

FOIA MARKER

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Folder Title:

Chron File - November 1994 #1 [1]

Staff Office-Individual:

Defense Policy-Bell, Robert

Original OA/ID Number:

377

Row:	Section:	Shelf:	Position:	Stack:
31	3	6	1	v

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For Lynn Davis et al from Robert Bell. Subject: Draft Cable to Beijing. (3 pages)	11/02/1994	P1/b(1)
002a. memo	Memorandum for James Timbie et al from Robert Bell. Subject: Russian BW Meeting. [vz4651_004a is a draft of this] (1 page)	11/02/1994	P1/b(1)
002b. paper	Considerations of the Russian Side as to the USA's Concerns, June 1994 [English Translation]. (3 pages)	06/00/1994	P1/b(1)
002c. paper	Considerations of the Russian Side as to the USA's Concerns, June 1994 [Russian]. (2 pages)	06/00/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 377

FOLDER TITLE:

Chron File - November 1994 #1 [1]

2016-0152-F

vz4652

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.

Withdrawal/Redaction Marker

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WHITE HOUSE STAFFING MEMORANDUM

*staff
please*

DATE: 11/2/94 ACTION/CONCURRENCE/COMMENT DUE BY: 11/4/94

SUBJECT: PROPOSED EXECUTIVE ORDER ENTITLED "AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1984"

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McGINTY	☐	☐
PANETTA	☐	☒	MYERS	☐	☐
McLARTY	☐	☐	QUINN	☐	☐
ICKES	☐	☐	RASCO	☐	☐
BOWLES	☐	☐	RUBIN	☐	☐
RIVLIN	☐	☐	SEGAL	☐	☐
BAGGETT	☐	☐	STEPHANOPOULOS	☐	☐
EMANUEL	☐	☐	TYSON	☐	☐
GEARAN	☐	☐	VARNEY	☐	☐
GERGEN	☐	☐	WEBSTER	☐	☐
GIBBONS	☐	☐	WILLIAMS	☐	☐
GRIFFIN	☐	☐	<u>Clerk</u>	☒	☐
HALE	☐	☐	_____	☐	☐
HERMAN	☐	☐	_____	☐	☐
LAKE	☒	☐	_____	☐	☐
LINDSEY	☐	☐	_____	☐	☐
MIKVA	☒	☐	_____	☐	☐

REMARKS:

Have you reviewed & cleared?

RESPONSE:

The National Security Council staff concurs with the proposed Executive Order Entitled "Amendments to the Manual for Courts-Martial, United States, 1984."

JOHN D. PODESTA
 Assistant to the President
 and Staff Secretary
 Ext. 2702

Anthony Lake



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

THE DIRECTOR

October 27, 1994

94 OCT 31 P12:10

MEMORANDUM FOR THE PRESIDENT

FROM: Alice M. Rivlin *AMR*
Director

SUBJECT: Proposed Executive Order Entitled "Amendments to the Manual for Courts-Martial, United States, 1984"

SUMMARY: This memorandum forwards for your consideration a proposed Executive order that was prepared by the Department of Defense. The proposed order would update the Manual for Courts-Martial ("Manual").

BACKGROUND: The proposed order would implement the President's requirement, prescribed by Executive Order No. 12473, as amended, for an annual review of the Manual. The Joint Services Committee of the Department of Defense has reviewed the Manual and recommends the following changes to the President.

The proposed order would amend the Rules for Courts-Martial relating to, among other things: (1) notice of defense requests for privileged information, (2) protective orders for release of privileged information, (3) the admissibility of evidence of an accused's rehabilitative potential, and (4) aggravating factors for sentencing in capital murder cases.

The proposed order would also amend the Military Rules of Evidence relating to an accused's rights to the presence of counsel during interrogation and notice to the defense of evidence of other crimes, wrongs, or acts that the prosecution intends to introduce at trial.

A Discussion and Analysis of the changes to the Manual accompany the proposed order and are issued with the order as guidance to assist the users of the Manual.

None of the affected agencies objects to the proposed Executive order.

RECOMMENDATION: I recommend that you sign the proposed Executive order.

Attachments



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

October 28, 1994

MEMORANDUM

Re: Proposed Executive Order Entitled
"Amendments to the Manual for Courts-
Martial, United States, 1984"

The attached proposed Executive order was prepared by the Department of Defense. The Office of Management and Budget, with the approval of the Director, forwarded the proposed order to this Department for review with respect to form and legality.

The proposed Executive order will amend certain Rules for Courts-Martial, Military Rules of Evidence, Punitive Articles, and discussion and analysis accompanying the Manual for Courts-Martial, United States, 1984. Specifically, the proposed order will amend the rules governing disclosure of privileged matters, testimony concerning rehabilitative potential, interrogation, protective sweeps, and evidence of other crimes or acts. The proposed order will also modify the maximum penalties for certain offenses such as manslaughter and carnal knowledge with a child.

The proposed Executive order is approved with respect to form and legality.

