type of sanctions. This does not seem appropriate.

Second, some of us question the value of a directive in which the President is essentially binding himself and the Executive Branch to procedures he might not always want to follow before making sanctions decisions. The EO made much more sense when we were considering it to demonstrate to a Congress that was then considering sanctions reform legislation

COPY



that we could get our own house in order. We think the most useful purpose this document could serve would be as a transition document, both to inform the incoming Administration about how this Administration has approached the issue of unilateral economic sanctions, and to provide a possible template for . . . ?.

Finally, if we were to go forward with such a memorandum, there are a number of substantive issues we'd want to review in the draft. For example, as written, the document seems to have a rather pronounced anti-sanctions tone, and we are concerned as well about mandating pre-decisional consultations with Congress in all cases.

Recommendation:

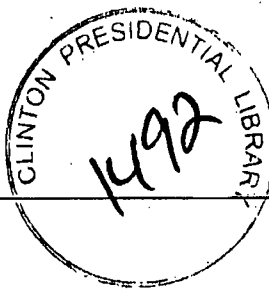
That we inform  
State that it is your view that the best use for this document is as a transition document, and that we work with State to make appropriate changes.

\_\_\_\_\_ Agree that this should not be issued as a Presidential Memorandum. Work with State to ensure that appropriate revisions are made prior to providing it as a transition document.

\_\_\_\_\_ Seek appropriate revisions, but accommodate State's strong desire to issue this as a Presidential Memorandum.

**COPY**

## Exchange Mail



DATE-TIME 1/4/01 1:49:11 PM  
FROM Shea, Dorothy C. (MULTILAT)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT RE: Draft note to SRB on unilateral sanctions [UNCLASSIFIED]  
TO Wiegmann, John B. "Brad" (LEGAL)

## CARBON\_COPY

## TEXT\_BODY

Thanks. These are good fixes. Haven't heard from Mara yet.  
DCS

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

From: Wiegmann, John B. "Brad" (LEGAL)

Sent: Thursday, January 04, 2001 1:44 PM

To: Shea, Dorothy C.

(MULTILAT); DeRosa, Mary B. (LEGAL); Bruns, Judson L. (Jay) (INTECON)

Cc: Schwartz,

Eric P. (MULTI); @LEGAL - Legal Advisor; @RUDMAN

Subject: RE: Draft

note to SRB on unilateral sanctions [UNCLASSIFIED]

This looks

good. I have made a few suggested revisions below for your consideration. I would think we would want a couple of sentences as to why State really thinks this is a good idea at this time, and our rebuttal of this, to the extent it is not already covered. But that may come from Mara after she discusses this with Larson.

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

From: Shea, Dorothy C. (MULTILAT)

Sent: Thursday,  
January 04, 2001 9:09 AM

To: DeRosa, Mary B. (LEGAL); Wiegmann,

John B. "Brad" (LEGAL); Bruns, Judson L. (Jay) (INTECON)

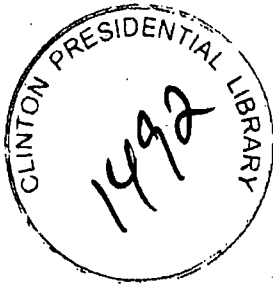
Cc: Schwartz,

Eric P. (MULTI); @LEGAL - Legal Advisor; @RUDMAN

Subject: RE: Draft

note to SRB on unilateral sanctions [UNCLASSIFIED]

COPY



Mary, Brad,

Jay:

Please review this draft note to SRB on the sanctions issue.

Mara will get back to me with a line or two following her conversation with Larson, but in the meantime, she wanted us to get going on the memo.

Thanks,

Dorothy

Please pass to Sandy

From Dorothy Shea

Thru

Eric Schwartz

Concurrences from Legal, Intecon, Mara

Sandy:

The

Issue: Whether to Resuscitate a Paper on Unilateral Sanctions

Al

Larson has been working on re-crafting as a Presidential Memorandum a paper on unilateral economic sanctions that has been in the works for some time and that Stu Eizenstat originally envisioned as an Executive Order (see attached document). The draft paper states that multilateral economic sanctions are to be "strongly preferred to unilateral economic sanctions," but that there can be a role for unilateral sanctions where multilateral sanctions or other policies are not feasible or where it is important for the U.S. to lead by example. It then sets out a range of procedures for the Executive Branch to follow in considering use of unilateral economic sanctions, including requirements to undertake a cost/benefit evaluation, to consider various factors related to the design and scope of the sanctions, to consult with the Congress before making any decisions, and to review annually the effectiveness of and need for the sanctions.

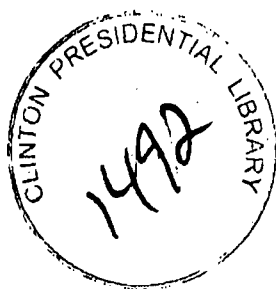
We have several concerns about the paper at this point:

First,

since the memorandum would be signed with less than three weeks remaining in this Administration, it essentially operates to direct how the incoming Administration should organize itself and conduct internal decisionmaking processes on this type of sanctions. This does not seem appropriate.

Second, some of us question the value of a directive in which the President essentially binding himself and the Executive Branch to procedures he might not always want to follow before making sanctions decisions. The EO made much more sense when

COPY



we were considering it to demonstrate to a Congress that was then considering sanctions reform legislation that we could get our own house in order. We think the most useful purpose this document could serve would be as a transition document, both to inform the incoming Administration about how this Administration has approached the issue of unilateral economic sanctions, and to provide a possible template for . . . ?.

Finally, if we were to go forward with such a memorandum, there are a number of substantive issues we'd want to review in the draft. For example, as written, the document seems to have a rather pronounced anti-sanctions tone, and we are concerned as well about mandating pre-decisional consultations with Congress in all cases.

Recommendation:

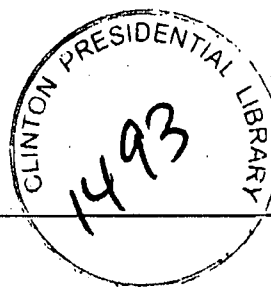
That we inform State that it is your view that the best use for this document is as a transition document, and that we work with State to make appropriate changes.

\_\_\_\_\_ Agree  
that this should not be issued as a Presidential Memorandum. Work with State to ensure that appropriate revisions are made prior to providing it as a transition document.

\_\_\_\_\_ Seek appropriate  
revisions, but accommodate State's strong desire to issue this as a Presidential Memorandum.

**COPY**

## Exchange Mail



DATE-TIME 1/4/01 4:21:15 PM  
FROM Shea, Dorothy C. (MULTILAT)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT RE: Draft note to SRB on unilateral sanctions [UNCLASSIFIED]  
TO Bruns, Judson L. (Jay) (INTECON)

## CARBON\_COPY

## TEXT\_BODY

Great. Thanks, Jay. DCS

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

From: Bruns,  
Judson L. (Jay) (INTECON)  
Sent: Thursday, January 04, 2001 2:53  
PM  
To: Shea, Dorothy C. (MULTILAT)  
Cc: DeRosa, Mary B. (LEGAL);  
Bruns, Judson L. (Jay) (INTECON); Schwartz, Eric P. (MULTI); @LEGAL  
- Legal Advisor; @RUDMAN; Samans, Richard (INTECON)  
Subject: FW:  
Draft note to SRB on unilateral sanctions [UNCLASSIFIED]

Dorothy

-- see my preliminary suggestions for changes. Will also want to review again after you get language from Mara re: outcome of Larson call, and before it goes forward to Sandy. Thanks, Jay

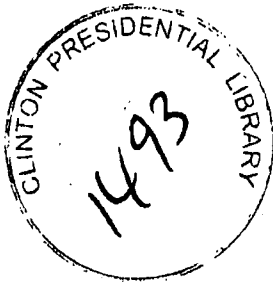
-----Original  
Message-----

From: Wiegmann, John B. "Brad" (LEGAL)  
Sent:  
Subject: RE:  
Draft note to SRB on unilateral sanctions [UNCLASSIFIED]

This

looks good. I have made a few suggested revisions below for your consideration. I would think we would want a couple of sentences as to why State really thinks this is a good idea at this time, and our rebuttal of this, to the extent it is not already covered. But that may come from Mara and she discusses this with Larson.

**COPY**



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

From: Shea, Dorothy C. (MULTILAT)

Sent: Thursday,

January 04, 2001 9:09 AM

To: DeRosa, Mary B. (LEGAL); Wiegmann,  
John B. "Brad" (LEGAL); Bruns, Judson L. (Jay) (INTECON)

Cc: Schwartz,

Eric P. (MULTI); @LEGAL - Legal Advisor; @RUDMAN

Subject: RE: Draft

note to SRB on unilateral sanctions [UNCLASSIFIED]

Mary, Brad,

Jay:

Please review this draft note to SRB on the sanctions issue.

Mara will get back to me with a line or two following her conversation with Larson, but in the meantime, she wanted us to get going on the memo.

Thanks,

Dorothy

Please pass to Sandy

From Dorothy Shea

Thru

Eric Schwartz

Concurrences from Legal, Intecon, Mara

Sandy:

The

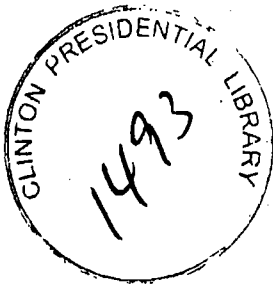
Issue: Whether to Resuscitate a Paper on Unilateral Sanctions

Al

Larson has been working on re-crafting as a Presidential Memorandum a paper on unilateral economic sanctions. The genesis for this effort began several years ago. Stu Eizenstat originally envisioned it as an Executive Order (see attached document). The draft paper states that multilateral economic sanctions are to be "strongly preferred to unilateral economic sanctions," but that there can be a role for unilateral sanctions where multilateral sanctions or other policies are not feasible or where it is important for the U.S. to lead by example. It then sets out procedures for the Executive Branch to consider in deciding whether to impose unilateral economic sanctions, including requirements to undertake a cost/benefit evaluation, to consider various factors related to the design and scope of the sanctions, to consult with the Congress before making any decisions, and to review annually the effectiveness of and need for the sanctions.

**COPY**

Most of us have several concerns about the paper at this point:



First, since the memorandum would be signed with less than three weeks remaining in this Administration, it essentially operates to direct how the incoming Administration should conduct internal decisionmaking processes on this type of sanctions. This does not seem appropriate.

Second, some of us question the value of a memorandum in which the President is essentially committing himself and the Executive Branch to procedures he might not always want to follow before making sanctions decisions. (The draft memorandum does have an out in the form of a blanket national interest waiver.) The E.O. made much more sense when we were considering it to demonstrate to a Congress that was then considering sanctions reform legislation that we could get our own house in order. We think the most useful purpose this document could serve would be as a transition document, both to inform the incoming Administration about how this Administration has approached the issue of unilateral economic sanctions, and to provide a possible template for future decisionmaking on these sanctions . . . ?.

Finally,  
if we were to go forward with such a memorandum, there are a number of substantive issues we'd want to review in the draft. (I think I'd want to take the following sentence out. I don't think the document is "anti-sanctions" in tone; I do think the reader can construe it to reflect some skepticism about whether unilateral economic sanctions (as opposed to multilateral, or sanctions other than economic ones) can be expected to modify behavior in the short run.) (For example, as written, the document seems to have a rather pronounced anti-sanctions tone), and we are concerned as well about mandating pre-decisional consultations with Congress in all cases.

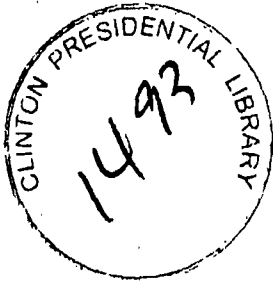
#### Recommendation:

That  
we inform NEC and State that it is your view that the best use for this document is as a transition document, and that we work with them to make appropriate changes.

\_\_\_\_\_ Agree that this should  
not be issued as a Presidential Memorandum. Work with  
NEC and  
State to ensure that appropriate revisions are made prior to providing  
it as a  
transition document.

\_\_\_\_\_ Seek appropriate revision  
but accommodate NEC and State's strong(?) Not sure it's strong --  
rather is considered on balance as a positive initiative.) desire

**COPY**



to issue this  
as a Presidential Memorandum.

**COPY**

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                         | DATE       | RESTRICTION               |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------|------------|---------------------------|
| 001. email               | Gayle Smith to Matthew Mclean, re: [summary of conclusions -- draft] (3 pages)                                        | 01/05/2001 | P1/b(1)                   |
| 002. email               | Bernard Owens to Jack Robinson, re: Briefing The Transition Team Meeting on Counter-Terrorism [partial] (1 page)      | 01/05/2001 | P3/b(3), P6/b(6), b(7)(C) |
| 003. email               | Hope Harrison to Mark Medish and Andrew Weiss, re: [announcement] (3 pages)                                           | 01/05/2001 | P1/b(1)                   |
| 004. email               | Mark Medish to Andrew Weiss and Hope Harrison, re: [announcement] (2 pages)                                           | 01/05/2001 | P1/b(1)                   |
| 005. email               | Mark Medish to Andrew Weiss, re: [announcement] (2 pages)                                                             | 01/05/2001 | P1/b(1)                   |
| 006. email               | Charles Pritchard to Robert Bradtke, re: Designated Transition Files (2 pages)                                        | 01/05/2001 | P1/b(1)                   |
| 007. email               | Eric Schwartz to Mara Rudman, Judson Bruns, and Dorothy Shea, re: Draft note to SRB on unilateral sanctions (4 pages) | 01/05/2001 | P5 1494                   |
| 008. email               | Hoyt Yee to Paul Orzulak, re: Help on SRB speech (2 pages)                                                            | 01/05/2001 | P1/b(1)                   |
| 009. email               | William McIlhenny to Michael Hammer, re: [background for your meeting] (3 pages)                                      | 01/05/2001 | P1/b(1)                   |
| 010. email               | Hope Harrison to Mark Medish and Andrew Weiss, re: [announcement] (3 pages)                                           | 01/05/2001 | P1/b(1)                   |
| 011. email               | Andrew Weiss to Paul Orzulak, re: Help for SRB Speech (4 pages)                                                       | 01/05/2001 | P1/b(1), P6/b(6)          |

### COLLECTION:

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

### FOLDER TITLE:

[01/05/2001 - 01/07/2001]

Kara Ellis  
2008-0015-F  
kel619

### RESTRICTION CODES

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

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

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

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]

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.

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# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                      | DATE       | RESTRICTION      |
|--------------------------|--------------------------------------------------------------------------------------------------------------------|------------|------------------|
| 012. email               | Edward Bolton to William Leary, re: Files (2 pages)                                                                | 01/05/2001 | P1/b(1)          |
| 013. email               | Jenny McGee to Mara Rudman, et al., re: Note to SRB on unilateral sanctions (5 pages)                              | 01/05/2001 | P5 1495          |
| 014. email               | Hoyt Yee to Maureen Tucker, re: [Background for Monday's meeting] (4 pages)                                        | 01/05/2001 | P1/b(1)          |
| 015. email               | John Ficklin to Ralph Bellamy, re: WHCA Computer Shut-Down (2 pages)                                               | 01/05/2001 | P1/b(1)          |
| 016. email               | Cathy Millison to L. June Bartlett, et al., re: WHCA Computer Shut-Down (2 pages)                                  | 01/06/2001 | P1/b(1)          |
| 017. email               | Cathy Millison to John Ficklin, re: WHCA Computer Shut-Down (2 pages)                                              | 01/06/2001 | P1/b(1)          |
| 018. email               | Gary Samore to Brooks Bash, et al., re: [Report] [Atomic Energy Act] (2 pages)                                     | 01/06/2001 | P1/b(1), P3/b(3) |
| 019. email               | Judson Bruns to Dorothy Shea, Mara Rudman, and Wendy Gray, re: Draft note to SRB on unilateral sanctions (4 pages) | 01/06/2001 | P5, P6/b(6)      |
| 020. email               | William Leary to Philip Cullom and Roseanne Hill, re: Files for Continuity (3 pages)                               | 01/07/2001 | P1/b(1)          |
| 021. email               | Paul Kurtz to Richard Clarke, re: [PRD] (4 pages)                                                                  | 01/07/2001 | P1/b(1)          |
| 022. email               | Jenny McGee to Patrick Porterfield, re: Note to SRB on unilateral sanctions (3 pages)                              | 01/07/2001 | P5 1496          |

### COLLECTION:

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

### FOLDER TITLE:

[01/05/2001 - 01/07/2001]

Kara Ellis  
2008-0015-F  
ke1619

### RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]  
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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).

