Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To John Hamre, Major General Donald Kerrick, Don Gips, and Tom Marsh from Janet Reno. Subject: PCCIP Draft Report. (5 pages)	10/06/1997	P5 6033
002. memo	To Major General Donald Kerrick from Philip Bobbitt. Subject: PCCIP-Steering Committee Meeting. Record ID: 9706793. (6 pages)	10/07/1997	P5, b(6)
003. memo	To Samuel Berger from Philip Bobbitt and Rand Beers. Subject: Strategy for Dealing with...Record ID: 9706663 (5 pages)	10/06/1997	P5
004. memo	To Janet Reno from Robert Litt. Subject: President's Commission on Critical Infrastructure Protection (PCCIP). (6 pages)	05/18/1997	P5 6034

COLLECTION:
Clinton Presidential Records
National Security Council
Intelligence Programs (Charlotte Knepper)
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FOLDER TITLE:
CALEA & Critical Infrastructure: Critical II

2008-1217-F
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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 Relcase would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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

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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 geologieal or geophysical information concerning wells [(b)(9) of the FOIA]

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Office of the Attorney General
Washington, D. C. 20530

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October 6, 1997

MEMORANDUM

TO: John Hamre
Deputy Secretary of Defense

Major General Don Kerrick
Deputy Assistant to the President for National Security Affairs

Don Gips
Chief Domestic Policy Advisor to the Vice President

Tom Marsh
Chairman, President's Commission on Critical Infrastructure Protection

FROM: Janet Reno
Attorney General

SUBJECT: PCCIP Draft Report

Based on our necessarily cursory review, I offer the following comments on the Commission's draft report. As I said in my September 30 memorandum, I believe the Steering Committee will need to conduct a more in-depth review and, with the help of the Advisory Committee and Transition Office, examine possible alternative recommendations after we receive the Commission's final report on October 13.

1. New Government Structures

One of the primary reasons for creating the Commission was to recommend how the government should organize itself to handle infrastructure assurance and, in particular, to respond to an attack on our critical infrastructures. Yet, despite its recommendation that the government create five new entities, the report does not answer some very fundamental questions -- How will the federal government respond to a cyber attack on our critical infrastructures (such as that in the Eligible Receiver Exercise)? Who, if anyone, is in charge? How should DoD and DoJ respond when it is not yet clear whether the source of the attack is a domestic hacker, a foreign nation state, an organized crime group, a terrorist organization, or some other bad actor? What mechanisms should be set up to provide the necessary crisis management and interagency coordination? The draft report merely

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states that "the emergency planning and response functions will continue to work as currently constituted." Page 5-7. A great deal more thought needs to be given to how the government should structure itself to deal with attacks on the critical infrastructures before we can recommend anything to the Principals Committee and, ultimately, to the President.

In addition, the roles of the new entities proposed by the Commission are not entirely clear. For instance, the report says that the proposed Office of National Infrastructure Assurance, which would be staffed by 5-10 persons, would oversee and facilitate infrastructure assurance policy formulation, propose national objectives, develop implementation strategies, and propose new legislation and regulations. In many respects, this formulation of ONIA's role mirrors the objectives that we had for the Commission itself. It is not clear to me how a new, small office will be able to accomplish this task.

The report also recommends that this office be headed by an Assistant to the President who would operate outside the NSC structure. As we discussed at our last meeting, this function might be better placed within the NSC. (I understand that the Commission may be considering altering its recommendation.)

The report also recommends creation of an Infrastructure Assurance Support Office, located within the Department of Commerce. It is not clear to me why this office, whose main role is to support the proposed ONIA, should be located in a different agency. Moreover, I am not certain that the Commerce Department is necessarily the best location for what is, in essence, a national security function. Other agencies, the NSC, or a new entity, would probably be more suitable locations for this responsibility.

2. Information Sharing

The report proposes the creation of a new Information Sharing and Operational Warning Center, which would collect information about cyber intrusions and provide early warnings. This proposal creates several different problems that need to be addressed. First, the new Center would duplicate existing indications and warning centers, such as the CITAC at FBI and others within DoD. The proposal does not specify how the new Center would interact with existing entities, particularly law enforcement agencies, or set out what role the Center would have in responding to a cyber crisis. It is not clear to me why this center should not be joined with an existing facility.