Walter Dellinger
Assistant Attorney General



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

October 28, 1994

The President,

The White House.

My dear Mr. President:

I am herewith transmitting a proposed Executive order entitled "Amendments to the Manual for Courts-Martial, United States, 1984."

The proposed Executive order was prepared by the Department of Defense. The Office of Management and Budget, with the approval of the Director, forwarded the proposed order to this Department for review with respect to form and legality.

The proposed Executive order is approved with respect to form and legality.

Respectfully,

Walter Dellinger
Assistant Attorney General

EXECUTIVE ORDER NO. _____

AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL,
UNITED STATES, 1984

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801-946), in order to prescribe amendments to the Manual for Courts-Martial, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484, Executive Order No. 12550, Executive Order No. 12586, Executive Order No. 12708, Executive Order No. 12767, and Executive Order No. 12888, it is hereby ordered as follows:

Sec. 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 405(g) (1) (B) is amended to read as follows:

"(B) Evidence. Subject to Mil. R. Evid., Section V, evidence, including documents or physical evidence, which is under the control of the Government and which is relevant to the investigation and not cumulative, shall be produced if reasonably available. Such evidence includes evidence requested by the accused, if the request is timely. As soon as practicable after receipt of a request by the accused for information which may be protected under Mil. R. Evid. 505 or 506, the investigating officer shall notify the person who is authorized to issue a protective order under subsection (g) (6) of this rule, and the convening authority, if different. Evidence is reasonably available if its significance outweighs the difficulty, expense, delay, and effect on military operations of obtaining the evidence."

b. R.C.M. 405(g) is amended by inserting the following new subparagraph (6) at the end thereof:

"(6) Protective order for release of privileged information. If, prior to referral, the Government agrees to disclose to the accused information to which the protections afforded by Mil. R. Evid. 505 or Mil. R. Evid. 506 may apply, the convening authority, or other person designated by regulations of the Secretary of the service concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified in Mil. R. Evid. 505(g) (1) (B) through (F) or Mil. R. Evid. 506(g) (2) through (5)."

c. R.C.M. 905(f) is amended to read as follows:

"(f) Reconsideration. On request of any party or sua sponte, the military judge may, prior to authentication of the record of trial, reconsider any ruling, other than one amounting to a finding of not guilty, made by the military judge."

d. R.C.M. 917(f) is amended to read as follows:

"(f) Effect of ruling. A ruling granting a motion for a finding of not guilty is final when announced and may not be reconsidered. Such a ruling is a finding of not guilty of the affected specification, or affected portion thereof, and, when appropriate, of the corresponding charge. A ruling denying a motion for a finding of not guilty may be reconsidered at any time prior to authentication of the record of trial."

e. R.C.M. 1001(b) (5) is amended to read as follows:

"(5) Evidence of rehabilitative potential. Rehabilitative potential refers to the accused's potential to be restored, through vocational, correctional, or therapeutic training or other corrective measures to a useful and constructive place in society.

(A) In general. The trial counsel may present, by testimony or oral deposition in accordance with R.C.M. 702(g) (1), evidence in the form of opinions concerning the accused's previous performance as a servicemember and potential for rehabilitation.

(B) Foundation for opinion. The witness or deponent providing opinion evidence regarding the accused's rehabilitative potential must possess sufficient information and knowledge about the accused to offer a rationally-based opinion that is helpful to the sentencing authority. Relevant information and knowledge include, but are not limited to, information and knowledge about the accused's character, performance of duty, moral fiber, determination to be rehabilitated, and nature and severity of the offense or offenses.

(C) Bases for opinion. An opinion regarding the accused's rehabilitative potential must be based upon relevant information and knowledge possessed by the witness or deponent, and must relate to the accused's personal circumstances. The opinion of the witness or deponent regarding the severity or nature of the accused's offense or offenses may not serve as the principal basis for an opinion of the accused's rehabilitative potential.

(D) Scope of opinion. An opinion offered under this rule is limited to whether the accused has rehabilitative potential and to the magnitude or quality of any such potential. A witness may not offer an opinion regarding the appropriateness of a punitive discharge or whether the accused should be returned to the accused's unit.

(E) Cross-examination. On cross-examination, inquiry is permitted into relevant and specific instances of conduct.