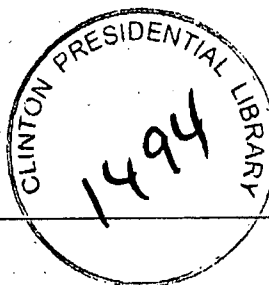
RR. Document will be reviewed upon request.

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

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b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]  
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

**COPY**

## Exchange Mail



DATE-TIME 1/5/01 12:59:49 PM  
FROM Schwartz, Eric P. (MULTI)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT RE: Draft note to SRB on unilateral sanctions [UNCLASSIFIED]  
TO Rudman, Mara E. (NSA)  
Bruns, Judson L. (Jay) (INTECON)  
Shea, Dorothy C. (MULTILAT)

CARBON\_COPY DeRosa, Mary B. (LEGAL)  
DeRosa, Mary B. (LEGAL)  
DeVine, Stephen (Legal)  
Hunerwadel, Joan S. (LEGAL)  
Scharfen, Jonathan R. (LEGAL)  
Wiegmann, John B. "Brad" (LEGAL)  
Williams, Mary C. (ADMIN)  
Gray, Wendy E. (NSA)  
Rudman, Mara E. (NSA)  
Samans, Richard (INTECON)

TEXT\_BODY looks good to me.

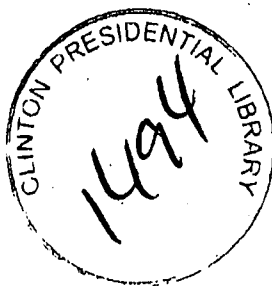
-----Original Message-----

From: Rudman,  
Mara E. (NSA)  
Sent: Friday, January 05, 2001 12:06 PM  
To: Bruns,  
Judson L. (Jay) (INTECON); Shea, Dorothy C. (MULTILAT)  
Cc: DeRosa,  
Mary B. (LEGAL); Schwartz, Eric P. (MULTI); @LEGAL - Legal Advisor;  
@RUDMAN; Samans, Richard (INTECON)  
Subject: RE: Draft note to SRB  
on unilateral sanctions [UNCLASSIFIED]  
Importance: High

See my  
revisions. they reflect both conversations with Larson, and what  
i know about what Sandy already knows on this topic.

Unless I  
hear loud noises of protest/dissent revisions -- which should be  
coordinated through Dorothy-- within the next couple hours, this  
is the version that I want to send forward to Sandy later this afternoon.

**COPY**



[dorothy

-- i am sending forward this note to Sandy. I will represent at the top where different directorates might be. right now i would assume that we have multi and legal together, and will hear from jay on whether he wants intecon listed as concurring. i think in the body i have reflected where intecon may differ on the substance of the recommendation.]

Sandy:

The Issue: Whether to Resuscitate  
a Paper on Unilateral Sanctions

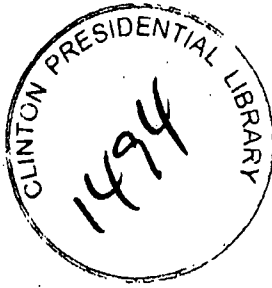
Al Larson has been working on re-crafting as a Presidential Memorandum a paper on unilateral economic sanctions. He has been trying to moderate a document that Stu Eizenstat has been pushing with a fair amount of zeal. Stu originally envisioned it as an Executive Order (see attached document). The draft paper states that multilateral economic sanctions are to be "strongly preferred to unilateral economic sanctions," but that there can be a role for unilateral sanctions where multilateral sanctions or other policies are not feasible or where it is important for the U.S. to lead by example. It then sets out procedures for the Executive Branch to consider in deciding whether to impose unilateral economic sanctions, including requirements to undertake a cost/benefit evaluation, to consider various factors related to the design and scope of the sanctions, to consult with the Congress and the public before making any decisions, and to review annually the effectiveness of and need for the sanctions.

We have several concerns about the paper:

First, since the memorandum would be signed with less than three weeks remaining in this Administration, it would be viewed as directing the incoming Administration on its internal decisionmaking processes on this type of sanctions. This does not seem appropriate.

Second, some of us question the value of a memorandum in which the President is essentially committing the Executive Branch to procedures that constrain his authority in making sanctions decisions, unless he formally determines that the national interest requires him to waive these procedures. We believe this draft E.O. made sense as an "if necessary" tool to ward off very problematic sanctions reform legislation. Ultimately, Lugar's broad sanctions reform legislation could be defeated within his own committee, and we did not need to put forward our alternative.

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At this point, we think the most useful purpose this document could serve would be as a transition document, which would inform the incoming Administration about how this Administration's approach to the issue of unilateral economic sanctions has evolved, and to provide a template of additional process options to consider. (NOTE: Intecon tends to support Al and Stu's perspective as articulated below.)

Stu, and to a much lesser extent, Al, see value in this Administration publicly "laying down the gauntlet" by issuing this sanctions reform paper as a Presidential directive of some sort. My sense is that they primarily view such action as a way to get "credit" with those in the business community who believe we have not been sufficiently rigorous on our unilateral sanctions decisionmaking process, and to further discipline an incoming Administration on these issues.

Our recommendation -- with a dissenting voice from Intecon -- is to advise that this memorandum, in revised form, be transmitted as a transition document by State-EB to the incoming team.

Whether the draft goes forward as a Presidential directive or a transition document, there are substantive issues that we need to address and revise. (We can take a much lighter hand on revisions if the document is an internal transition document.)

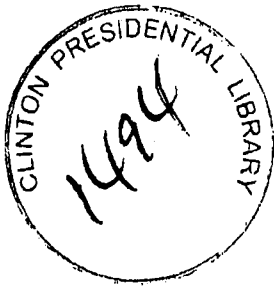
For example, as written, the document reflects deep skepticism about any benefits that might result from the application of unilateral sanctions -- we'd probably want to balance that some. It also can be read to mandate what would be inappropriate pre-decisional consultations with Congress. Finally, it has references to judicial review and retroactivity that are very "legislative" in character and seemingly unnecessary for an internal document or a presidential directive.

#### Recommendation:

That we inform Al Larson and Stu Eizenstat that it is your view that the best use for this document is as a transition document, and that we work with them to make appropriate changes.

Agree that this should not be issued as a Presidential Memorandum. Work with NEC and State to ensure that appropriate revisions are made prior to providing it as a transition document.

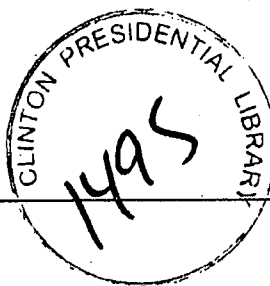
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\_\_\_\_ Seek appropriate revisions, but accommodate  
Al and Stu's interest in issuing this as a Presidential Memorandum.

**COPY**

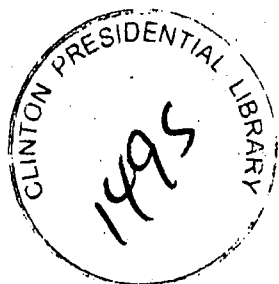
## Exchange Mail



DATE-TIME 1/5/01 7:42:55 PM  
FROM McGee, Jenny A. (WHSR)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT RE: Note to SRB on unilateral sanctions [UNCLASSIFIED]  
TO

Rudman, Mara E. (NSA)  
Blackburn, John (WHSR)  
Bresnahan, Gary E. (WHSR/STP)  
Broadwick, Bonnie. (WHSR)  
Cheramie, Don E. (WHSR)  
Crowder, Stevan D. (WHSR/STP)  
Ehrendreich, Joel (WHSR)  
Erdahl, Douglas M. (WHSR)  
Fuchs, Joachim D. (WHSR)  
Gentile, Donald J. (WHSR)  
Grissom, Dianne L. (WHSR)  
Hargis, Robert C. (WHSR)  
Heyer, Scott C. (WHSR)  
Jarosinski, Frank J. (WHSR)  
Laskowski, Gregory J. (WHSR)  
Lystra, Clark R. (WHSR)  
Manning, Michael T. (WHSR)  
Mathews, William D. (WHSR)  
McGee, Jenny A. (WHSR)  
Mynatt, Lee (Brad) B. (WHSR)  
Payne, Raymond H. (WHSR/STP)  
Porterfield, Patrick C. (WHSR)  
Powell, Elliott (WHSR/EXSEC)  
Reyes, David (WHSR)  
Sandler, Deborah J. "Jill" (WHSR)  
Schubert, Robert E.  
Sherman, John B. (WHSR)  
Sigler, Ralph H. (WHSR)  
Sutliff, Deana R. (WHSR)  
Tarver, J. Sean (WHSR)  
vanderWalde, Kurt F. (WHSR)  
Williams, Robert S. (WHSR)  
Yarmchuk, Christina H. (WHSR)  
Bash, Brooks L. (EXSEC)  
Bradtke, Robert A. (EXSEC)  
Gray, Wendy E. (NSA)  
Haas, Dean J. (ADMIN)  
Joshi, M. Kay (EXSEC)  
Kale, Dora A. (NSA)

**COPY**



Millison, Cathy L. (EXSEC)  
 Moran, Kevin S. (NSA)  
 Moretz, Sheila K. (NSA)  
 NSA Email  
 Rudman, Mara E. (NSA)  
 Scott-Perez, Marilyn L. (NSA)  
 Siberell, Justin H. (NSA)  
 Storey, Sharon V. (NSA)

## CARBON\_COPY

Bruns, Judson L. (Jay) (INTECON)  
 Samans, Richard (INTECON)  
 DeRosa, Mary B. (LEGAL)  
 DeVine, Stephen (Legal)  
 Hunerwadel, Joan S. (LEGAL)  
 Scharfen, Jonathan R. (LEGAL)  
 Wiegmann, John B. "Brad" (LEGAL)  
 Williams, Mary C. (ADMIN)  
 Banbury, Anthony "Tony" N. (MULTI)  
 Mclean, Matthew K. (MULTI)  
 Naplan, Steven J. (MULTI)  
 Patten, Wendy L. (MULTI)  
 Peterson-Becker, Augustine "Gusti" (ADMIN)  
 Schwartz, Eric P. (MULTI)  
 Shea, Dorothy C. (MULTILAT)  
 Smith, Peter D. R. (MULTI)  
 Tierney, Mary "Theresa" T. (MULTI)  
 Wilcox, Richard M. (MULTI)

## TEXT\_BODY

Printed and placed in SRB readbook, along with paper provided by Wendy.

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

From: Rudman, Mara E. (NSA)

Sent: Friday, January 05, 2001 19:38 PM

To: @WHSR - WH Situation

Room; @NSA - Natl Security Advisor

Cc: Bruns, Judson L. (Jay)

(INTECON); Samans, Richard (INTECON); @LEGAL - Legal Advisor;  
 @MULTILAT

- Multilateral and Humanitarian Affairs

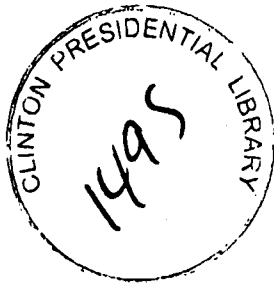
Subject: Note to SRB on  
 unilateral sanctions [UNCLASSIFIED]

Importance: High

sitroom

-- pls place this memo, along with copy of the sanctions reform paper that Wendy Gray provided, in Sandy's Saturday readbook. Thanks.

**COPY**



Sandy

The following is the staff note I promised on Stu's sanctions reform proposal. Initial draft by Dorothy Shea/Eric in multi, with input and concurrence by legal and intecon. Would be helpful if you have a chance to review it over the weekend; Al and Stu particularly are anxious for your response.

The Issue: Whether to Resuscitate  
a Paper on Unilateral Sanctions

Al Larson has been working on re-crafting as a Presidential Memorandum a paper on unilateral economic sanctions. He has been trying to moderate a document that Stu Eizenstat has been pushing with a fair amount of zeal. Stu originally envisioned it as an Executive Order (see attached document). The draft paper states that multilateral economic sanctions are to be "strongly preferred to unilateral economic sanctions," but that there can be a role for unilateral sanctions where multilateral sanctions or other policies are not feasible or where it is important for the U.S. to lead by example. It then sets out procedures for the Executive Branch to consider in deciding whether to impose unilateral economic sanctions, including requirements to undertake a cost/benefit evaluation, to consider various factors related to the design and scope of the sanctions, to consult with the Congress and the public before making any decisions, and to review annually the effectiveness of and need for the sanctions.

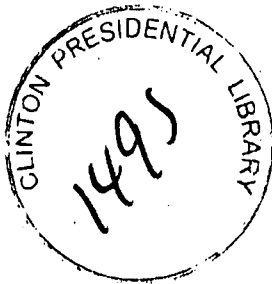
We have several concerns about the paper:

First, since the memorandum would be signed with less than three weeks remaining in this Administration, it would be viewed as directing the incoming Administration on its internal decisionmaking processes on this type of sanctions. This does not seem appropriate.

Second, some of us question the value of a memorandum in which the President is essentially committing the Executive Branch to procedures that constrain his authority in making sanctions decisions, unless he formally determines that the national interest requires him to waive these procedures. We believe this draft E.O. made sense as an "if necessary" tool to ward off very problematic sanctions reform legislation. Ultimately, Lugar's broad sanctions reform legislation was defeated within his own committee, and we did not need to put forward our alternative.

**COPY**

At this point, we think the most useful purpose this document could serve would be as a transition document, which



would inform the incoming Administration about how this Administration's approach to the issue of unilateral economic sanctions has evolved, and to provide a template of additional process options to consider. (NOTE: Intecon tends to support Al and Stu's perspective as articulated below.)

Stu, and to a much lesser extent, Al, see value in this Administration publicly "laying down the gauntlet" by issuing this sanctions reform paper as a Presidential directive of some sort. My sense is that they primarily view such action as a way to get "credit" with those in the business community who believe we have not been sufficiently rigorous on our unilateral sanctions decisionmaking process, and to further discipline an incoming Administration on these issues.

Our recommendation -- with a dissenting voice from Intecon -- is to advise that this memorandum, in revised form, be transmitted as a transition document by State-EB to the incoming team.

Whether the draft goes forward as a Presidential directive or a transition document, there are substantive issues that we need to address and revise. (We can take a much lighter hand on revisions if the document is an internal transition document.)

For example, as written, the document reflects deep skepticism about any benefits that might result from the application of unilateral sanctions -- we'd probably want to balance that some. It also can be read to mandate what would be inappropriate pre-decisional consultations with Congress. Finally, it has references to judicial review and retroactivity that are very "legislative" in character and seemingly unnecessary for an internal document or a presidential directive.