In addition, the Commission notes many of the problems that lead to industry's refusing to share information with the government, but the report's solutions do not seem sufficient to remedy the problem. One reason industry does not share

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information about cyber intrusions with law enforcement is that it fears the negative business repercussions that would attend criminal investigation and, in many cases, public disclosure during a trial. Establishing a new trusted Center, along with other fixes like a FOIA amendment, would not assuage all of industry's concerns if the Center's information were made available to law enforcement. But if the information is not available to law enforcement, the government will be unable to perform a critical part of its infrastructure assurance responsibility. Alternative solutions to the information sharing problem, including possible reporting requirements enacted in law or regulation, need to be considered. Reliance on market forces and voluntary industry cooperation, while desirable, may simply be insufficient.

3. Licensing of Cyber Investigators.

The Commission's draft report recommends the licensing of private cyber investigators. It is not at all clear, however, how these investigators would interact with federal, state, and local law enforcement. If the Commission perceives that existing law enforcement resources are inadequate, we should try to redress that problem directly. Creating federally licensed cyber investigators not only fails to solve the problem of insufficient law enforcement resources, but may actually prove a hindrance if private investigators, who would be collecting evidence and interviewing witnesses on behalf of their employers, interfere with law enforcement investigations.

4. Encryption.

The draft report urges the creation of a trustworthy key management infrastructure and the use of key recovery to provide access to encrypted data for law enforcement and businesses. The report does not contain any recommendation, however, on how to achieve this goal. It is not clear whether the Commission is urging that we rely on market forces alone, or whether it is proposing legislation to effect this desired outcome. Law enforcement, for its part, is skeptical that market forces alone will result in the widespread use of key recovery encryption. Moreover, the Commission states that stored keys should receive the same sorts of legal protections as exist for mail, telephone communications, and electronic communications. These types of communications, however, receive different protections.

5. Publication of Sensitive Data.

The Commission urges the publication of comparative data within industries. Yet, publication of information regarding security and reliability can provide potential attackers with a blueprint for attacking critical infrastructures (as the Commission later acknowledges in its section concerning sensitive

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information on the Internet).

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In a related vein, I note that several sections of the report itself, particularly the appendices, contain sensitive security information. Special care should be taken to protect this information once portions of the report are declassified and released. This concern also applies to any discussion of "offensive" operations.

6. Physical vs. Cyber Issues.

The vast majority of the report deals with cyber issues. We have no objection to this emphasis, but the Commission should not convey the impression that we are not concerned with physical attacks on the infrastructures. The Commission could mitigate this problem by noting in the introduction that cyber issues are given more attention because there is a more urgent need to identify and address the issues in this new area, but that this emphasis should not be interpreted as a suggestion that physical threats do not require continued national attention and cooperation between the government and private sector.

7. Legal Issues.

We are concerned that several statements in the report about legal issues may be overbroad or simply incorrect. For instance, the discussion in Appendix E suggests that the Jencks Act would entitle defense attorneys to access to information shared with the analysis and warning center. We believe this is incorrect. Similarly, the report states that courts have already spoken to the issue of making hacker tools available on the Internet, and that a hands-off policy is therefore required. This may be an overstatement. I would recommend that the Commission consult with relevant components of the Department of Justice (the Criminal, Civil, and Antitrust Divisions, in particular) to confirm the accuracy of the report's legal discussion.

8. Implementation.

The reports final chapter addresses implementation of the report's recommendations. It states, for example, that the Transition Office will focus immediately on establishment of the Office of National Infrastructure Assurance; that the Transition Office will be headed by the same person who will head the ONIA; and that the Transition Office will begin immediately to detail the responsibilities of the new federal structures and address personnel matters.

I believe this chapter should be deleted. It would be presumptuous to begin implementing any recommendations until after the President, upon receiving the advice of the Steering, Advisory, and Principals Committee, makes his final decisions.

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Again, these are simply our preliminary views on the Commission's draft report. Much closer analysis is needed once we receive the Commission's final report. I look forward to discussing these issues with you tomorrow.

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Criminal Division

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Office of the Deputy Assistant Attorney General *Washington, D.C. 20530*

EXECUTIVE SUMMARY

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE ACTING DEPUTY ATTORNEY GENERAL

FROM: Robert S. Litt
Deputy Assistant Attorney General

SUBJECT: President's Commission on Critical Infrastructure Protection (PCCIP)

PURPOSE: To inform the Attorney General of PCCIP's request that the Steering Committee and Advisory Committee be fully staffed, and that the Vice President show support for the Commission's work.

TIMETABLE: None.

DISCUSSION: The President's Commission on Critical Infrastructure Protection has relayed concerns that the Commission is not receiving adequate support from the Administration. More specifically, they lack a Steering Committee, an Advisory Committee, and any visible White House support.