(F) Redirect. Notwithstanding any other provision in this rule, the scope of opinion testimony permitted on redirect may be expanded, depending upon the nature and scope of the cross-examination."

f. R.C.M. 1003(b) (2) is amended to read as follows:

"(2) Forfeiture of pay and allowances. Unless a total forfeiture is adjudged, a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last. Allowances shall be subject to forfeiture only when the sentence includes forfeiture of all pay and allowances. The

maximum authorized amount of a partial forfeiture shall be determined by using the basic pay, retired pay, or retainer pay, as applicable, or, in the case of reserve component personnel on inactive-duty, compensation for periods of inactive-duty training, authorized by the cumulative years of service of the accused, and, if no confinement is adjudged, any sea or foreign duty pay. If the sentence also includes reduction in grade, expressly or by operation of law, the maximum forfeiture shall be based on the grade to which the accused is reduced."

g. R.C.M. 1004(c)(4) is amended to read as follows:

"(4) That the offense was committed in such a way or under circumstances that the life of one or more persons other than the victim was unlawfully and substantially endangered, except that this factor shall not apply to a violation of Articles 104, 106a, or 120."

h. R.C.M. 1004(c)(7)(B) is amended to read as follows:

"(B) The murder was committed: while the accused was engaged in the commission or attempted commission of any robbery, rape, aggravated arson, sodomy, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense."

i. R.C.M. 1004(c)(7)(I) is amended to read as follows:

"(I) The murder was preceded by the intentional infliction of substantial physical harm or prolonged, substantial mental or physical pain and suffering to the victim. For purposes of this section, "substantial physical harm" means fractures or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs or other serious bodily injuries.

The term "substantial physical harm" does not mean minor injuries, such as a black eye or a bloody nose. The term "substantial mental or physical pain and suffering" is accorded its common meaning and includes torture."

j. R.C.M. 1102(b)(2) is amended to read as follows:

"(2) Article 39(a) sessions. An Article 39(a) session under this rule may be called for the purpose of inquiring into, and, when appropriate, resolving any matter which arises after trial and which substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may also call an Article 39(a) session, upon motion of either party or sua sponte, to reconsider any trial ruling that substantially affects the legal sufficiency of any findings of guilty or the sentence."

k. R.C.M. 1105(c)(1) is amended to read as follows:

"(1) General and special courts-martial. After a general or special court-martial, the accused may submit matters under this rule within the later of 10 days after a copy of the authenticated record of trial, or, if applicable, the recommendation of the staff judge advocate or legal officer, or an addendum to the recommendation containing new matter is served on the accused. If, within the 10-day period, the accused shows that additional time is

required for the accused to submit such matters, the convening authority or that authority's staff judge advocate may, for good cause, extend the 10-day period for not more than 20 additional days; however, only the convening authority may deny a request for such an extension."

1. R.C.M. 1106(f)(7) is amended to read as follows:

"(7) New matter in addendum to recommendation. The staff judge advocate or legal officer may supplement the recommendation after the accused and counsel for the accused have been served with the recommendation and given an opportunity to comment. When new matter is introduced after the accused and counsel for the accused have examined the recommendation, however, the accused and counsel for the accused must be served with the new matter and given ten days from service of the addendum in which to submit comments. Substitute service of the accused's copy of the addendum upon counsel for the accused is permitted in accordance with the procedures outlined in subparagraph (f)(1) of this rule."

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 305(d)(1)(B) is amended to read as follows:

"(B) The interrogation is conducted by a person subject to the code acting in a law enforcement capacity or the agent of such a person, the interrogation is conducted subsequent to the preferral of charges, and the interrogation concerns the offenses or matters that were the subject of the preferral of charges."

b. Mil. R. Evid. 305(e) is amended to read as follows:

"(e) Presence of counsel.

(1) Custodial interrogation. Absent a valid waiver of counsel under subdivision (g)(2)(B), when an accused or person suspected of an offense is subjected to custodial interrogation under circumstances described under subdivision (d)(1)(A) of this rule, and the accused or suspect requests counsel, counsel must be present before any subsequent custodial interrogation may proceed.

(2) Post-preferral interrogation. Absent a valid waiver of counsel under subdivision (g)(2)(C), when an accused or person suspected of an offense is subjected to interrogation under circumstances described in subdivision (d)(1)(B) of this rule, and the accused or suspect either requests counsel or has an appointed or retained counsel, counsel must be present before any subsequent interrogation concerning that offense may proceed."

c. Mil. R. Evid. 305(f) is amended to read as follows:

"(f) Exercise of rights.

(1) The privilege against self-incrimination. If a person chooses to exercise the privilege against self-incrimination under this rule, questioning must cease immediately.

(2) The right to counsel. If a person subjected to interrogation under the circumstances described in subdivision (d)(1) of this rule chooses to exercise the right to counsel, questioning must cease until counsel is present."

d. Mil. R. Evid. 305(g)(2) is amended to read as follows:

"(2) Counsel.

(A) If the right to counsel in subdivision (d) is applicable and the accused or suspect does not decline affirmatively the right to counsel, the prosecution must demonstrate by a preponderance of the evidence that the individual waived the right to counsel.

(B) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(A) requests counsel, any subsequent waiver of the right to counsel obtained during a custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that -

(i) the accused or suspect initiated the communication leading to the waiver; or

(ii) the accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver.

(C) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(B) requests counsel, any subsequent waiver of the right to counsel obtained during an interrogation concerning the same offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that the accused or suspect initiated the communication leading to the waiver."

e. Mil. R. Evid. 314(g)(3) is amended to read as follows:

"(3) Examination for other persons.