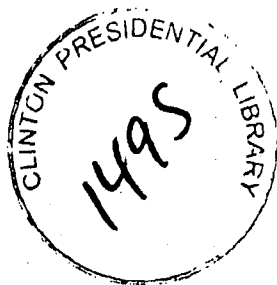
#### Recommendation:

That we inform Al Larson and Stu Eizenstat that it is your view that the best use for this document is as a transition document, and that we work with them to make appropriate changes.

\_\_\_\_ Agree that this should not be issued as a Presidential Memorandum. Work with NEC and State to ensure that appropriate revisions are made prior to providing it as a transition document.

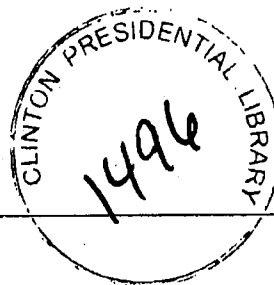
**COPY**

\_\_\_\_ Seek appropriate revisions, but accommodate Al and Stu's interest in issuing this as a Presidential Memorandum.



**COPY**

## Exchange Mail



DATE-TIME 1/7/01 1:57:02 PM  
FROM McGee, Jenny A. (WHSR)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT FW: Note to SRB on unilateral sanctions [UNCLASSIFIED]  
TO Porterfield, Patrick C. (WHSR)

CARBON\_COPY

TEXT\_BODY

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

From: Rudman, Mara E. (NSA)

Sent: Friday,

January 05, 2001 19:38 PM

To: @WHSR - WH Situation Room; @NSA -  
Natl Security AdvisorCc: Bruns, Judson L. (Jay) (INTECON); Samans,  
Richard (INTECON); @LEGAL - Legal Advisor; @MULTILAT - Multilateral  
and Humanitarian AffairsSubject: Note to SRB on unilateral sanctions  
[UNCLASSIFIED]

Importance: High

sitroom -- pls place this memo,  
along with copy of the sanctions reform paper that Wendy Gray provided,  
in Sandy's Saturday readbook. Thanks.

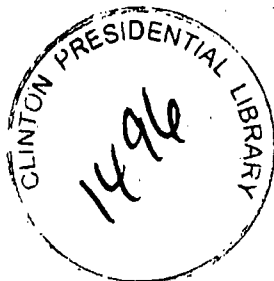
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Initial draft by Dorothy Shea/Eric in multi, with input and concurrence  
by legal and intecon. Would be helpful if you have a chance to review  
it over the weekend; Al and Stu particularly are anxious for your  
response.

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Memorandum a paper on unilateral economic sanctions. He has been  
trying to moderate a document that Stu Eizenstat has been pushing  
with a fair amount of zeal. Stu originally envisioned it as an Executive

**COPY**



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have several concerns about the paper:

First, since the memorandum would be signed with less than three weeks remaining in this Administration, it would be viewed as directing the incoming Administration on its internal decisionmaking processes on this type of sanctions. This does not seem appropriate.

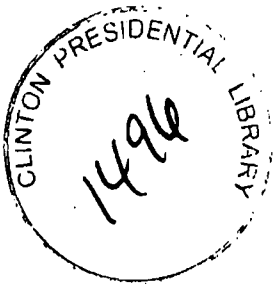
Second, some of us question the value of a memorandum in which the President is essentially committing the Executive Branch to procedures that constrain his authority in making sanctions decisions, unless he formally determines that the national interest requires him to waive these procedures. We believe this draft E.O. made sense as an "if necessary" tool to ward off very problematic sanctions reform legislation. Ultimately, Lugar's broad sanctions reform legislation was defeated within his own committee, and we did not need to put forward our alternative.

At this point, we think the most useful purpose this document could serve would be as a transition document, which would inform the incoming Administration about how this Administration's approach to the issue of unilateral economic sanctions has evolved, and to provide a template of additional process options to consider. (NOTE: Intecon tends to support Al and Stu's perspective as articulated below.)

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**COPY**

Our recommendation -- with a dissenting voice from



Intecon -- is to advise that this memorandum, in revised form, be transmitted as a transition document by State-EB to the incoming team.

Whether the draft goes forward as a Presidential directive or a transition document, there are substantive issues that we need to address and revise. (We can take a much lighter hand on revisions if the document is an internal transition document.)

For example, as written, the document reflects deep skepticism about any benefits that might result from the application of unilateral sanctions -- we'd probably want to balance that some. It also can be read to mandate what would be inappropriate pre-decisional consultations with Congress. Finally, it has references to judicial review and retroactivity that are very "legislative" in character and seemingly unnecessary for an internal document or a presidential directive.

Recommendation:

That we inform Al Larson and Stu Eizenstat that it is your view that the best use for this document is as a transition document, and that we work with them to make appropriate changes.

\_\_\_\_ Agree that this should not be issued as a Presidential Memorandum. Work with NEC and State to ensure that appropriate revisions are made prior to providing it as a transition document.

\_\_\_\_ Seek appropriate revisions, but accommodate Al and Stu's interest in issuing this as a Presidential Memorandum.

**COPY**

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                        | DATE       | RESTRICTION |
|--------------------------|------------------------------------------------------------------------------------------------------|------------|-------------|
| 001. email               | Kevin Moran to Matthew Mclean, re: PKG 7641 per your request (5 pages)                               | 12/16/2000 | P1/b(1)     |
| 002. email               | From Matthew Mclean, re: [briefer] (3 pages)                                                         | 12/18/2000 | P1/b(1)     |
| 003. email               | Dean Haas to Russell Baum, re: Tough One (2 pages)                                                   | 12/18/2000 | P6/b(6)     |
| 004. email               | Robert Bradtke to Eric Pierce, re: [personnel] (2 pages)                                             | 12/18/2000 | P6/b(6)     |
| 005. email               | Sharon Storey to Justin Siberell, re: Bush memo (3 pages)                                            | 12/19/2000 | P1/b(1)     |
| 006. email               | Matthew Mclean to Anthony Banbury, et al., re: [draft paper] (6 pages)                               | 12/19/2000 | P1/b(1)     |
| 007. email               | Gayle Smith to Colby Cooper, re: [situation] (1 page)                                                | 12/19/2000 | P6/b(6)     |
| 008. email               | Dean Haas to Colby Cooper and Marsha Dimel, re: [transition] (2 pages)                               | 12/20/2000 | P6/b(6)     |
| 009. email               | Mark Medish to Andrew Weiss, re: [POTUS call] (2 pages)                                              | 12/20/2000 | P1/b(1)     |
| 010. email               | Steven Andreasen to Philip Crowley and Johannes Binnendijk, re: UPDATE ON SHAL CTBT REPORT (7 pages) | 12/20/2000 | P5 1497     |
| 011. email               | Dean Haas to Robert Bradtke, re: Hadley [partial] (1 page)                                           | 12/20/2000 | P6/b(6)     |
| 012. email               | Robert Williams to Nicole Grandimo, re: [coffee] (4 pages)                                           | 12/20/2000 | P6/b(6)     |

### COLLECTION:

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

### FOLDER TITLE:

[12/16/2000 - 12/21/2000]

Kara Ellis  
2008-0015-F  
kc1633

### 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).

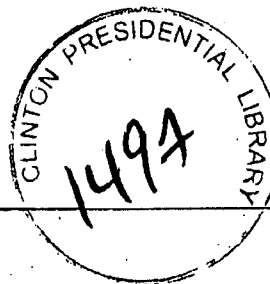
RR. Document will be reviewed upon request.

#### 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]

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## Exchange Mail



DATE-TIME 12/20/2000 12:54:18 PM  
FROM Andreassen, Steven P. (DEFENSE)  
CLASSIFICATION UNCLASSIFIED  
SUBJECT RE: UPDATE ON SHAL CTBT REPORT [UNCLASSIFIED]  
TO Crowley, Philip J. (PRESS)  
Binnendijk, Johannes A. (Hans) (DEFENSE)  
CARBON\_COPY Lackey, Miles M. (LEGIS)  
Anderson, Brooke D. (NSCCOMM)

## TEXT\_BODY

Well, I think we should let Shali answer the question of whether the new team has been briefed (and I expect he would say he has consulted with a broad array of national security experts in preparation of his report and more recently with members of the transition team, but not get into details).

## -----Original Message-----

From: Crowley,  
Philip J. (PRESS)  
Sent: Wednesday, December 20, 2000 12:51 PM  
To: Andreassen,  
Steven P. (DEFENSE); Binnendijk, Johannes A. (Hans) (DEFENSE)  
Cc: Lackey,  
Miles M. (LEGIS); Anderson, Brooke D. (NSCCOMM)  
Subject: RE: UPDATE  
ON SHAL CTBT REPORT [UNCLASSIFIED]

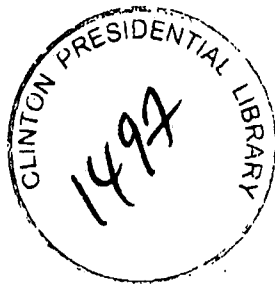
Right, but we will be asked  
if the new team has been briefed and we should say yes. He has no  
credibility if the answer is anything different.

PJ

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

From: Andreassen, Steven P. (DEFENSE)  
Sent: Wednesday,  
December 20, 2000 12:49 PM  
To: Crowley, Philip J. (PRESS); Binnendijk,  
Johannes A. (Hans) (DEFENSE)  
Cc: Lackey, Miles M. (LEGIS); Anderson,  
Brooke D. (NSCCOMM)

COPY



Subject: RE: UPDATE ON SHAL CTBT REPORT [UNCLASSIFIED]  
Importance: High

PJ

-- I think we are talking past each other. Again, Shali is detailing his rationale to the new team -- quietly, behind the scenes. My sense is they would not welcome a formal, frontal presentation from him. Shali is, however, the special advisor to the President, and should brief POTUS on his report. Moreover, since his audience includes "the Hill" (in particular, the Senate) he should make a trip up there to meet with a select group of Members.

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

From: Crowley,  
Philip J. (PRESS)  
Sent: Wednesday, December 20, 2000 12:35 PM  
To: Andreasen,  
Steven P. (DEFENSE); Binnendijk, Johannes A. (Hans) (DEFENSE)  
Cc: Lackey,  
Miles M. (LEGIS); Anderson, Brooke D. (NSCCOMM)  
Subject: RE: UPDATE  
ON SHAL CTBT REPORT [UNCLASSIFIED]

Since this isn't going anywhere until after January 20, unless the Dems are going to ram this through during its 17 day rule, then it would be more credible for Shali to detail his rationale for the new team. Yes?

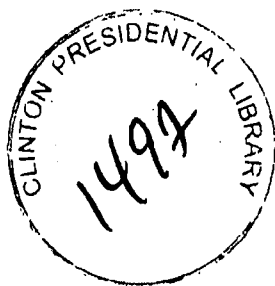
PJ

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

From: Andreasen, Steven P. (DEFENSE)  
Sent: Wednesday,  
December 20, 2000 12:31 PM  
To: Binnendijk, Johannes A. (Hans) (DEFENSE);  
Crowley, Philip J. (PRESS)  
Cc: Lackey, Miles M. (LEGIS); Anderson,  
Brooke D. (NSCCOMM)  
Subject: RE: UPDATE ON SHAL CTBT REPORT [UNCLASSIFIED]  
Importance: High

To

be clear: previewing the story with Gordon is an idea emanating from Shali and Goodby. The rationale as I understand it is to get the most favorable possible press -- not press shaped by reactions after the report is briefed to the Hill (Brooke: please confirm). Again, I am very confident that Shali and Powell have spoken: I don't know that it would necessarily be a welcome event to have a "formal" Shali-Powell encounter that would put Powell directly on



the spot. That said, we can certainly inquire.

-----Original

Message-----

From: Binnendijk, Johannes A. (Hans) (DEFENSE)

Sent: Wednesday,

December 20, 2000 12:14 PM

To: Crowley, Philip J. (PRESS)

Cc: Andreasen,

Steven P. (DEFENSE); Lackey, Miles M. (LEGIS); Anderson, Brooke D. (NSCCOMM)

Subject: RE: UPDATE ON SHAL CTBT REPORT [UNCLASSIFIED]

I

would be inclined not to place the story in advance unless Shali agrees --- and if I were he I would not agree. Why brief the President and Hill on what they have read in the morning paper? The question of briefing Powell will obviously also come up. We ought to check with Shali too to see how he prefers playing that. This is in the first instance a report for the President, but it would make sense to me to suggest that Shali talk to Powell formally (I am sure Shali has already spoken to Powell several times about all this informally).  
Hans

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

From: Crowley, Philip J. (PRESS)

Sent: Wednesday, December 20, 2000 11:59 AM

To: Andreasen, Steven

P. (DEFENSE); Anderson, Brooke D. (NSCCOMM); Binnendijk, Johannes A. (Hans) (DEFENSE); Lackey, Miles M. (LEGIS)

Cc: @DEFENSE - Defense

Policy

Subject: RE: UPDATE ON SHAL CTBT REPORT [UNCLASSIFIED]

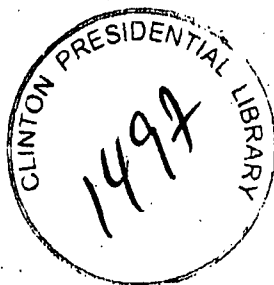
This

is probably something that Miles would particularly get to think through. Does leaking the story in this instance compromise Shali's standing on the Hill as "impartial." If he plays straight, does that help us. If nothing lost, then Michael Gordon is a perfect choice. I think the WH venue works much better than the Hill venue and the Press Club. I don't think that the folks who defeated this before are going to give him any help at all. Also, is Shali going to brief the incoming team? And would we be looking for support from Powell, who I think has supported this? How do we do that, since the follow on coverage will be played in the political mix.

PJ

**COPY**

-----Original



Message-----

From: Andreasen, Steven P. (DEFENSE)

Sent: Wednesday,

December 20, 2000 11:00 AM

To: Andreasen, Steven P. (DEFENSE);

Anderson, Brooke D. (NSCCOMM); Binnendijk, Johannes A. (Hans) (DEFENSE);

Crowley, Philip J. (PRESS); Lackey, Miles M. (LEGIS)

Cc: @DEFENSE

- Defense Policy

Subject: UPDATE ON SHAL CTBT REPORT [UNCLASSIFIED]

Importance: High

Hans/Brooke/Miles/P.J.

-- Please comment this afternoon, as I will need to send over no later than COB today (and earlier if possible). Thanks. Steve.

PLEASE PASS TO SANDY ASAP. THANK YOU.

Shali expects to go

final on his 30-page CTBT report by the close of business Thursday.

The report is in excellent shape, articulating why the CTBT is in our national interest, and providing a comprehensive set of recommendations for addressing concerns of Treaty critics. In this context, we wanted to highlight for you a few points:

\* Role of nuclear weapons in

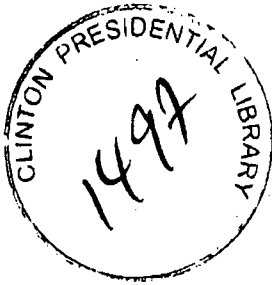
U.S. military posture. Shali states it would not be in our security interests to assign a high profile role to nuclear weapons in the U.S. military posture, and that any activities that "erode the firebreak" between nuclear and conventional weapons or that encourage the use of nuclear weapons undermine the advantage that we derive from overwhelming conventional superiority.

\* This is a critical point to refute

the argument being made by some within DOD, the nuclear laboratories, and STRATCOM that the U.S. will need to modify existing warheads to develop a new "low-yield, precisison" nuclear strike option (which could, in the future, lead to a rationale for nuclear testing) so that we are not "self-deterred" in a limited nuclear strike. We expect this debate to unfold during next year's Congressionally-mandated nuclear posture review.