RECOMMENDATION: We recommend that you call Sandy Berger at the White House and address these three issues in an attempt to promote the Commission's work.

05/18/9/ SUN 13:01 FAX 202 514 6034 CRM/OAAG/RSL/AVD 002

U. S. Department of Justice

Criminal Division

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Office of the Deputy Assistant Attorney General *Washington, D.C. 20530*

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE ACTING DEPUTY ATTORNEY GENERAL

FROM: Robert S. Litt
Deputy Assistant Attorney General

SUBJECT: President's Commission on Critical Infrastructure Protection (PCCIP)

PURPOSE: The purpose of this memorandum is to recommend that you contact Sandy Berger at the White House and request his support in addressing three issues involving the President's Commission on Critical Infrastructure Protection (PCCIP). More specifically, we recommend that you ask Mr. Berger to ensure that the White House (1) re-staffs the PCCIP's Steering Committee, (2) designates Advisory Committee members, and (3) arranges an event where the Vice President lends support to the Commission's activities. This request is made because of the Commission's concerns, relayed independently by David Keyes and Stevan Mitchell (a Computer Crime Section attorney serving as a Commissioner) that the Commission is not receiving adequate support from the Administration.

TIMETABLE: None.

SYNOPSIS: According to the Commission members, the President's Commission on Critical Infrastructure Protection (PCCIP) has been hindered in achieving its mission because (1) there has been dramatic and disruptive personnel turnover in the PCCIP's Steering Committee; (2) there have been delays in designating members of the Commission's Advisory Committee; and (3) the PCCIP suffers from a general inability to obtain visible White House support for its efforts. And while Congress appears to be interested in PCCIP's underlying issues, both Congress and the media are becoming increasingly aware of these practical difficulties, creating the potential for

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embarrassment. Therefore, the Commission needs White House support. More specifically, the White House should fully staff the PCCIP's Steering Committee, quickly assemble a viable Advisory Committee, and consider scheduling events and/or meetings to coalesce support for PCCIP's efforts.

DISCUSSION: On July 15 of last year, the President signed Executive Order 13010, thereby establishing the President's Commission on Critical Infrastructure Protection (PCCIP). The Order also established a Steering Committee and a Principals Committee to review the Commission's recommendations before their submission to the President. In recognition of the fact that critical infrastructures are owned and operated by the private sector, the Executive Order also called for a private sector Advisory Committee to consist of up to 15 individuals "appointed by the President from the private sector who are knowledgeable about critical infrastructures."

The Executive Order gave the Commission one year to consult with concerned elements of the public and private sectors and Congress, and assess the vulnerabilities of, and threats to, our nation's critical infrastructures. In its report to the President (now due on October 15, 1997), the Commission is to recommend a comprehensive national policy and implementation strategy for protecting critical infrastructures from physical and cyber threats.

There are three primary obstacles that may prevent the Commission from succeeding in its mission: (1) turnover that has caused significant disruption in continuity of PCCIP's Steering Committee;[1] (2) numerous delays in selecting the Commission's Advisory Committee; and (3) a general inability to obtain visible White House support for its efforts.

Obstacle 1: Disruption in Continuity of the Steering Committee. Last December, Jamie

[1] Some of this turnover is the natural result of a Presidential election and the shifting of personnel within the Administration.

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Gorelick, John White, and PCCIP Chairman Tom Marsh met and agreed the Commission has not yet been operationalized in accordance with the Executive Order. The Steering Committee was appointed shortly thereafter, and held its first (and thus far only) meeting in January. At that meeting, it was agreed that an extension of the Commission was warranted, due to the five-month delay in establishing the Steering Committee, and further inevitable delays in the appointment of the Advisory Committee. As a result, the Commission, Principals Committee, Steering Committee, and Advisory Committee were extended by 90 days.

Since that meeting, the Steering Committee has undergone almost complete turnover. Ms. Gorelick left her position at the Department of Justice in mid-April and her replacement has not yet been confirmed. John White has announced his imminent departure. Mr. Berger has moved up to become the Assistant to the President for National Security Affairs and is handing his Steering Committee responsibilities to his deputy, Don Kerrick. The position established in November for a representative of the Vice President's office has yet to be filled. Thus, Commission Chairman Tom Marsh provides the only continuity on the Steering Committee.