(A) Protective sweep. When an apprehension takes place at a location in which other persons might be present who might endanger those conducting the apprehension and others in the area of the apprehension, a reasonable examination may be made of the general area in which such other persons might be located. A reasonable examination under this rule is permitted if the apprehending officials have a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(B) Search of attack area. Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched."

f. Mil. R. Evid. 404(b) is amended to read as follows:

"(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided, that upon request by the accused, the prosecution shall provide reasonable notice in advance of trial, or during trial if the military judge excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial."

Sec. 3. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 44e(1) is amended to read as follows:

"(1) Voluntary manslaughter. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years."

b. Paragraph 44e(2) is amended to read as follows:

"(2) Involuntary manslaughter. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years."

c. Paragraph 45e is amended to read as follows:

"e. Maximum punishment.

(1) Rape. Death or such other punishment as a court-martial may direct.

(2) Carnal knowledge with a child who, at the time of the offense, has attained the age of 12 years. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(3) Carnal knowledge with a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life."

d. Paragraph 51e is amended to read as follows:

"e. Maximum punishment.

(1) By force and without consent. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life.

(2) With a child who, at the time of the offense, has attained the age of 12 years, but is under the age of 16 years. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(3) With a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life.

(4) Other cases. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years."

e. Paragraph 85e is amended to read as follows:

"e. Maximum punishment. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years."

Sec. 4. These amendments shall take effect on _____ 1994, subject to the following:

(a) The amendment made to Rule for Courts-Martial 1004(c)(4) shall apply only to offenses committed on or after _____ 1994.

(b) Nothing contained in these amendments shall be construed to make punishable any act done or omitted prior to _____ 1994, which was not punishable when done or omitted.

(c) The maximum punishment for an offense committed prior to 1994, shall not exceed the applicable maximum in effect at the time of the commission of such offense.

(d) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to 1994, and any such restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Sec. 5. The Secretary of Defense, on behalf of the President, shall transmit a copy of this order to the Congress of the United States in accord with section 836 of title 10, United States Code.

THE WHITE HOUSE,

TIME STAMP

NATIONAL SECURITY COUNCIL EXECUTIVE SECRETARIAT STAFFING DOCUMENT

SYSTEM LOG NUMBER:

8916

ACTION OFFICER:

HAFV Seaton

DUE:

11/4/94

☒ Prepare Memo For Lake/Seaton☐ Prepare Memo For Podesta☐ Prepare Memo☒ Appropriate Action☐ Prepare Memo For Itoh

to

CONCURRENCES/COMMENTS*

PHONE* to action officer at ext.

Concur	FYI	Concur	FYI	Concur	FYI
☐	☐ Andreassen	☐	☐ Gottemoeller	☐	☐ Ross
☐	☐ Andricos	☐	☐ Hahn	☐	☐ Rossin
☐	☐ Aoki	☐	☐ Halperin	☐	☐ Roth
☐	☐ Atkins	☐	☐ Harris	☐	☐ Satterfield
☐	☐ Beers	☐	☐ Indyk	☐	☐ Schifter
☒	☐ Bell	☐	☐ Jenson-Moran	☐	☐ Schwartz
☐	☐ Beyrle	☐	☐ Jones	☐	☐ Seaton
☐	☐ Blakeman	☐	☐ Kerrick	☐	☐ Simon
☐	☐ Bradley	☒	☐ Kreczko	☐	☐ Sonenshins
☐	☐ Breeland	☐	☐ Kristoff	☐	☐ Spalter
☐	☐ Burns	☐	☐ Kyle	☐	☐ Steinberg
☐	☐ Clarke	☐	☐ Laipson	☐	☐ Stephens
☐	☐ Claussen	☐	☐ Leary	☐	☐ Suettinger
☐	☒ Danvers	☐	☐ LeBourgeois	☐	☐ Tenet
☐	☐ Darragh	☐	☐ Mislock	☐	☐ Van Tassel
☐	☐ DeShazer	☐	☐ Mitchell	☐	☐ Vershbow
☐	☐ Fauver	☐	☐ Murase	☐	☐ Wales
☐	☐ Feinberg	☐	☐ Poneman	☐	☐ Walsh
☐	☐ Forsythe	☐	☐ Punke	☐	☐ Whyman
☐	☐ Fried	☐	☐ Reed	☐	☐ Witkowski
☐	☐ Froman	☐	☐ Rice	☐	☒ Seaton
☐	☐ Genton	☐	☐ Rocha	☐	☐

INFORMATION

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COMMENTS

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General Assembly

Distr.
LIMITED

A/C.1/49/L.25
2 November 1994

ORIGINAL: ENGLISH

Forty-ninth session
FIRST COMMITTEE
Agenda item 62

GENERAL AND COMPLETE DISARMAMENT

Brazil, Colombia, Egypt, India, Indonesia, Malaysia, Mexico,
Nigeria and Zimbabwe: draft resolution