\* CTBT's value for national security.

Shali states the Treaty will place direct constraints on other states' ability to acquire and improve nuclear weapons, and specifically cites examples in the case of India-Pakistan, China and Russia. He also cites the Treaty's importance for sustaining support for the NPT and other elements of a comprehensive non-proliferation strategy.



\* Shali recommends the next Administration: implement an integrated nonproliferation policy; appoint a Deputy National Security Advisor for Non-Proliferation; review "at the highest level" issues related to the Test Ban Treaty (FYI -- this is less direct than an earlier draft, which said the next Administration should "actively pursue the Senate's advice and consent to Test Ban Treaty ratification as a high priority for national security"); and continue its testing moratorium.

\* Monitoring and Verification. Shali notes the Treaty does not add new monitoring requirements but instead adds new sources of information and creates greater political clout for uncovering and addressing suspected violations. He notes the difficulties of advancing a nuclear weapon program through evasive testing, and states that anyone who is concerned about what might occur under the CTBT should also worry about what might happen without it (asserting that the military significance of activities that would be ruled out unless a country was willing to openly violate the Treaty outweighs anything that could be gained from clandestine testing).

\* Shali recommends that higher funding and intelligence collection priorities should be assigned to monitor nuclear test activities and other aspects of nuclear weapons programs.

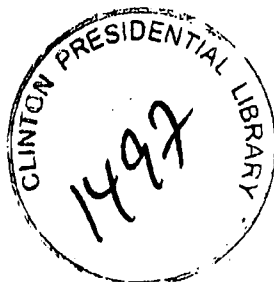
\* Stockpile Stewardship.

Shali states the U.S. can safely reap the benefits of CTBT ratification as long as it takes appropriate steps to manage risks associated with its stockpile stewardship program and retains the ability to test again if an unanticipated development makes that necessary for national security. He notes our annual certification process provides a "clear-eyed, candid, and careful evaluation of each nuclear weapon type in the stockpile; nothing is sugar-coated." He also makes clear that the cost to non-proliferation objectives of conducting an occasional nuclear explosion would be high and the toll on other aspects of stockpile stewardship could be substantial. He concludes by stating that the challenges facing the Stewardship Program can be managed, and the safety and reliability of our deterrent maintained indefinitely, so long as future Administrations and Congresses provide high standards of accountability and sufficient resources to keep uncertainty at an acceptable level.

\* Shali has made a number of recommendations designed to strengthen the stewardship program, as well as its associated budget and oversight process.

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\* Minimizing uncertainty with a Treaty of Indefinite Duration. Shali concludes that, as a practical



matter, it is highly unlikely that the U.S. could gain international support for changing the Treaty's duration or permitting low-yield testing, stating "there would be clear risks in a U.S. effort to modify the Treaty and very little chance of success." He also states the Treaty does not foreclose any meaningful options that we currently have for responding should someone else conduct a nuclear explosion. Finally, he argues against an indefinite voluntary nuclear testing moratorium as an alternative to CTBT, stating "no one should underestimate the damage that could occur if the United States renounces the Test Ban Treaty, or even waits too long to take the next steps towards ratification."

\* Shali recommends instead that the U.S. include careful internal understandings and conditions, possibly attached to a senate resolution of ratification, to reduce concerns about the Treaty's indefinite duration. In addition to the Administration's six proposed CTBT "safeguards," Shali proposes involving the Senate in a full and formal review of the Treaty's net value for national security at a specified time after ratification, and at regular intervals thereafter; if grave doubts exist, the President, in consultation with Congress, would be prepared to withdraw from the Treaty.

Next steps. We are (still) working to get a "green light" for a Shali meeting with the President on January 4/5. Brooke has also met with Jim Goodby (who works for Shali) to coordinate plans for a public rollout.

Shali has produced a serious, thoughtful product responding to the President's direction to get CTBT back on track: we should ensure the report is visible on the public and international radar screen to underscore our continued commitment to the Treaty and non-proliferation.

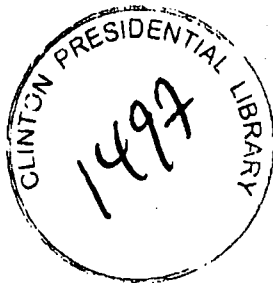
In this context, we would propose the following sequence of events:

\* Shali meeting with the President (stills or White House photographer with photo released).

\* Shali briefings on the Hill (members to be determined).

\* Shali press briefing on the Hill with members of Congress (if members are not available or he can not get the right bipartisan group to stand with him, then Shali could do something in the White House briefing room or at the Press Club/other neutral venue). Brooke thinks the Hill option is great if it works; if not, she would recommend the White House briefing room with you.

**COPY**



\* Presidential statement (written).

\* Op-Eds (including one by Shali and one by former Secretaries of Defense Laird, Brown and possibly Perry).

\* Shali meeting with editorial writers/reporters with the NYT, WP, LAT, and USA Today.

In addition to the above, Shali and Goodby are thinking of starting to background a NYT or WP reporter to leave open the possibility of an advance story on the day of the meeting with the President. Their inclination is to go to Michael Gordon of the NYT. Brooke is not sure if he would be interested, but wanted to get your reaction to the idea of an advance story to be printed day of the roll-out.

Brooke's view is that the press on the report will turn out better with an advance story (more of an ability to shape it and gives it a higher profile), but realizes there may be other considerations. The disadvantage, of course, is that it's in the paper before the President and Hill are briefed.

I am OK  
with an advance story \_\_\_\_ Don't do it \_\_\_\_

Do you like  
the idea of an actual announcement happening on the Hill if they  
can get the right mix of members?

Yes \_\_\_\_ No \_\_\_\_

If  
Hill announcement does not work, Brooke recommends the White House briefing room over a neutral venue. A neutral venue, like the Press Club or CSIS, would convey more independence but it would have less visibility. Second choice should be:

WH briefing room \_\_\_\_  
Neutral venue \_\_\_\_

End.

**COPY**

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                 | DATE       | RESTRICTION |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------|------------|-------------|
| 001. email               | Dean Haas to Mary Ellen Countryman, re: any news? (2 pages)                                                                   | 01/10/2001 | P6/b(6)     |
| 002. email               | From John Duncan, re: Additional Suggested Documents for Intecon to Retain at the Start of the Bush Administration (38 pages) | 01/10/2001 | P1/b(1)     |
| 003. email               | Nicholas Kass to Mary Quinn, re: My Transition List (1 page)                                                                  | 01/11/2001 | P1/b(1)     |
| 004. email               | Donald Mitchell to Robert Bradtke, re: Post January 20 (3 pages)                                                              | 01/11/2001 | P6/b(6)     |
| 005. email               | Eugene Fishel to Mark Medish, re: Inaugural Guests (1 page)                                                                   | 01/11/2001 | P1/b(1)     |
| 006. email               | Victoria Darnes to John Ficklin, re: Pls pass to Condi/Steve (1 page)                                                         | 01/11/2001 | P1/b(1)     |
| 007. email               | Frederick Rosa to Mary DeRosa, et al., re: [Memo re: Columbia Waiver] (3 pages)                                               | 01/12/2001 | P5 1498     |
| 008. email               | Johannes Binnendijk to Mauren Tucker, re: [call] (3 pages)                                                                    | 01/12/2001 | P1/b(1)     |
| 009. email               | Re: Info on NSC [National Security Act] (3 pages)                                                                             | 01/12/2001 | P3/b(3)     |
| 010. email               | Re: [Transition Team Meeting] [National Security Act] (3 pages)                                                               | 01/12/2001 | P3/b(3)     |
| 011. email               | Re: [Visit by Presidential Transition Team] [National Security Act] (3 pages)                                                 | 01/12/2001 | P3/b(3)     |
| 012. email               | Brenda Hilliard to M. Kay Joshi, re: Wondering!! (2 pages)                                                                    | 01/12/2001 | P6/b(6)     |

### COLLECTION:

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

### FOLDER TITLE:

[01/10/2001 - 01/12/2001]

Kara Ellis  
2008-0015-F  
kel638

### RESTRICTION CODES

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

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

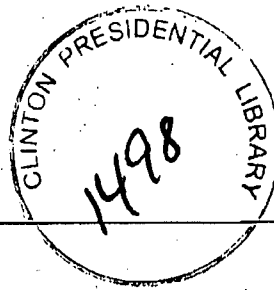
P1 National Security Classified Information [(a)(1) of the PRA]  
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]  
P3 Release would violate a Federal statute [(a)(3) of the PRA]  
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4)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

b(1) National security classified information [(b)(1) of the FOIA]  
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]  
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]  
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]  
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]  
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]  
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]  
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

COPY

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.

## Exchange Mail



**DATE-TIME** 1/12/01 9:13:50 AM

**FROM** Rosa, Frederick M. (TNT)

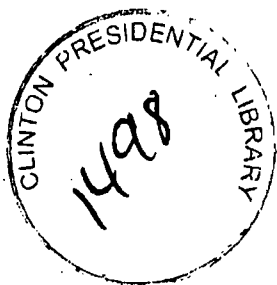
**CLASSIFICATION** UNCLASSIFIED

**SUBJECT** FW: EXECSEC RETURN MEMO TO STATE RE COLOMBIA WAIVER  
[UNCLASSIFIED]

**TO** DeRosa, Mary B. (LEGAL)  
DeVine, Stephen (Legal)  
Hunerwadel, Joan S. (LEGAL)  
Scharfen, Jonathan R. (LEGAL)  
Wiegmann, John B. "Brad" (LEGAL)  
Williams, Mary C. (ADMIN)

**CARBON\_COPY** Hammer, Michael A. (INTERAM)  
Hanley, Timothy P. (INTERAM/INTERN)  
Hollis, Caryn C. (INTERAM)  
Mattingly, Amanda C. (INTERAM/Intern)  
McIlhenny, William W. (INTERAM)  
Merletti, Roger D. (INTERAM)  
Snowden, Deniz (INTERAM)  
Valenzuela, Arturo A. (INTERAM)  
Wallace, Joanna B. (INTERAM)  
Williams, Mary C. (ADMIN)  
Burrell, Christina L. (LEGIS)  
Lackey, Miles M. (LEGIS)  
Shapiro, Daniel B. (LEGIS)  
Tavlarides, Mark J. (LEGIS)  
Walldorff, Rebecca L. (LEGIS)  
Banbury, Anthony "Tony" N. (MULTI)  
McLean, Matthew K. (MULTI)  
Naplan, Steven J. (MULTI)  
Patten, Wendy L. (MULTI)  
Peterson-Becker, Augustine "Gusti" (ADMIN)  
Schwartz, Eric P. (MULTI)  
Shea, Dorothy C. (MULTILAT)  
Smith, Peter D. R. (MULTI)  
Tierney, Mary "Theresa" T. (MULTI)  
Wilcox, Richard M. (MULTI)  
Gray, Wendy E. (NSA)  
Rudman, Mara E. (NSA)  
Bash, Brooks L. (EXSEC)  
Bradtke, Robert A. (EXSEC)  
Bresnahan, Gary E. (WHISR/STP)  
Darnes, Victoria J. (RECORDS)

**COPY**



Dimel, Marsha L. (ADMIN)  
 Ficklin, John W. (RECORDS)  
 Figueredo, Orlando (STP)  
 Haas, Dean J. (ADMIN)  
 Leary, William H. (RECORDS)  
 Millison, Cathy L. (EXSEC)  
 Powell, Elliott (WHSR/EXSEC)  
 Scharfen, Jonathan R. (LEGAL)  
 Sigler, Ralph H. (WHSR)  
 Briggs, Christiana (TNT/INTERN)  
 Chen, Darren T. (INTERN/TNT)  
 Clarke, Richard A. (TNT)  
 Cressey, Roger W. (TNT)  
 Fenzel, Michael R. (TNT)  
 Gordon-Hagerty, Lisa E. (TNT)  
 Grandimo, Nicole M. (TNT/INTERN)  
 Green, Charles A. (TNT)  
 Hunker, Jeffrey A. (TNT)  
 Kurtz, Paul B. (TNT)  
 Lieberman, Donna P. (TNT)  
 McCauley, Peter A. (TNT)  
 Mulligan, George D. (TNT)  
 Owens, Bernard M. Jr. (TNT/INTERN)  
 Pierce, Eric A. (TNT)  
 Plunkett, Debora A. (TNT)  
 Robinson, Jack A. (TNT)  
 Rosa, Frederick M. (TNT)  
 Roundtree, Beverly (TNT)  
 Telleen, Erik K. (TNT/INTERN)  
 Wolosky, Lee S. (TNT)

**TEXT\_BODY**

Jock: I take OLC's point on the additional language, and I'm fine with current versions of document... My vote would be for option two below or a hybrid thereof... Regards, Fred

-----Original

Message-----

From: Hammer, Michael A. (INTERAM)

Sent: Friday,

January 12, 2001 8:16 AM

To: Scharfen, Jonathan R. (LEGAL); @RUDMAN;

@LEGISLAT - Legislative Affairs; @MULTILAT - Multilateral and Humanitarian

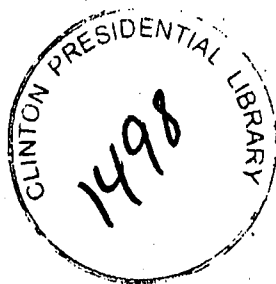
Affairs; @TRANSITION; Rosa, Frederick M. (TNT); @EXECSEC - Executive Secretary; @INTERAM - Inter-American

Cc: @LEGAL - Legal Advisor

Subject: RE:

EXECSEC RETURN MEMO TO STATE RE COLOMBIA WAIVER  
 [UNCLASSIFIED]

**COPY**



I'm fine with current form. Defer to the legislative gurus (Miles) on whether we pursue 1, 2 or 3 (that I added) below regarding form of the letter/report.

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

From: Scharfen,  
Jonathan R. (LEGAL)  
Sent: Friday, January 12, 2001 7:08 AM  
To: @RUDMAN;  
@LEGISLAT - Legislative Affairs; @MULTILAT - Multilateral and Humanitarian Affairs; @TRANSITION; Rosa, Frederick M. (TNT); @EXECSEC - Executive Secretary; @INTERAM - Inter-American; Hammer, Michael A. (INTERAM)  
Cc: @LEGAL  
- Legal Advisor  
Subject: EXECSEC RETURN MEMO TO STATE RE COLOMBIA WAIVER [UNCLASSIFIED]

Mike, Miles, Fred, Wendy,  
The attached memos are the final memos which in large part incorporates all, but not all, of your edits. I intend to forward to Bob this morning unless you object.  
Miles -- OLC is comfortable w/ our referencing DOJ but asks that we use "determined" in place of agreed. That seems reasonable to me and we still make our point by using the DOJ formulation. I went w/ determined.  
Fred -- OLC recommends against the suggested sentence mentioning "specific certification requirements contained in the Act" because it works at cross purposes of the legal point we are making. I agree w/ OLC's legal point and as a practical matter the letter will stand on its own in any event.  
Mike & Miles, have we decided how we want to draft the President's letter? Options appear to be:

1. A summary by President that makes reference to a report submitted by State
2. A summary by President that attaches/forwards the State report
3. Other??? A Larkin transmittal letter containing State's report with no additional Presidential letter/report.