Obstacle 2: Difficulties in Establishing an Advisory Committee. The Commission has pressed to obtain presidential appointees for its Advisory Committee since July of last year. Even with its three months' extension, however, the Commission is now more than halfway through its allotted time and there are still an insufficient number of appointees with which to convene a representative Advisory Committee. It is a critical time, and even the opportunity to appoint an Advisory Committee may soon be lost, because the Commission must begin to circulate drafts to the Steering Committee and Principals Committee by early August if the final report will be issued, as required, in October. Yet, to this day, there has been only incremental progress:

- In early February, eight names were approved by the President for vetting. As of last week, one on that list had declined to

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participate; three had been cleared by White House Counsel, two had submitted all their paperwork and were pending clearance by Counsel, and two had not yet submitted their financial forms. A second slate of four names was approved by the President for vetting last week.

- Sam Nunn and Jamie Gorelick have been proposed as co-chairs of the Advisory Committee, and both have reportedly agreed to serve. To our knowledge, however, the President has not been asked to approve them for vetting and we do not know what the vetting process will entail. (For example, although she was at the time serving as Deputy Attorney General, it took five months to complete Ms. Gorelick's vetting for the Steering Committee, and it took even longer to vet John White.)

Obstacle 3: Difficulties in Obtaining Visible White House Support of PCCIP Efforts. Since the Commission's inception, Chairman Marsh has sought a public event with the President and/or Vice President as a means of signaling the importance they attach to the Commission's work and of stimulating private sector interest and participation. No such "coalescing event" has occurred, nor is one scheduled for the foreseeable future.

It is worth noting that shortly after the signing of the Executive Order, Sandy Berger, Jamie Gorelick, John White, and Tom Marsh met and agreed to explore whether the President or Vice President might be available to announce the designation of the Chairman and the creation of the Commission. A December 23 White House press release announced the President's intention to designate Mr. Marsh to serve as Chair of the Commission and to appoint Sandy Berger and Jamie Gorelick to the Steering Committee, but there have been no further White House announcements.

Several months after the press release, in March of this year, representatives of Steering Committee members met with a NSC staff representative who said that the Commission and

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Steering Committee would not be meeting with the President any time soon, and should instead focus on briefing the Vice President within two or three weeks with the objective of obtaining his commitment to participate in the "National Executive Forum" before the end of May.

When these same representatives met again at the end of April, the NSC staff representative reported that because the Commission's results were not yet known, getting the President or Vice President to endorse the Commission's efforts would be "virtually impossible." Representatives of the Vice President's office expressed a preference for the Vice President to be involved in "a low-key way rather than by a splashy PR event." A Commission representative then asked if the proposed "National Executives Forum" was still a possibility and was told the issue needs to be taken up by the Vice President's office. Thus, the previously-sought meeting between Mr. Marsh and the Vice President was changed to a meeting with Mr. Don Gips, now scheduled for May 19, 1997.

RECOMMENDATION: In order to advance the Commission's efforts, we recommend that you call Sandy Berger and seek:

(1) a commitment from the White House to fully reappoint the Steering Committee and encourage it to meet regularly during PCCIP's final months to provide the oversight and guidance contemplated in the Executive Order;

(2) a commitment from the White House to press forward with the Advisory Committee candidates and allow a partial Committee to be quickly appointed (the Committee can be brought to full strength as additional nominees are cleared); and

(3) a commitment on the part of the Vice President to support PCCIP efforts in conjunction with related high-technology concerns of the Administration, and invite PCCIP participation in the National Executive Forum.

005 CM/OAAG/RSL/AWD 05/16/97 SUN 15:08 FAX 202 514 6054

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	David W. Beier to Thomas A. Kalil at 08:32:06.00. Subject: Re: CALEA. (1 page)	07/31/1998	P5
002. email	David W. Beier to Thomas A. Kalil at 06:53:27.00. Subject: CALEA. (1 page)	10/08/1998	P5
003. email	Thomas A. Kalil to David W. Beier at 21:30:48.00. Subject: Re: CALEA. (1 page)	10/08/1998	P5
004. email	David W. Beier to Thomas A. Kalil at 12:54:02.00. Subject: Re: CALEA. (1 page)	10/09/1998	P5
005. email	Thomas A. Kalil to David Beier at 13:56:34.00. Subject: Re: CALEA. (1 page)	10/09/1998	P5

6146

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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CREATOR: Thomas A. Kalil (CN=Thomas A. Kalil/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 9-OCT-1998 13:56:34.00

SUBJECT: Re: CALEA

TO: David W. Beier (CN=David W. Beier/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TEXT:
Justice says FBI did not clear roving wiretap with them.