Step-by-step reduction of the nuclear threat

The General Assembly,

Bearing in mind the goal of the total elimination of nuclear weapons,

Desiring to progressively and systematically reduce the threat posed by nuclear weapons,

Welcoming the respite from the intense competition in the accumulation of weapon-grade fissile materials, in the production of nuclear warheads and in the deployment of nuclear-weapon systems which characterized the cold war,

Mindful that processing of special fissionable material for weapon purposes and production of nuclear warheads continues at a steady pace in some States, and that many thousands of nuclear-weapon systems remain deployed at the brink of war,

Welcoming also the standing down of some nuclear-weapon systems from full alert and the elimination of certain types of weapons,

Mindful also that the military doctrines regarding the threat of use of nuclear weapons remain unaltered, and that most agreed reductions do not entail destruction of the nuclear warheads or delivery vehicles,

Welcoming further the steps taken to increase transparency in armaments and the emerging pattern of closing or converting nuclear-weapon production facilities,

Mindful further of the continuing lack of internationally verified inventories of the nuclear arsenals and that plans for the redirection of nuclear-weapon facilities to the task of dismantlement of the nuclear arsenals are only at an early state of development,

Wishing to further current efforts regarding multilateral negotiations and agreements, and conscious of the urgent need for expeditious action for this purpose,

Confident that the Conference on Disarmament can serve as an effective multilateral disarmament negotiating forum, as envisioned at its 1978 special session on disarmament 1/ and as evidenced recently by the successful conclusion of the chemical weapons Convention, 2/

Persuaded that agreement upon a five- to ten-year agenda on nuclear arms control would provide a needed, overall sense of direction to global disarmament efforts,

Convinced that the successful pursuit of such an agenda would significantly advance the goal of the elimination of nuclear weapons from national arsenals,

1. Identifies the following general areas for step-by-step reduction of the nuclear threat:

Area A. Steps to counter, inter alia:

(a) The acquisition and processing of special fissionable material for nuclear-weapon purposes;

(b) The manufacture and testing of nuclear warheads and their delivery vehicles;

(c) The assembly and deployment of nuclear-weapon systems;

by such means as:

(i) Prohibiting the test explosion of nuclear weapons;

(ii) Cutting off the production of special fissile materials for weapon purposes;

(iii) Ending production of nuclear warheads;

1/ Resolution S-10/2, para. 120.

2/ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction; see Official Records of the General Assembly, Forty-seventh Session, Supplement No. 27 (A/47/27), appendix I.

- (iv) Ending the production and testing of intermediate- and long-range ballistic missiles for nuclear-weapon purposes;
- (v) Effective legally binding measures to deter the use or threat of use of nuclear weapons;
- (vi) Other related measures;

Area B. Steps to actuate, inter alia:

- (a) The withdrawal from deployment and disassembly of nuclear-weapon systems;
- (b) The secure storage and dismantlement of nuclear warheads and their delivery vehicles;
- (c) The elimination of special fissionable materials for nuclear-weapon purposes;

by such means as:

- (i) Standing down nuclear-weapon systems from high-alert status;
- (ii) Separating nuclear warheads from their delivery vehicles;
- (iii) Placing nuclear warheads in secure storage;
- (iv) Converting delivery vehicles, where appropriate, to peaceful uses;
- (v) Removing special nuclear materials from warheads;
- (vi) Converting special nuclear materials to non-weapon purposes;
- (vii) Other related measures;

Area C. Steps to prepare, under international auspices:

- (a) An inventory of the nuclear arsenals, including:
 - (i) All special fissile materials, nuclear warheads and their delivery vehicles;
 - (ii) All facilities devoted to the processing, manufacture, assembly and deployment of those items;
- (b) A reorientation of those facilities necessary to the task of implementing measures relating to area B;
- (c) The closure or conversion to peaceful purposes of all other such facilities in furtherance of measures relating to area A;

2. Asks Member States, in particular the nuclear-weapon States, to consider steps which they might take unilaterally, bilaterally, or in cooperation with other States to promote progress in the identified areas, and to fully inform the international community of any steps taken in this regard;

3. Recommends to the Conference on Disarmament that in 1995 it:

(a) Develop from the three general areas identified in operative paragraph 1 a comprehensive set of practical, verifiable measures for possible negotiation in their next five- and ten-year periods;

(b) Determine from that set a year-by-year sequence and combination of negotiations on specific measures to be commenced during the next five- and ten-year periods, with due regard to steps taken pursuant to operative paragraph 2;

4. Requests that the Conference on Disarmament include in its 1995 report to the General Assembly a section on efforts undertaken in accordance with the above recommendation.

Steve A -
FYI - from my
2:30 meeting.

Long Term Nuclear Safety Strategy for Eastern Europe

BAL

1. Need for Western Support

Nuclear safety in central and eastern Europe (CEE), as well as in Russia and the newly independent successor states to the Soviet Union (collectively referred to as NIS), is challenged by a range of technical and organizational deficiencies. These relate not only to design, quality and operation of nuclear facilities but also to infrastructure, management, and the financial resources required for establishing a satisfactory safety regime.