Thank you. Jock

<< File: 0002kenney1rev (3).doc  
>> << File: 0002rab.doc

**COPY**

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                 | DATE        | RESTRICTION |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------|-------------|-------------|
| 001. memo                | Randolph Moss to Beth Nolan, re: Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order (2 pages) | 01/29/2000  | P5 1473     |
| 002a. memo               | Bill Leary and Mary Derosa to Samuel Berger, re: Disposition of Clinton Administration Records (7 pages)                      | 03/10/2000  | P5 1474     |
| 002b. memo               | Samuel Berger to John Podesta and Beth Nolan, re: Disposition of NSC Records (7 pages)                                        | ca. 03/2000 | P5 1475     |

### COLLECTION:

Clinton Presidential Records  
National Security Council  
Legal Advisor (Derosa, Mary)  
OA/Box Number: 4057

### FOLDER TITLE:

Transition Issues [1]

Kara Ellis  
2008-0015-F  
kel581

### 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]

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may

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

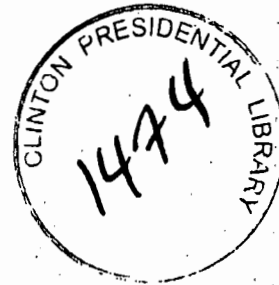
March 10, 2000

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: BILL LEARY <sup>WLB</sup> / MARY DEROSA <sup>MD</sup>

SUBJECT: Disposition of Clinton Administration Records



On August 2, 1996, the D.C. Circuit ruled in the Armstrong case that the NSC is a component of the Executive Office of the President that solely advises and assists the President and thus creates only "presidential" records within the scope of the Presidential Records Act (PRA). On May 27, 1997, the Supreme Court denied plaintiffs' petition for certiorari in Armstrong. Given this final determination of NSC's status as a Presidential entity, a number of decisions regarding NSC's recordkeeping policies and procedures need to be made as we approach the end of the Clinton administration.

When the NSC took the litigating position that it creates only presidential records, the President wrote to Tony Lake and Will Itoh, on March 24, 1994, directing that the NSC: (1) continue to provide public access to appropriate NSC records; and (2) develop a plan for leaving "appropriate NSC records to the next Administration in order to provide for smooth transition and continuity of essential foreign policy and national security matters" (Tab A). On May 8, 1998, the NSC published in the Federal Register procedures that allow for continued public access to appropriate NSC records (Tab D).

The purpose of this memorandum is to seek your concurrence in several actions that are needed to handle the disposition of NSC records of this administration, as well as those left behind by former Presidents, in a way that enhances a smooth transition on national security matters. The recommendations are based on extensive consultations with legal counsel at the Justice Department and the National Archives and Records Administration (NARA) and have been cleared by them. If you concur with the recommendations below, we believe you also should seek the concurrence of White House Counsel and the Chief of Staff by signing the memo at Tab I.

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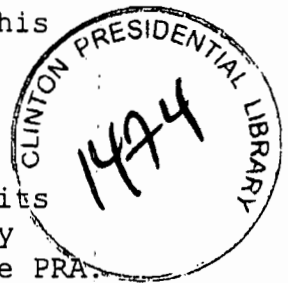
# I. What Should We Do With the NSC's "Institutional" Files?

The NSC currently holds nearly 600 cubic feet of "institutional" files, most dating back to the Nixon administration (12 cubic feet predate 1968), which were left behind by former Administrations to promote continuity. (As used in this memorandum, the term institutional files applies only to records created prior to the Clinton administration.) Most are originals, and they relate primarily to Presidential directives and interagency meetings. Prior to litigating the issue of NSC's status, beginning in March 1994, these institutional files were treated as federal records subject to the Freedom of Information Act (FOIA). All parties (NSC, DOJ, and the National Archives) agree that these records should be transferred to NARA for redistribution to the appropriate Presidential Libraries.

The issue here involves a judgment about the legal character of these pre-Clinton institutional records, which in turn affects the timing of transfer and the access rules that apply to them after transfer. We recommend that the NSC institutional records be designated as presidential records under the PRA, which should be transferred to NARA at the end of the Administration (or later in certain cases) for distribution to the appropriate Library. It is clear that former Administrations left behind these records with the assumption that they would be under the custody and control of their successors. The documents were thus "received" by each new administration within the meaning of the presidential records definition of the PRA, which applies to all Presidents beginning with President Reagan and covers records that are "created or received" by a President or his staff.<sup>1</sup>

It should not be necessary to decide the rather esoteric question of whether the NSC institutional files that were "received" by the Reagan administration and passed on to its successors should be viewed as presidential records of any particular one of the three administrations subject to the PRA. The processing approach we recommend below would produce the same practical result, regardless of the answer to that

<sup>1</sup> We do not recommend the alternative of treating the records as presidential records of the originating administration. Treating them in that fashion would be in tension with the "received" language of the PRA, and would exempt the pre-Reagan materials from the reach of FOIA. Arguably, this would diminish the historic level of access to these records, thus creating litigation risk. Treating the records as federal records is not an option because that would be contrary to the D.C. Circuit's decision in Armstrong. It would also make the NSC subject to FOIA litigation until the time of transfer. For this reason, the NSC has treated these records as presidential records subject to our discretionary release policy since 1994.



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question. Therefore, it should suffice to decide only that the pre-Clinton files are records subject to the PRA.

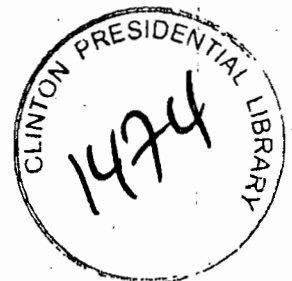
As presidential records under the PRA, all of the institutional files normally would become subject to the FOIA as early as five years after transfer to NARA. (The PRA allows NARA up to five years of processing after transfer during which time the records may be kept completely closed.) The PRA also allows the President to impose certain access restrictions for up to 12 years after transfer, as Presidents Reagan and Bush have done; in addition, the Archivist is required to notify and consult with the incumbent and former President (or his representative) prior to any disclosure of records from the former President's administration.

Our first recommendation is that the President should waive the requirements for notice and consultation and all PRA restrictions on access to the institutional files, except that the President should retain all available access restrictions for records created during the Bush administration until January 20, 2005. (This exception will ensure that the NSC records returned to the Bush Library are treated consistent with the restrictions established by President Bush, which remain in effect until 2005.)

The draft NSC letter to the Archivist at Tab B incorporates our second recommendation. The letter would record an agreement with NARA that it will waive the optional five-year processing period, thus making these records FOIA-accessible at the time of transfer.

These waivers by the President and NARA would help to ensure that these records will remain as accessible to the public as they have been in the past. The waivers would render moot the question whether the pre-Reagan documents passed on to the Clinton administration are presidential records of the Reagan or Clinton administrations: under either determination, the documents would become available at the same time. In other words, we would avoid a situation in which applying Clinton administration access restrictions and the NARA processing period would impose longer access restrictions on the records passed on by the Reagan administration than would be the case under existing PRA restrictions imposed by President Reagan.

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**RECOMMENDATION:** Treat the NSC's pre-Clinton institutional records as presidential records and document their transfer to NARA with letters similar to those at Tab B.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_



**II. When Should the NSC Transfer the Institutional Files to NARA?** With one exception discussed below, we recommend transferring the institutional files to NARA at end of the Clinton administration. We have proposed to treat these files as presidential records, and the PRA provides that "upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President."

Roughly half of the institutional files are now old enough to warrant a systematic declassification review. Since such a review must be conducted by the NSC staff, it makes sense to conduct the review before transferring the records to several libraries scattered around the country. For these records, we propose transferring legal custody to NARA at the end of the Administration, while retaining physical custody for up to five years for the purpose of performing a systematic declassification review. This would ensure maximum public access to the records as soon as they are transferred to the appropriate Library.

**RECOMMENDATION:** Transfer NSC's pre-Clinton institutional files to NARA's legal custody at the end of the Administration and transfer physical custody of certain older records as designated by NARA after conducting a systematic declassification review.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

**III. What NSC Files, If Any, Should Be Left Behind at the End of the Clinton Administration?** Despite the NSC's status as an exclusively presidential entity, it is appropriate for this and future Presidents to continue to leave behind certain NSC records, or copies of records, for the traditional purpose of contributing to policy continuity and administrative efficiency. At a minimum, we would recommend leaving behind copies of essential policy directives and certain administrative files. Leaving behind copies of policy directives such as PDDs, PRDs,

**COPY**



PDs, and certain Presidential Findings, which are routinely distributed to federal agencies where they become subject to FOIA, would not diminish a departing President's control over these records.

Records that should be considered for retention at the NSC, in original form or as copies, can be divided into three categories. We will provide a list of specific documents proposed for retention nearer the end of the Administration. At this point we are seeking your approval of the general approach discussed below.

a. **Copies of Pre-Clinton Program Records.** We would propose to retain a reference set, which already exists, of all Presidential Directives prior to the Clinton administration. This reference set satisfies the Presidential Records Act definition of a non-record, and therefore presents no issue of infringing upon potential claims of a former President. At this point, we have not identified any other significant category of pre-Clinton institutional records that we would propose for retention.

b. **Copies of Clinton Program Records.** For records created or updated during the Clinton administration, we would recommend that the President authorize retention of certain categories of records, along the lines of the precedent established by President Reagan, the first President subject to the PRA (see Tab C). In general, this authorization would apply to copies of three classes of Presidential records: (1) useful precedents and information for recurring matters, such as automated indexes to NSC records dating back to the Truman administration or procedures for handling recurring Reports to Congress; (2) records that continue to be applicable to ongoing government activities, such as PRDs and PDDs and Summaries of Conclusions for interagency meetings; and (3) essential records related to matters of ongoing concern, such as current bilateral issues and other matters of high currency at the time of transition. (This authorization to make selected copies also should apply to pre-Clinton institutional records, but it would apply only to a limited number of administrative records.)

Even though these continuity documents would be retained only in the form of copies, they would become records of the succeeding Administration and, therefore, subject to its access determinations. Copies of many documents retained, such as PDDs, PRDs and Summaries of Conclusions, also exist in federal agencies where they are subject to release under the FOIA. The

**COPY**



only way for a departing President to preserve greater control is to forbid the leaving behind of any working copies, which we do not favor.

c. **Administrative NSC Materials.** The NSC currently maintains three discrete collections of administrative materials: (1) security clearance files, (2) personnel files and (3) access case files, which document responses to public access requests. We recommend that the first two categories be transferred in part to the presidential libraries at the end of the Administration. The access case files have no continuing historical significance, but the removal of current case files at the end of the Clinton administration would undermine the effectiveness of NSC administrative operations.

1. The **security clearance files** maintained by the NSC's Office of Administration consist of records pertaining to the background security clearance investigations of NSC personnel. These files are similar to security clearance files of White House Office staff that have traditionally been transferred to NARA as Presidential materials at the end of each Administration. We therefore propose that the non-current NSC security clearance files be transferred to NARA at the end of this and succeeding administrations as Presidential records.

2. The **personnel files** maintained by the NSC's Office of Administration consist primarily of copies of official personnel documents maintained by the EOP Office of Administration or the home agency of detailed staff. The remaining documents in these files fall into two categories. The first is reference copies of NSC documents, the record copy of which will be transferred to the National Archives. The second category consists of documents of a highly transitory nature that have current administrative value because they pertain to current employees. We propose transferring the non-current personnel files to NARA at the close of the Clinton administration. These records will be processed and considered for disposal at the appropriate Presidential Library in accordance with the requirements of the PRA. Current personnel files will remain at the NSC for ongoing administrative business. As these files become non-current and lose their administrative value, the NSC will establish a process to obtain the Archivist's views for disposal in accordance with Sec. 2203(c) of the PRA.

3. The NSC's Office of Access Management maintains access case files dating back 20 years to guide them in making

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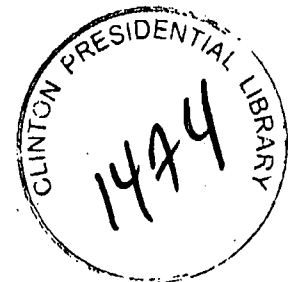
future access decisions. These records have no historical value, but they need to be maintained temporarily for administrative purposes because they provide essential precedential information for deciding ongoing access requests. The NSC proposes that these files remain at the NSC and be disposed of after obtaining the Archivist's views, in accordance with Sec. 2203(c) of the PRA.

**RECOMMENDATION:** The NSC staff, in consultation with White House Counsel, National Archives and DOJ staff, should prepare for your approval a list of policy and administrative files that should be left behind at the end of the Administration, in accordance with the guidelines summarized here.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

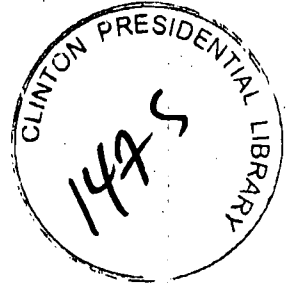
**Attachments**

- Tab I Memo to Podesta and Nolan
- Tab A 3/24/94 Memo from the President
- Tab B Draft Letters to the Archivist and President-Elect
- Tab C Culvahouse to Reagan Memo
- Tab D NSC Access Procedures



**COPY**

THE WHITE HOUSE  
WASHINGTON



ACTION

MEMORANDUM FOR JOHN PODESTA  
BETH NOLAN

FROM: SAMUEL R. BERGER

SUBJECT: Disposition of NSC Records

On August 2, 1996, the D.C. Circuit ruled in the Armstrong case that the NSC is a component of the Executive Office of the President that solely advises and assists the President and thus creates only "presidential" records within the scope of the Presidential Records Act (PRA). On May 27, 1997, the Supreme Court denied plaintiffs' petition for certiorari in Armstrong. Given this final determination of NSC's status as a Presidential entity, a number of decisions regarding NSC's recordkeeping policies and procedures need to be made as we approach the end of the Clinton administration.

When the NSC took the litigating position that it creates only presidential records, the President wrote to Tony Lake and Will Itoh, on March 24, 1994, directing that the NSC: (1) continue to provide public access to appropriate NSC records; and (2) develop a plan for leaving "appropriate NSC records to the next Administration in order to provide for smooth transition and continuity of essential foreign policy and national security matters" (Tab A). On May 8, 1998, the NSC published in the Federal Register procedures that allow for continued public access to appropriate NSC records (Tab D).

The purpose of this memorandum is to seek your concurrence in several actions that are needed to handle the disposition of NSC records of this administration, as well as those left behind by former Presidents, in a way that enhances a smooth transition on national security matters. The recommendations are based on extensive consultations by NSC staff with legal counsel at the Justice Department and the National Archives and Records Administration (NARA) and have been cleared by them.

I. What Should We Do With the NSC's "Institutional" Files?  
The NSC currently holds nearly 600 cubic feet of "institutional" files, most dating back to the Nixon administration (12 cubic

COPY



feet predate 1968), which were left behind by former Administrations to promote continuity. (As used in this memorandum, the term institutional files applies only to records created prior to the Clinton administration.) Most are originals, and they relate primarily to Presidential directives and interagency meetings. Prior to litigating the issue of NSC's status, beginning in March 1994, these institutional files were treated as federal records subject to the Freedom of Information Act (FOIA). All parties (NSC, DOJ, and the National Archives) agree that these records should be transferred to NARA for redistribution to the appropriate Presidential Libraries.

The issue here involves a judgment about the legal character of these pre-Clinton records, which in turn affects the timing of transfer and the access rules that apply to them after transfer. We recommend that the NSC institutional records be designated as presidential records under the PRA, which should be transferred to NARA at the end of the Administration (or later in certain cases) for distribution to the appropriate Library. It is clear that former Administrations left behind these records with the assumption that they would be under the custody and control of their successors. The documents were thus "received" by each new administration within the meaning of the presidential records definition of the PRA, which applies to all Presidents beginning with President Reagan and covers records that are "created or received" by a President or his staff.<sup>1</sup>

It should not be necessary to decide the rather esoteric question of whether the NSC institutional files that were "received" by the Reagan administration and passed on to its successors should be viewed as presidential records of any particular one of the three administrations subject to the PRA. The processing approach we recommend below would produce the same practical result, regardless of the answer to that question. Therefore, it should suffice to decide only that the pre-Clinton files are records subject to the PRA.

---

<sup>1</sup> We do not recommend the alternative of treating the records as presidential records of the originating administration. Treating them in that fashion would be in tension with the "received" language of the PRA, and would exempt the pre-Reagan materials from the reach of FOIA. Arguably, this would diminish the historic level of access to these records, thus creating litigation risk. Treating the records as federal records is not an option because that would be contrary to the D.C. Circuit's decision in Armstrong. It would also make the NSC subject to E.O. 12958 litigation until the time of transfer. For this reason, the NSC has treated these records as presidential records subject to our discretionary release policy since 1994.

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As presidential records under the PRA, all of the institutional files normally would become subject to the FOIA no more than five years after transfer to NARA. (The PRA allows NARA up to five years of processing after transfer during which time the records may be kept completely closed.) The PRA also allows the President to impose certain access restrictions for up to 12 years after transfer, as Presidents Reagan and Bush have done; in addition, the Archivist is required to notify and consult with the incumbent and former President (or his representative) prior to any disclosure of records from the former President's administration.

Our first recommendation is that the President should waive the requirements for notice and consultation and all PRA restrictions on access to the institutional files, except that the President should retain all available access restrictions for records created during the Bush administration until January 20, 2005. (This exception will ensure that the NSC records returned to the Bush Library are treated consistent with the restrictions established by President Bush, which remain in effect until 2005.)

The draft NSC letter to the Archivist at Tab B incorporates our second recommendation. The letter would record an agreement with NARA that it will waive the optional five-year processing period, thus making these records FOIA-accessible at the time of transfer.

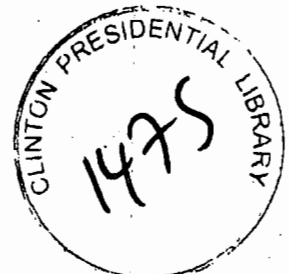
These waivers by the President and NARA would help to ensure that these records will remain as accessible to the public as they have been in the past. The waivers would render moot the question whether the pre-Reagan documents passed on to the Clinton administration are presidential records of the Reagan or Clinton administrations: under either determination, the documents would become available at the same time. In other words, we would avoid a situation in which applying Clinton administration access restrictions and the NARA processing period would impose longer access restrictions on the records passed on by the Reagan administration than would be the case under existing PRA restrictions imposed by President Reagan.

**RECOMMENDATION:** Treat the NSC's pre Clinton institutional records as presidential records and document their transfer to NARA with letters similar to those at Tab B.

Approve \_\_\_\_\_

**COPY**

Disapprove \_\_\_\_\_





II. When Should the NSC Transfer the Institutional Files to NARA? With one exception discussed below, we recommend transferring the institutional files to NARA at end of the Clinton administration. We have proposed to treat these files as presidential records, and the PRA provides that "upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President."

Roughly half of the institutional files are now old enough to warrant a systematic declassification review. Since such a review must be conducted by the NSC staff, it makes sense to conduct the review before transferring the records to several libraries scattered around the country. For these records, we propose transferring legal custody to NARA at the end of the Administration, while retaining physical custody for up to five years for the purpose of performing a systematic declassification review. This would ensure maximum public access to the records as soon as they are transferred to the appropriate Library.

**RECOMMENDATION:** Transfer NSC's pre-Clinton institutional files to NARA's legal custody at the end of the Administration and transfer physical custody of certain older records as designated by NARA after conducting a systematic declassification review.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

III. What NSC Files, If Any, Should Be Left Behind at the End of the Clinton Administration? Despite the NSC's status as an exclusively presidential entity, it is appropriate for this and future Presidents to continue to leave behind certain NSC records, or copies of records, for the traditional purpose of contributing to policy continuity and administrative efficiency. At a minimum, we would recommend leaving behind copies of essential policy directives and certain administrative files. Leaving behind copies of policy directives such as PDDs, PRDs, PDs, and certain Presidential Findings, which are routinely distributed to federal agencies where they become subject to FOIA, would not diminish a departing President's control over these records.

Records that should be considered for retention at the NSC, in original form or as copies, can be divided into three

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categories. We will provide a list of specific documents proposed for retention nearer the end of the Administration. At this point we are seeking your approval of the general approach discussed below.

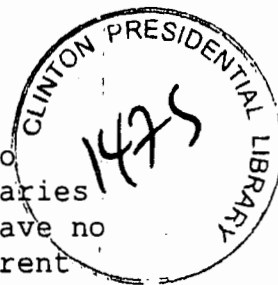
a. **Copies of Pre-Clinton Program Records.** We would propose to retain a reference set, which already exists, of all Presidential Directives prior to the Clinton administration. This reference set satisfies the Presidential Records Act definition of a non-record, and therefore presents no issue of infringing upon potential claims of a former President. At this point, we have not identified any other significant category of pre-Clinton institutional records that we would propose for retention.

b. **Copies of Clinton Program Records.** For records created or updated during the Clinton administration, we would recommend that the President authorize retention of certain categories of records, along the lines of the precedent established by President Reagan, the first President subject to the PRA (see Tab C). In general, this authorization would apply to copies of three classes of Presidential records: (1) useful precedents and information for recurring matters, such as automated indexes to NSC records dating back to the Truman administration or procedures for handling recurring Reports to Congress; (2) records that continue to be applicable to ongoing government activities, such as PRDs and PDDs and Summaries of Conclusions for interagency meetings; and (3) essential records related to matters of ongoing concern, such as current bilateral issues and other matters of high currency at the time of transition. (This authorization to make selected copies also should apply to pre-Clinton institutional records, but it would apply only to a limited number of administrative records.)

Even though these continuity documents would be retained only in the form of copies, they would become records of the succeeding Administration and, therefore, subject to its access determinations. Copies of many documents retained, such as PDDs, PRDs and Summaries of Conclusions, also exist in federal agencies where they are subject to release under the FOIA. The only way for a departing President to preserve greater control is to forbid the leaving behind of any working copies, which we do not favor.

c. **Administrative NSC Materials.** The NSC currently maintains three discrete collections of administrative materials: (1) security clearance files, (2) personnel files

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and (3) access case files. We recommend that the first two categories be transferred in part to the presidential libraries at the end of the Administration. The access case files have no continuing historical significance, but the removal of current case files at the end of the Clinton administration would undermine the effectiveness of NSC administrative operations.

1. The **security clearance files** maintained by the NSC's Office of Administration consist of records pertaining to the background security clearance investigations of NSC personnel. These files are similar to security clearance files of White House Office staff that have traditionally been transferred to NARA as Presidential materials at the end of each Administration. We therefore propose that the non-current NSC security clearance files be transferred to NARA at the end of this and succeeding administrations as Presidential records.

2. The **personnel files** maintained by the NSC's Office of Administration consist primarily of copies of official personnel documents maintained by the EOP Office of Administration or the home agency of detailed staff. The remaining documents in these files fall into two categories. The first is reference copies of NSC documents, the record copy of which will be transferred to the National Archives. The second category consists of documents of a highly transitory nature that have current administrative value because they pertain to current employees. We propose transferring the non-current personnel files to NARA at the close of the Clinton administration. These records will be processed and considered for disposal at the appropriate Presidential Library in accordance with the requirements of the PRA. Current personnel files will remain at the NSC for ongoing administrative business. As these files become non-current and lose their administrative value, the NSC will establish a process to obtain the Archivist's views for disposal in accordance with Sec. 2203(c) of the PRA.

3. The NSC's Office of Access Management maintains **access case files** dating back 20 years to guide them in making future access decisions. These records have no historical value, but they need to be maintained temporarily for administrative purposes because they provide essential precedential information for deciding ongoing access requests. The NSC proposes that these files remain at the NSC and be disposed of after obtaining the Archivist's views, in accordance with Sec. 2203(c) of the PRA.

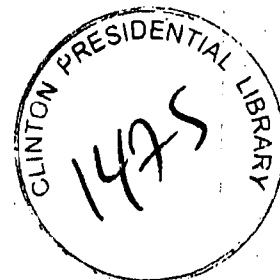
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RECOMMENDATION: The NSC staff, in consultation with White House Counsel, National Archives and DOJ staff, should prepare for the APNSA's approval a list of policy and administrative files that should be left behind at the end of the Administration, in accordance with the guidelines summarized here.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

Attachments

Tab A 3/24/94 Memo from the President  
Tab B Draft Letters to the Archivist  
Tab C Culvahouse to Reagan Memo  
Tab D NSC Access Procedures



**COPY**

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                            | DATE       | RESTRICTION |
|--------------------------|----------------------------------------------------------------------------------------------------------|------------|-------------|
| 001. memo                | Bill Leary and Mary Derosa to Samuel Berger, re: Disposition of NSC Intelligence Files (2 pages)         | 07/07/2000 | P1/b(1)     |
| 002. memo                | Samuel Berger to John Podesta, re: Disposition of NSC Records (7 pages)                                  | 03/27/2000 | P5 1476     |
| 003a. memo               | Bill Leary and Jamie Baker to Samuel Berger, re: Disposition of Clinton Administration Records (6 pages) | ca. 2000   | P5 1477     |
| 003b. memo               | Bill Leary and Jamie Baker to Samuel Berger, re: Disposition of Clinton Administration Records (6 pages) | ca. 2000   | P5 1478     |
| 004a. memo               | Bill Leary and Mary McCarthy to Samuel Berger, re: Disposition of NSC Intelligence Files (3 pages)       | 06/29/2000 | P1/b(1)     |
| 004b. memo               | Samuel Berger to John Podesta, re: Disposition of NSC Records (6 pages)                                  | 04/10/2000 | P5 1479     |

### COLLECTION:

Clinton Presidential Records  
National Security Council  
Legal Advisor (Derosa, Mary)  
OA/Box Number: 4057

### FOLDER TITLE:

Transition Issues [2]

Kara Ellis  
2008-0015-F  
kel582

### 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.

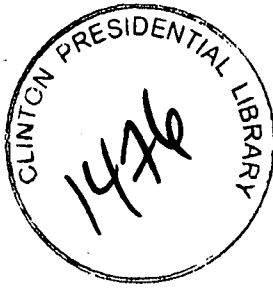
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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]

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THE WHITE HOUSE  
WASHINGTON

ACTION

MEMORANDUM FOR JOHN PODESTA

THROUGH: BETH NOLAN  
FROM: SAMUEL R. BERGER  
SUBJECT: Disposition of NSC Records

On August 2, 1996, the D.C. Circuit ruled in the Armstrong case that the NSC is a component of the Executive Office of the President that solely advises and assists the President and thus creates only "presidential" records within the scope of the Presidential Records Act (PRA). On May 27, 1997, the Supreme Court denied plaintiffs' petition for certiorari in Armstrong. Given this final determination of NSC's status as a Presidential entity, a number of decisions regarding NSC's recordkeeping policies and procedures need to be made as we approach the end of the Clinton administration.

When the NSC took the litigating position that it creates only presidential records, the President wrote to Tony Lake and Will Itoh, on March 24, 1994, directing that the NSC: (1) continue to provide public access to appropriate NSC records; and (2) develop a plan for leaving "appropriate NSC records to the next Administration in order to provide for smooth transition and continuity of essential foreign policy and national security matters" (Tab A). On May 8, 1998, the NSC published in the Federal Register procedures that allow for continued public access to appropriate NSC records (Tab D).

The purpose of this memorandum is to seek your concurrence in several actions that are needed to handle the disposition of NSC records of this administration, as well as those left behind by former Presidents, in a way that enhances a smooth transition on national security matters. The recommendations are based on extensive consultations by NSC staff with legal counsel at the Justice Department and the National Archives and Records Administration (NARA) and have been cleared by them.

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# I. What Should We Do With the NSC's "Institutional" Files?

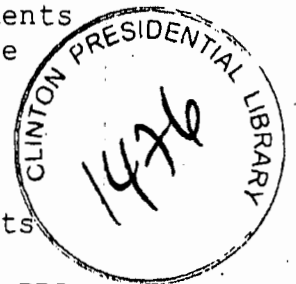
The NSC currently holds nearly 600 cubic feet of "institutional" files, most dating back to the Nixon administration (12 cubic feet predate 1968), which were left behind by former Administrations to promote continuity. (As used in this memorandum, the term institutional files applies only to records created prior to the Clinton administration.) Most are originals, and they relate primarily to Presidential directives and interagency meetings. Prior to litigating the issue of NSC's status, beginning in March 1994, these institutional files were treated as federal records subject to the Freedom of Information Act (FOIA). All parties (NSC, DOJ, and the National Archives) agree that these records should be transferred to NARA for redistribution to the appropriate Presidential Libraries.

The issue here involves a judgment about the legal character of these pre-Clinton records, which in turn affects the timing of transfer and the access rules that apply to them after transfer. We recommend that the NSC institutional records be designated as presidential records under the PRA, which should be transferred to NARA at the end of the Administration (or later in certain cases) for distribution to the appropriate Library. It is clear that former Administrations left behind these records with the assumption that they would be under the custody and control of their successors. The documents were thus "received" by each new administration within the meaning of the presidential records definition of the PRA, which applies to all Presidents beginning with President Reagan and covers records that are "created or received" by a President or his staff.<sup>1</sup>

It should not be necessary to decide the rather esoteric question of whether the NSC institutional files that were "received" by the Reagan administration and passed on to its successors should be viewed as presidential records of any particular one of the three administrations subject to the PRA. The processing approach we recommend below would produce the same practical result, regardless of the answer to that

<sup>1</sup> We do not recommend the alternative of treating the records as presidential records of the originating administration. Treating them in that fashion would be in tension with the "received" language of the PRA, and would exempt the pre-Reagan materials from the reach of FOIA. Arguably, this would diminish the historic level of access to these records, thus creating litigation risk. Treating the records as federal records is not an option because that would be contrary to the D.C. Circuit's decision in Armstrong. It would also make the NSC subject to FOIA litigation until the time of transfer. For this reason, the NSC has treated these records as presidential records subject to our discretionary release policy since 1994.

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question. Therefore, it should suffice to decide only that the pre-Clinton files are records subject to the PRA.

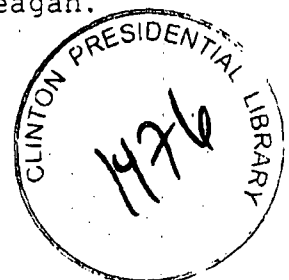
As presidential records under the PRA, all of the institutional files normally would become subject to the FOIA no more than five years after transfer to NARA. (The PRA allows NARA up to five years of processing after transfer during which time the records may be kept completely closed.) The PRA also allows the President to impose certain access restrictions for up to 12 years after transfer, as Presidents Reagan and Bush have done; in addition, the Archivist is required to notify and consult with the incumbent and former President (or his representative) prior to any disclosure of records from the former President's administration.

Our first recommendation is that the President should waive the requirements for notice and consultation and all PRA restrictions on access to the institutional files, except that the President should retain all available access restrictions for records created during the Bush administration until January 20, 2005. (This exception will ensure that the NSC records returned to the Bush Library are treated consistent with the restrictions established by President Bush, which remain in effect until 2005.)

The draft NSC letter to the Archivist at Tab B incorporates our second recommendation. The letter would record an agreement with NARA that it will waive the optional five-year processing period, thus making these records FOIA-accessible at the time of transfer.