In the late 80's, the first western activities were undertaken in order to get information about the problems in CEE and NIS. During the following years several western countries and international organizations such as the International Atomic Energy Agency (IAEA), the European Community (EC) and the World Association of Nuclear Operators (WANO) were engaged in support programs aimed at building up infrastructure, transferring scientific know-how and software, improving the quality of operation and maintenance, in-service inspection, regulatory control, and training of people.

2. The Munich Summit Approach

As the manifold different actions include a considerable risk of duplication of work and the application of different and potentially contradictory concepts, it is important to focus on "good risks" and international coordination of the various programs. In that regard, an essential step was made with the Group of Seven nations process of the Organization for Cooperation and Development (G-7), when a multilateral program of action was decided at the Munich summit in July 1992 requesting a special effort to improve the safety of Soviet-built nuclear power plants. The G-7 protocol established the following priorities of action:

"The program of action should comprise immediate measures in the following areas:

- * operational safety improvement;
- * near-term technical improvements to plants based on safety assessment; and
- * enhancing regulatory regimes.

In addition, the program of action aimed to create the basis for longer term safety improvements by the examination of:

- * the scope for replacing less safe plants by the development of alternative energy sources and the more efficient use of energy; and
- * the potential for upgrading plants of more recent design.

An essential basis of the approach were the assumptions that:

- * old VVER-440/N-230 and RBMK plants constitute an essential threat from a safety point of view that could not be removed with reasonable efforts; and
- * newer plants of type VVER-440/V-213 and VVER 1000 have more favorable safety characteristics and could be retrofitted (upgraded).

The program focused efforts on urgent measures aimed at assuring the safety of the old plants during a short- and medium-term period of operation of three to five years, after which restructuring of the energy supply structure would lead to conditions that would permit the decommissioning of the older plants.

A nuclear safety assistance coordination mechanism was established with the object of coordinating different actions within bilateral and international support programs such as the nuclear safety account at the European Bank for Reconstruction and Development (EBRD) and the actions were undertaken in the programs PHARE^a and TACIS^b. A secretariat of 24 countries was established at the European Commission in order to provide an exchange of

^a An assistance program of the European Union for central and eastern Europe.

^b An assistance program of the European Union for the former Soviet Union.

information about a spectrum of different actions at various levels.

An essential benefit of the G-7 approach is that it supplements the other support programs by the delivery of indispensable technical equipment as well as industrial cooperation in energy supply and nuclear power technology. The steps undertaken by now in that regard almost exclusively relate, however, to old VVER-440/V-230 and RBMK plants.

3. Current Situation

The G-7 procedure elaborated in detail after the Munich summit was implicitly based on the condition that comparatively rapid changes would be possible in the energy supply structure and in the nuclear safety level in CEE and NIS. This assumption was partly supported by the analyses of energy situations performed by organizations such as the IAEA and the World Bank, which predicted a sharp decrease in the energy demand of CEE and NIS and indicated the possibility of a premature decommissioning of old, unsafe nuclear power plants.

Today, it is recognized that changes are generally much slower than previously assumed, in the political and economic sectors as well as in nuclear safety matters. Several factors contribute to this slow pace of improvements. For instance, western support was often hindered by administrative obstacles in both the donor and recipient countries. It also turned out that the decrease in energy demand which occurred in most CEE and NIS countries did not ever provide real possibilities to change the energy supply structure. Essential reasons are the instability of the non-nuclear energy sector including severe problems with fossil fuel supply due to lack of hard currency, environmental impacts of fossil energy use, and the dependence of social and industrial structures on the existing operating facilities.

Some problems even increased, such as the availability of financial resources. Recently the head of the Russian State Committee for the Supervision of Nuclear and Radiation Safety

expressed his concern that the repeated considerable delay of salaries of nuclear plant personnel has a very negative influence on the quality of work and that the lack of money at nuclear power stations renders it impossible to perform required maintenance and modernization.

Country specific and regional differences turn out to be more and more important:

- * Russia has a very strong scientific and technological infrastructure because almost all central organizations of the former Soviet union (including the nuclear power plant operators) were taken over. Furthermore, Russia has a large potential of virtually all kinds of energy resources, thus providing ample independence in decisions on future energy supply structure. As a consequence this country does not really need "technical assistance" but rather long term cooperation aimed at achieving a more conscious safety thinking at all levels.
- * The Soviet organizations taken over by Russia have no counterparts in the other successor states of the former USSR, thus rendering them dependent on external technical support. In those cases, western assistance is often the only way to achieve improvements in the operation and technology of nuclear plants.
- * Many of the successor countries are heavily dependent on energy imports from Russia and suffer from a lack of hard currency required to pay for them. This situation is made more acute as Russia moves toward charging its customers world prices for fuels.
- * Countries such as the Czech and Hungarian republics have a considerable national technological infrastructure and a comparatively good economic development. They possess a high potential to solve problems by their own means but need commercial partners and cooperation to achieve the best results.
- * Chernobyl's defunct reactor poses a different problem from other reactor-related safety issues and is relevant

in different ways. The stability of the sarcophagus around the destroyed reactor is only assured for a limited time. Several open questions exist such as the treatment of significant amounts of core material outside the sarcophagus and the relationship between the destroyed reactor and the other units which are still running. The solutions of these issues are closely related to each other and to the overall energy situation of Ukraine.

For these and other reasons an early decommissioning of old Soviet built nuclear plants seems no longer a realistic short term perspective in most cases. On the contrary, Armenian and Ukrainian developments indicate that some local authorities believe old plants already shut down may even return to operation.

4. The Need for a New, "Living" Long Term Strategy

Compared to the initial assumptions of the G-7 approach, the current situation is significantly changed. There are new conditions and priorities for western support for nuclear safety in CEE and the NIS:

- * The old VVER-440/V-230 nuclear power plants are likely to be operated for a considerable period of time into the future. Furthermore, several countries in CEE and the NIS are reemphasizing the role of nuclear energy and developing plans to further expand its use in the future. Thus, the safety of plants under construction and of new facilities is again a matter of priority. Safety concerns apply to existing designs as well as to new concepts evolving within the Russian nuclear sector.
- * At least for the second generation of RBMK plants continued operation is practically a reality. Taking into account the importance of the RBMK safety issues western support programs need to be reconsidered even if western knowledge of that technology is still rather limited.
- * Fuel storage and disposal problems require much more

attention. Already there is a difficult situation at many reactor sites in CEE and the NIS. Solid solutions to this problem are required.

- * Following the decision of the Ukrainian parliament to continue the operation of the remaining reactors at Chernobyl, their safety has become a matter of more concern. A comprehensive approach to the whole range of problems related to the Chernobyl site is of high priority.
- * Realistic possibilities for decommissioning old nuclear power plants not only depend on the need and availability of replacement energy but also on the solution of related social and industrial problems. A broad approach is needed which takes into account the full range of those aspects on a country specific and regional basis.

Furthermore it must be recognized that the root causes of nuclear safety problems in CEE and the NIS are very deeply rooted and that the achievement of significant improvements is not only a question of technology transfer and availability of funds. It is also necessary to change the nuclear mentality and to strengthen safety oriented thinking at all levels. Strong and continuous efforts in cooperation during a decade or even more will presumably be needed to achieve that goal. Thus, the emphasis has to change from short-term to long-term objectives. As recognized by the protocol of the recent G-7 summit in Naples, "More needs to be done and longer term actions must be carried out."

Western support programs should be adapted to recent changes. The objectives and procedures for nuclear support to CEE and the NIS should be reconsidered in more detail, taking into account a range of relevant issues such as:

- * the specific energy supply and nuclear safety situations;
- * social, industrial, and financial aspects related to the operation and shut down of nuclear power plants;
- * differences between generic, country specific, and regional situations;
- * the general, industrial and scientific infrastructure,

and the availability of hardware; and

- * specific problems such as those related to the Chernobyl site.

A sensible procedure would be the development of a long term plan based on realistic objectives making distinctions between:

- * actions of an international nature due to the size, complexity or costs of the tasks to be solved (e.g. Chernobyl);
- * commitment to support internationally coordinated safety research and development in view of an effective exchange of information in those scientific and technological areas which provide the infrastructure of safety; and
- * building up a strong and consistent approach to RBMK reactor safety, which has only been addressed to a very limited degree in past programs.

It is suggested that the most practical way to move forward quickly and effectively on these issues is for representatives from the most nuclear capable and most directly involved western countries to formulate an action plan to deal with the situation in CEE and the NIS. Such a plan should be elaborated by a small group of experts from the United States, France, Germany, and the United Kingdom.

OUTLINE OF EVENTS:

During his Veterans Day remarks at Arlington, the President would acknowledge the veterans' presence in a VIP box. Prior to the ceremony, the veterans would be given a tour of the White House.

Sitinstand
at Arlington

REMARKS REQUIRED:

None (other than speech for occasion)

MEDIA COVERAGE:

WH Photographer

FIRST LADY'S ATTENDANCE:

As desired

VICE PRESIDENT'S ATTENDANCE:

As desired

SECOND LADY'S ATTENDANCE:

None

RECOMMENDED BY:

NSC

CONTACT:

Jim Seaton (6-9191)

THE WHITE HOUSE

WASHINGTON

Schedule Proposal

date 10 / 04 / 94☐ ACCEPT☐ REGRET☐ PENDING

TO:

Ricki Seidman
Assistant to the President and
Director of Scheduling and Advance

FROM:

Anthony Lake

REQUEST

Meeting with President

PURPOSE:

Provides an opportunity for
President to honor WWII veterans who
jumped into Normandy in June

BACKGROUND:

The head of the Return to Normandy
Association (RTN), an organization
of WWII veterans who parachuted into
Normandy during the June 1994
Normandy commemoration, requested
that members of their organization
meet with the President. As you
recall, some Pentagon officials were
against the idea of these veterans
jumping into Normandy, until
President Clinton lent his support
to the veterans' efforts.