These waivers by the President and NARA would help to ensure that these records will remain as accessible to the public as they have been in the past. The waivers would render moot the question whether the pre-Reagan documents passed on to the Clinton administration are presidential records of the Reagan or Clinton administrations: under either determination, the documents would become available at the same time. In other words, we would avoid a situation in which applying Clinton administration access restrictions and the NARA processing period would impose longer access restrictions on the records passed on by the Reagan administration than would be the case under existing PRA restrictions imposed by President Reagan.

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**RECOMMENDATION:** Treat the NSC's pre Clinton institutional records as presidential records and document their transfer to NARA with letters similar to those at Tab B.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

II. When Should the NSC Transfer the Institutional Files to NARA? With one exception discussed below, we recommend transferring the institutional files to NARA at end of the Clinton administration. We have proposed to treat these files as presidential records, and the PRA provides that "upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President."

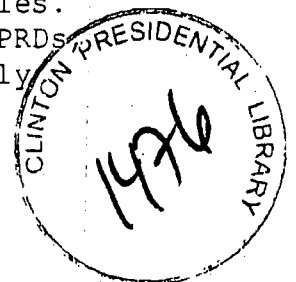
Roughly half of the institutional files are now old enough to warrant a systematic declassification review. Since such a review must be conducted by the NSC staff, it makes sense to conduct the review before transferring the records to several libraries scattered around the country. For these records, we propose transferring legal custody to NARA at the end of the Administration, while retaining physical custody for up to five years for the purpose of performing a systematic declassification review. This would ensure maximum public access to the records as soon as they are transferred to the appropriate Library.

**RECOMMENDATION:** Transfer NSC's pre-Clinton institutional files to NARA's legal custody at the end of the Administration and transfer physical custody of certain older records as designated by NARA after conducting a systematic declassification review.

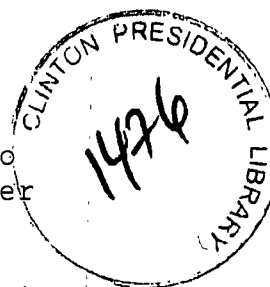
Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

III. What NSC Files, If Any, Should Be Left Behind at the End of the Clinton Administration? Despite the NSC's status as an exclusively presidential entity, it is appropriate for this and future Presidents to continue to leave behind certain NSC records, or copies of records, for the traditional purpose of contributing to policy continuity and administrative efficiency. At a minimum, we would recommend leaving behind copies of essential policy directives and certain administrative files. Leaving behind copies of policy directives such as PDDs, PRDs, PDs, and certain Presidential findings, which are routinely

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distributed to federal agencies where they become subject to FOIA, would not diminish a departing President's control over these records.



Records that should be considered for retention at the NSC, in original form or as copies, can be divided into three categories. We will provide a list of specific documents proposed for retention nearer the end of the Administration. At this point we are seeking your approval of the general approach discussed below.

a. **Copies of Pre-Clinton Program Records.** We would propose to retain a reference set, which already exists, of all Presidential Directives prior to the Clinton administration. This reference set satisfies the Presidential Records Act definition of a non-record, and therefore presents no issue of infringing upon potential claims of a former President. At this point, we have not identified any other significant category of pre-Clinton institutional records that we would propose for retention.

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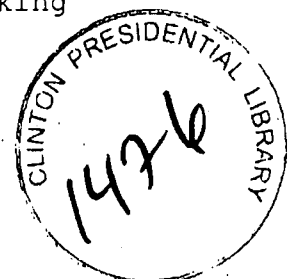
c. **Administrative NSC Materials.** The NSC currently maintains three discrete collections of administrative materials: (1) security clearance files, (2) personnel files and (3) access case files. We recommend that the first two categories be transferred in part to the presidential libraries at the end of the Administration. The access case files have no continuing historical significance, but the removal of current case files at the end of the Clinton administration would undermine the effectiveness of NSC administrative operations.

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administrative purposes because they provide essential precedential information for deciding ongoing access requests. The NSC proposes that these files remain at the NSC and be disposed of after obtaining the Archivist's views, in accordance with Sec. 2203(c) of the PRA.

**RECOMMENDATION:** The NSC staff, in consultation with White House Counsel, National Archives and DOJ staff, should prepare for the APNSA's approval a list of policy and administrative files that should be left behind at the end of the Administration, in accordance with the guidelines summarized here.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

**Attachments**

Tab A 3/24/94 Memo from the President  
Tab B Draft Letters to the Archivist  
Tab C Culvahouse to Reagan Memo  
Tab D NSC Access Procedures



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ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: BILL LEARY/JAMIE BAKER

SUBJECT: Disposition of Clinton Administration Records

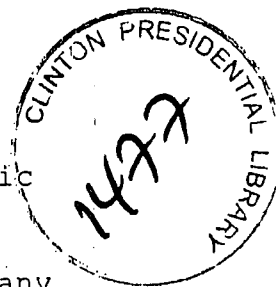
On August 2, 1996, the D.C. Circuit ruled that the NSC is a component of the Executive Office of the President that solely advises and assists the President and thus creates only "presidential" records within the scope of the Presidential Records Act (PRA). On May 27, 1997, the Supreme Court denied plaintiffs' petition for certiorari in the Armstrong case. Given this final determination of NSC's status as a Presidential entity, a number of decisions regarding NSC's recordkeeping policies and procedures need to be made as we approach the end of the Clinton administration.

When the NSC took the litigating position that it creates only presidential records, the President wrote to Tony Lake and Will Itoh, on March 24, 1994, directing that the NSC: (1) continue to provide public access to appropriate NSC records; and (2) develop a plan for leaving "appropriate NSC records to the next Administration in order to provide for smooth transition and continuity of essential foreign policy and national security matters" (Tab A). On May 8, 1998, the NSC published in the Federal Register procedures that allow for continued public access to appropriate NSC records.

The purpose of this memorandum is to seek your concurrence in several actions that are needed to handle the disposition of NSC records of this administration, as well as those left behind by former Presidents, in a way that enhances a smooth transition on national security matters. The recommendations are based on extensive consultations with legal counsel at the Justice Department and the National Archives and Records Administration (NARA) and have been cleared by them. If you concur, we believe you also should seek the concurrence of White House Counsel and the Chief of Staff by signing the memo at Tab I.

I. What Should We Do With the "Institutional" Files?  
The NSC currently holds nearly 600 cubic feet of "institutional"

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files, most dating back to the Nixon administration (12 cubic feet predate 1968), which were left behind by former Administrations to promote continuity. (As used in this memorandum, the term institutional files does not apply to any records created by the Clinton administration.) Most are originals, and they relate primarily to Presidential directives and interagency meetings. Prior to litigating the issue of NSC's status, beginning in March 1994, these institutional files were treated as federal records subject to the Freedom of Information Act (FOIA). All parties (NSC, DOJ, and the National Archives) agree that these records should be transferred to NARA for redistribution to the appropriate Presidential Libraries.

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<sup>1</sup> We do not recommend the alternative of treating the records as presidential records of the originating administration. Treating them in that fashion would be in tension with the "received" language of the PRA and would exempt the pre-Reagan materials from the reach of FOIA, thus diminishing the historic level of access to these records and creating litigation risk. Treating the records as federal records is not an option because that would be contrary to the D.C. Circuit's decision in *Armstrong*. It would also make the NSC subject to FOIA litigation until the time of transfer. For this reason, the NSC has treated these records as Presidential records subject to our discretionary release policy since 1994.

**COPY**

As presidential records under the PRA, all of the institutional files would ordinarily become subject to the FOIA within five years after transfer to NARA. (The PRA allows NARA five years of processing after transfer during which they may keep records completely closed.) The PRA also allows the President to impose certain access restrictions for up to 12 years after transfer, as Presidents Reagan and Bush have done; in addition the PRA requires the Archivist to notify and consult with the former President (or his representative) prior to any disclosure of records from his administration. Our first recommendation is that the President should waive the requirements for notice and consultation and all PRA restrictions on access, except that the President should retain all available access restrictions for records created during the Bush administration until January 20, 2005. (This exception will ensure that the NSC records returned to the Bush Library are treated consistent with the restrictions established by President Bush, which remain in effect until 2005.)

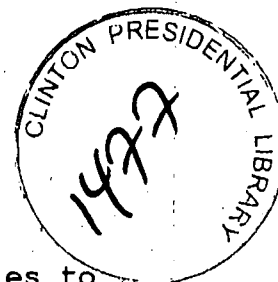
The draft NSC letter to the Archivist at Tab B incorporates our second recommendation. The letter would record an agreement with NARA it will waive the optional five-year processing period, thus making these records FOIA-accessible at the time of transfer. We also recommend that the President send a memo to the President-elect recommending that he waive the notice to the incumbent President required under E.O. 12667 for this specific set of records.

These waivers by the President and NARA would ensure that these records will remain as accessible to the public as they have been in the past. The waivers would render moot the question whether the pre-Reagan documents passed on to the Clinton administration are presidential records of the Reagan or Clinton administrations: under either determination, the documents would become available at the same time. In other words, we would avoid a situation in which applying Clinton administration access restrictions and the NARA processing period would impose longer access restrictions on the records passed on by the Reagan administration than would be the case under existing PRA restrictions imposed by President Reagan. This should reduce the possibility that a member of the public might file a lawsuit challenging the handling of these records.

**RECOMMENDATION:** Treat the NSC's institutional records as presidential records and document their transfer to NARA with letters similar to those at Tab B

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Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

II. When Should the NSC Transfer the Institutional Files to NARA? With one exception discussed below, we recommend transferring the institutional files to NARA at end of the Clinton administration. We have proposed to treat these files as presidential records, and the PRA provides that "upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President."

Roughly half of the institutional files are now old enough to warrant a systematic declassification review. Since such a review must be conducted by the NSC staff, it makes sense to conduct the review before transferring the records to several libraries scattered around the country. For these records, we propose transferring legal custody to NARA at the end of the Administration, while retaining physical custody for up to five years for the purpose of performing a systematic declassification review. This would ensure maximum public access to the records as soon as they are transferred to the appropriate Library.

**RECOMMENDATION:** Transfer NSC's institutional files to NARA's legal custody at the end of the Administration and transfer physical custody of certain older records as designated by NARA after conducting a systematic declassification review.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

III. What NSC Files, If Any, Should Be Left Behind at the End of the Clinton Administration? Despite the NSC's status as an exclusively presidential entity, it is appropriate for this and future Presidents to continue to leave behind certain NSC records, or copies of records, for the traditional purpose of contributing to policy continuity and administrative efficiency. At a minimum, we would recommend leaving behind copies of essential policy directives and certain administrative files. Leaving behind copies of policy directives such as PDDs, PRDs, PDs, and Presidential Findings, which are routinely distributed to federal agencies where they become subject to FOIA, would not diminish a departing President's control over his records.

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Records that should be considered for retention at the NSC, in original form or as copies, can be divided into three categories. We will provide a list of specific documents proposed for retention nearer the end of the Administration. At this point we are seeking your approval of the general approach discussed below.

a. **Copies of Pre-Clinton Records.** We would propose to retain a reference set, which already exists, of all Presidential Directives prior to the Clinton administration. This reference set satisfies the Presidential Records Act (PRA) definition of a non-record, and therefore presents no issue of infringing upon potential claims of a former President. At this point, we have not identified any other significant category of pre-Clinton institutional records that we would propose for retention.

b. **Copies of Clinton Records.** For records created or updated during the Clinton administration, we would recommend that the President authorize retention of certain categories of records, along the lines of the precedent established by President Reagan, the first President subject to the PRA (see Tab C). In general, this authorization would apply to copies of three classes of Presidential records: (1) useful precedents and information for recurring matters, such as automated indexes to NSC records dating back to the Truman administration or procedures for handling recurring Reports to Congress; (2) records that continue to be applicable to ongoing government activities, such as PRDs and PDDs and Summaries of Conclusions for interagency meetings; and (3) essential records related to matters of ongoing concern, such as current bilateral issues and other matters of high currency at the time of transition. (This authorization to make selected copies also should apply to pre-Clinton institutional records, but it would apply only to a limited number of administrative records.)

Even though these continuity documents would be retained only in the form of copies, they would become records of the succeeding Administration and, therefore, subject to their access determinations. However, those access determinations would be made in accordance with the current NSC access procedures, which fully protect concerns about confidentiality. Copies of many documents retained, such as PDDs, PRDs and Summaries of Conclusions, also exist in federal agencies where they are subject to release under the FOIA. The only way for a departing President to preserve greater control is to forbid the leaving behind of any working copies, which we do not favor.

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c. **Non-Permanent NSC Materials.** The NSC currently maintains two discrete collections of records that should not be transferred to the presidential libraries: (1) personnel files and (2) access case files. These administrative files have no continuing historical significance, but their removal would undermine the effectiveness of NSC administrative operations. Because of their substantial volume (ca. 600,000 pages), copying would entail a significant and unnecessary burden.

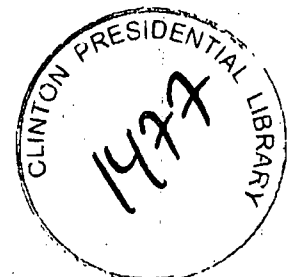
1. The **personnel files** maintained by the Office of Administration consist primarily of copies of official documents maintained by the EOP Office of Administration. The unique documents in these files are of a highly transitory nature. Transferring them to the Clinton Library at the end of the Administration would contravene the practice in all other parts of the White House Office, where personnel records are handled as federal records and not transferred to a presidential library. Therefore, we propose treating these files as nonrecord materials, which should be destroyed at the time of the employee's departure from the NSC. We also recommend that NARA staff review the accumulated non-current personnel files of departed employees prior to the end of 2000 to identify any that may warrant permanent retention at the appropriate Library.

2. The NSC's Office of Access Management maintains **access case files** dating back 20 years to guide them in making future access decisions. These records have no historical value, but they need to be maintained temporarily for administrative purposes. We propose scheduling them for disposal in accordance with NARA's General Records Schedule for comparable files in federal agencies, i.e., seven years after closing the case.

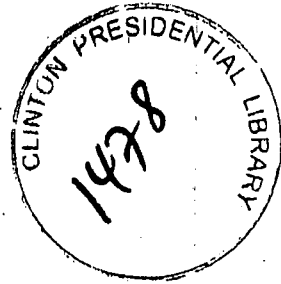
**RECOMMENDATION:** The NSC staff, in consultation with National Archives and DOJ staff, should prepare for your approval a list of policy and administrative files that should be left behind at the end of the Administration, in accordance with the guidelines summarized here.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

**COPY**



Gary Stern GC of National Archives



ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: BILL LEARY/JAMIE BAKER

SUBJECT: Disposition of Clinton Administration Records

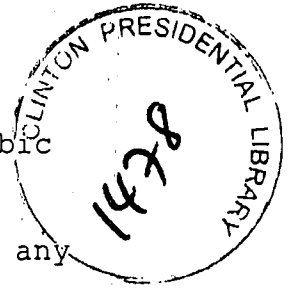
On August 2, 1996, the D.C. Circuit ruled that the NSC is a component of the Executive Office of the President that solely advises and assists the President and thus creates only "presidential" records within the scope of the Presidential Records Act (PRA). On May 27, 1997, the Supreme Court denied plaintiffs' petition for certiorari in the Armstrong case. Given this final determination of NSC's status as a Presidential entity, a number of decisions regarding NSC's recordkeeping policies and procedures need to be made as we approach the end of the Clinton administration.

When the NSC took the litigating position that it creates only presidential records, the President wrote to Tony Lake and Will Itoh, on March 24, 1994, directing that the NSC: (1) continue to provide public access to appropriate NSC records; and (2) develop a plan for leaving "appropriate NSC records to the next Administration in order to provide for smooth transition and continuity of essential foreign policy and national security matters" (Tab A). On May 8, 1998, the NSC published in the Federal Register procedures that allow for continued public access to appropriate NSC records.

The purpose of this memorandum is to seek your concurrence in several actions that are needed to handle the disposition of NSC records of this administration, as well as those left behind by former Presidents, in a way that enhances a smooth transition on national security matters. The recommendations are based on extensive consultations with legal counsel at the Justice Department and the National Archives and Records Administration (NARA) and have been cleared by them. If you concur, we believe you also should seek the concurrence of White House Counsel and the Chief of Staff by signing the memo at Tab I.

I. What Should We Do With the NSC's "Institutional" Files?  
The NSC currently holds nearly 600 cubic feet of "institutional"

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files, most dating back to the Nixon administration (12 cubic feet predate 1968), which were left behind by former Administrations to promote continuity. (As used in this memorandum, the term institutional files does not apply to any records created by the Clinton administration.) Most are originals, and they relate primarily to Presidential directives and interagency meetings. Prior to litigating the issue of NSC's status, beginning in March 1994, these institutional files were treated as federal records subject to the Freedom of Information Act (FOIA). All parties (NSC, DOJ, and the National Archives) agree that these records should be transferred to NARA for redistribution to the appropriate Presidential Libraries.

The issue here involves a judgment about the legal character of these records, which in turn affects the timing of transfer and the access rules that apply to them after transfer. We recommend that the NSC institutional records be designated as presidential records under the PRA, which should be transferred to NARA at the end of the Administration (or later in certain cases) for distribution to the appropriate Library. It is clear that former Administrations left behind these records with the assumption that they would be under the custody and control of their successors. The documents were thus "received" by each new administration within the meaning of the presidential records definition of the PRA, which applies to all Presidents beginning with President Reagan and covers records that are "created or received" by a President or his staff.<sup>1</sup>

It should not be necessary to decide the rather esoteric question of whether the NSC institutional files that were "received" by the Reagan administration and passed on to its successors should be viewed as presidential records of any particular one of the three administrations subject to the PRA. The processing approach we recommend below would produce the same practical result, regardless of the answer to that question. Therefore, it should suffice to decide only that the files are records subject to the PRA.

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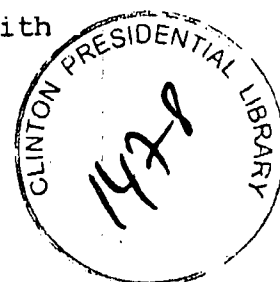
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The draft NSC letter to the Archivist at Tab B incorporates our second recommendation. The letter would record an agreement with NARA that it will waive the optional five-year processing period, thus making these records FOIA-accessible at the time of transfer. We also recommend that the President send a memo to the President-elect recommending that he waive the notice to the incumbent President required under E.O. 12667 for this specific set of records.

These waivers by the President and NARA would ensure that these records will remain as accessible to the public as they have been in the past. The waivers would render moot the question whether the pre-Reagan documents passed on to the Clinton administration are presidential records of the Reagan or Clinton administrations: under either determination, the documents would become available at the same time. In other words, we would avoid a situation in which applying Clinton administration access restrictions and the NARA processing period would impose longer access restrictions on the records passed on by the Reagan administration than would be the case under existing PRA restrictions imposed by President Reagan. This should reduce the possibility that a member of the public might file a lawsuit challenging the handling of these records.

**RECOMMENDATION:** Treat the NSC's institutional records as presidential records and document their transfer to NARA with letters similar to those at Tab

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Approve \_\_\_\_\_ Disapprove \_\_\_\_\_



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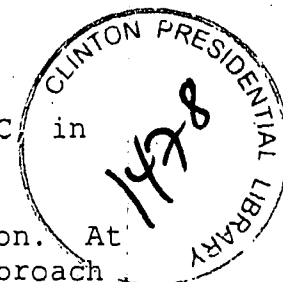
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Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

III. What NSC Files, If Any, Should Be Left Behind at the End of the Clinton Administration? Despite the NSC's status as an exclusively presidential entity, it is appropriate for this and future Presidents to continue to leave behind certain NSC records, or copies of records, for the traditional purpose of contributing to policy continuity and administrative efficiency. At a minimum, we would recommend leaving behind copies of essential policy directives and certain administrative files. Leaving behind copies of policy directives such as PDDs, PRDs, PDs, and Presidential Findings, which are routinely distributed to federal agencies where they become subject to FOIA, would not diminish a departing President's control over his records.

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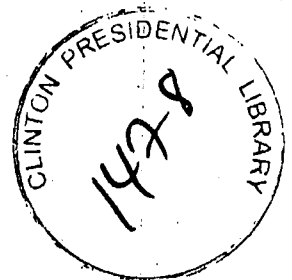
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1. The **personnel files** maintained by the NSC's Office of Administration consist primarily of copies of official documents maintained by the EOP Office of Administration. The unique documents in these files are of a highly transitory nature, and they do not warrant permanent preservation. Therefore, we would propose developing a PRA records schedule calling for the disposal of these materials at the time of the employee's departure from the NSC. We also recommend that NARA staff review the accumulated non-current personnel files of departed employees prior to the end of 2000 to identify any that may warrant permanent retention at the appropriate Library.

2. The NSC's Office of Access Management maintains **access case files** dating back 20 years to guide them in making future access decisions. These records have no historical value, but they need to be maintained temporarily for administrative purposes. We propose scheduling them for disposal in accordance with NARA's General Records Schedule for comparable files in federal agencies, i.e., seven years after closing the case.

**RECOMMENDATION:** The NSC staff, in consultation with National Archives and DOJ staff, should prepare for your approval a list of policy and administrative files that should be left behind at the end of the Administration, in accordance with the guidelines summarized here.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_



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## THE WHITE HOUSE

WASHINGTON

April 10, 2000

ACTION

MEMORANDUM FOR JOHN PODESTA

THROUGH: BETH NOLAN

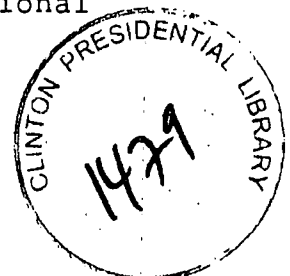
FROM: SAMUEL R. BERGER 

SUBJECT: Disposition of NSC Records

On August 2, 1996, the D.C. Circuit ruled in the Armstrong case that the NSC is a component of the Executive Office of the President that solely advises and assists the President and thus creates only "presidential" records within the scope of the Presidential Records Act (PRA). On May 27, 1997, the Supreme Court denied plaintiffs' petition for certiorari in Armstrong. Given this final determination of NSC's status as a Presidential entity, a number of decisions regarding NSC's recordkeeping policies and procedures need to be made as we approach the end of the Clinton administration.

When the NSC took the litigating position that it creates only presidential records, the President wrote to Tony Lake and Will Itoh, on March 24, 1994, directing that the NSC: (1) continue to provide public access to appropriate NSC records; and (2) develop a plan for leaving "appropriate NSC records to the next Administration in order to provide for smooth transition and continuity of essential foreign policy and national security matters" (Tab A). On May 8, 1998, the NSC published in the Federal Register procedures that allow for continued public access to appropriate NSC records (Tab D).

The purpose of this memorandum is to seek your concurrence in several actions that are needed to handle the disposition of NSC records of this administration, as well as those left behind by former Presidents, in a way that enhances a smooth transition on national security matters. The recommendations are based on extensive consultations by NSC staff with and have been cleared by legal counsel at the Justice Department and the National Archives and Records Administration (NARA).

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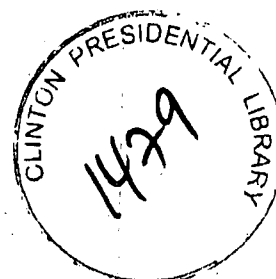
I. What Should We Do With the NSC's "Institutional" Files? The NSC holds nearly 600 cubic feet of "institutional" files, most dating back to the Nixon administration (12 cubic feet predate 1968), left behind by former Administrations to promote continuity. (As used in this memorandum, the term institutional files applies only to records created prior to the Clinton administration.) Most are originals, and relate primarily to Presidential directives and interagency meetings. Prior to litigation that began in March 1994, these institutional files were treated as federal records subject to the Freedom of Information Act (FOIA). All parties (NSC, DOJ, and the National Archives) agree that these records should be transferred to NARA for redistribution to the appropriate Presidential Libraries.

The issue here involves a judgment about the legal character of these pre-Clinton records, which in turn affects the timing of transfer and the access rules that apply to them after transfer. We recommend that the NSC institutional records be designated as presidential records under the PRA, which should be transferred to NARA at the end of the Administration (or later in certain cases) for distribution to the appropriate Library. Former Administrations left behind these records with the assumption that they would be under the custody and control of their successors. The documents were thus "received" by each new administration within the meaning of the presidential records definition of the PRA, which applies to all Presidents beginning with President Reagan and covers records that are "created or received" by a President or his staff.<sup>1</sup>

As presidential records under the PRA, all of the institutional files normally would become subject to the FOIA no more than five years after transfer to NARA. (The PRA allows NARA up to five years of processing after transfer during which time the records may be kept completely closed.) The PRA also allows the President to impose certain access restrictions for up to 12 years after transfer, as Presidents Reagan and Bush have done; in addition, the Archivist is required to notify and consult with the incumbent and former President (or his representative)

<sup>1</sup> It should not be necessary to decide the rather esoteric question of whether the NSC institutional files that were "received" by the Reagan administration and passed on to its successors should be viewed as presidential records of any particular one of the three administrations subject to the PRA. The processing approach we recommend below would produce the same practical result, regardless of the answer to that question. Therefore, it should suffice to decide only that the pre-Clinton files are records subject to the PRA.

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prior to any disclosure of records from the former President's administration.

First we recommend that the President waive the requirements for notice and consultation and all PRA restrictions on access to the institutional files, except that the President should retain all available access restrictions for records created during the Bush administration until January 20, 2005. (This exception will ensure that the NSC records returned to the Bush Library are treated consistent with the restrictions established by President Bush, which remain in effect until 2005.) We next recommend that the NSC's Executive Secretary write to the Archivist (draft at Tab B) to record an agreement that NARA will waive the optional five-year processing period, thus making these records FOIA-accessible at the time of transfer.

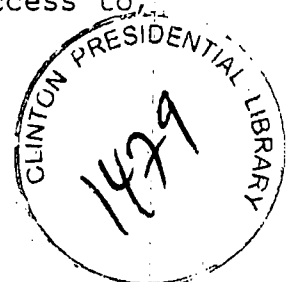
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**RECOMMENDATION:** Treat the NSC's pre-Clinton institutional records as presidential records and document their transfer to NARA with letters similar to those at Tab B.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

**II. When Should the NSC Transfer the Institutional Files to NARA?** With one exception discussed below, we recommend transferring the institutional files to NARA at end of the Clinton administration. We have proposed to treat these files as presidential records, and the PRA provides that "upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President."

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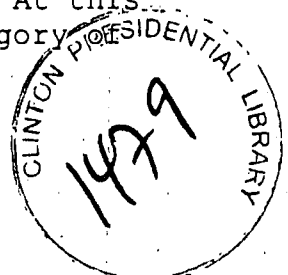
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**III. What NSC Files, If Any, Should Be Left Behind at the End of the Clinton Administration?** Despite the NSC's status as an exclusively presidential entity, it is appropriate for this and future Presidents to continue to leave behind certain NSC records, or copies of records, for the traditional purpose of contributing to policy continuity and administrative efficiency. At a minimum, we recommend leaving behind copies of essential policy directives and certain administrative files. Leaving behind copies of policy directives such as PDDs, PRDs, PDs, and certain Presidential Findings, which are routinely distributed to federal agencies where they become subject to FOIA, would not diminish a departing President's control over these records.

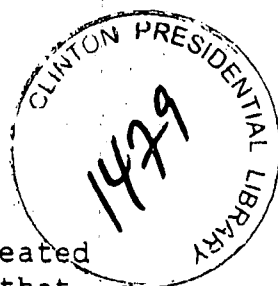
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pre-Clinton institutional records that we would propose for retention.



b. **Copies of Clinton Program Records.** For records created or updated during the Clinton administration, we recommend that the President authorize retention of certain categories of records, similar to the precedent established by President Reagan, the first President subject to the PRA (see Tab C). In general, this authorization would apply to copies of three classes of Presidential records: (1) useful precedents and information for recurring matters, such as automated indexes to NSC records dating back to the Truman administration or procedures for handling recurring Reports to Congress; (2) records that continue to be applicable to ongoing government activities, such as PRDs and PDDs and Summaries of Conclusions for interagency meetings; and (3) essential records related to matters of ongoing concern, such as current bilateral issues and other matters of high currency at the time of transition. (This authorization to make selected copies also should apply to pre-Clinton institutional records, but it would apply only to a limited number of administrative records.)

While these continuity documents would be retained only in the form of copies, they would become records of the succeeding Administration and subject to its access determinations. Copies of many documents retained, such as PDDs, PRDs and Summaries of Conclusions, also exist in federal agencies where they are subject to release under the FOIA. The only way for a departing President to preserve greater control is to forbid the leaving behind of any working copies, which we do not favor.

c. **Administrative NSC Materials.** The NSC currently maintains three discrete collections of administrative materials: (1) security clearance files, (2) personnel files and (3) access case files. We recommend that the first two categories be transferred in part to the presidential libraries at the end of the Administration. The access case files have no continuing historical significance, but the removal of current case files at the end of the Clinton administration would undermine the effectiveness of NSC administrative operations.

1. The **security clearance files** maintained by the NSC's Office of Administration consist of records pertaining to the background security clearance investigations of NSC personnel. These files are similar to security clearance files of White House Office staff that have traditionally been transferred to NARA as Presidential materials at the end of each

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Administration. We propose that the non-current NSC security clearance files be transferred to NARA at the end of this and succeeding administrations as Presidential records.

2. The **personnel files** maintained by the NSC's Office of Administration consist primarily of copies of official personnel documents maintained by the EOP Office of Administration or the home agency of detailed staff. The remaining documents in these files fall into two categories: (1) reference copies of NSC documents, the record copy of which will be transferred to the National Archives; and (2) documents of a highly transitory nature that have current administrative value because they pertain to current employees. We propose transferring the non-current personnel files to NARA at the close of the Clinton administration. These records will be processed and considered for disposal at the appropriate Presidential Library in accordance with the requirements of the PRA. Current personnel files will remain at the NSC for ongoing administrative business. As these files become non-current and lose their administrative value, the NSC will establish a process to obtain the Archivist's views for disposal in accordance with Sec. 2203(c) of the PRA.

3. The NSC's Office of Access Management maintains **access case files** dating back 20 years to guide them in making future access decisions. These records have no historical value, but they need to be maintained temporarily for administrative purposes because they provide essential precedential information for deciding ongoing access requests. The NSC proposes that these files remain at the NSC and be disposed of after obtaining the Archivist's views, in accordance with Sec. 2203(c) of the PRA.

**RECOMMENDATION:** The NSC staff, in consultation with White House Counsel, National Archives and DOJ staff, should prepare for the APNSA's approval a list of policy and administrative files that should be left behind at the end of the Administration, in accordance with the guidelines summarized here.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

**Attachments**

Tab A 3/24/94 Memo from the President  
 Tab B Draft Letters to the Archivist  
 Tab C Culvahouse to Reagan Memo  
 Tab D NSC Access Procedures

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