PREVIOUS PARTICIPATION:

The President met with several
members of this group during the D-
Day commemoration ceremonies on June
6. The RTN Association's head
writes that on this occasion the
President and Mrs. Clinton invited
them to the White House.

DATE AND TIME:

November 11, 1994 11:00 a.m.

DURATION:

N/A

LOCATION:

Arlington National Cemetery

PARTICIPANTS:

Secretary of Veterans Affairs;
Participating veterans' names to be
provided later

cc: Stephanie Streett

THE WHITE HOUSE
WASHINGTON

October 5, 1994

NOTE TO NANCY

FROM: BROOKE

I don't understand why we submitted the attached schedule proposal -- we aren't asking for any of the President's time. We're only asking that these WWII vets be allowed to sit in the VIP box at Arlington and that the President acknowledge them in his remarks.

The REQUEST line is incorrect: we are NOT asking for a meeting (per Jim Seaton of Defense Policy).

To Bob Bell -

Are we asking for any

POTUS meetings?



Nancy:

10/5-

We are not requesting a meeting per se, rather that the vets be seated in the VIP box at Arlington amphitheater next to center stage next Nov. 11. I submitted an SP because I wanted to be sure this approach (instead of an Oval Office meeting) would be acceptable to POTUS. I was not near-by when he met with the vets at Omaha Beach and do not know if he promised an Oval Office meeting. If an SP is not the right vehicle for getting this pinned down, what should we do? Bob

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

November 3, 1994

INFORMATION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ROBERT G. BELL *RGB*FROM: ANNE WITKOWSKY *AW*

SUBJECT: Letter from Congressman LaRocco to Department of the Treasury regarding additional funding for Persian Gulf silver medallion

We had been asked to inquire about the Treasury Department response to the attached incoming letter from Congressman LaRocco. LaRocco wants Treasury to take steps to encourage Kuwait and other Gulf States to help fund the purchase of silver medallions for Gulf War veterans, either by buying bronze replicas and thereby generating profits for the silver medallions, or by paying for the silver medallions directly.

In response to LaRocco's letter to him, Michael Levy, Assistant Secretary for Legislative Affairs at Treasury, talked to LaRocco. He then had Treasury and State Department officials at a lower level follow up with the Kuwaiti Embassy. According to Levy, Kuwaiti Embassy officials have said on more than one occasion that they would consult with other Gulf States, but to date they have provided no substantive response. Levy has chosen not to seek high level Treasury intervention.

Concurrences by: R. Rand *RR* and Bill Danvers *WD*

Attachment

Tab A Incoming Correspondence

LARRY LAROCCO

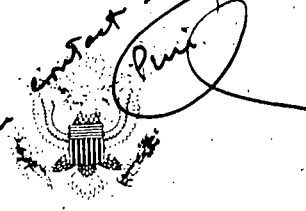
1ST DISTRICT IDAHO

COMMITTEE ON NATURAL RESOURCES

COMMITTEE ON BANKING
FINANCE AND URBAN AFFAIRS

AT-LARGE WHIP

Sandy B. Levy has asked me to push his silver medallion project who's the contact?



Neal - Who is this? What's this about? Please handle. @

1111 NEW WORLD BUILDING
WASHINGTON, DC 20515-1201
(202) 225-6611

DISTRICT OFFICES
304 N. 8TH STREET
BOISE, ID 83702
(208) 343-4211

109 S KIMBALL AVENUE
P.O. BOX 67
CALDWELL, ID 83606
(208) 459-2362

621 MAIN STREET
LEWISTON, ID 83501
(208) 746-6694

408 SHERMAN AVENUE
COEUR D'ALENE, ID 83814
(208) 667-2110

Congress of the United States
House of Representatives
Washington, DC 20515

August 18, 1994

Mr. Michael B. Levy
Assistant Secretary for Legislative Affairs
Department of the Treasury
15th and Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. Levy:

In the past, your assistance with the Persian Gulf Veterans National Medal (P.L. 102-281) has been invaluable. Today, I am seeking your pivotal assistance once again.

As you know, I have spoken earlier with the Ambassador of the State of Kuwait in an effort to secure additional funding for the Persian Gulf silver medallions through the State of Kuwait, and other members of the Gulf Cooperation Council (GCC).

On August 16, 1994, I met with Mr. Abdul-Al S. Al-Qenae, Counselor and First Secretary at the Embassy of Kuwait. The Ambassador is in Kuwait, and during his visit home he is expected to present my request for funding to his government. When he returns, the Ambassador is expected to present a request to his counterparts at the other Gulf Cooperation Council (GCC) nations.

During our meeting, I shared my amendment to the Interstate Branching bill which will allow production of silver medallions on a cash flow basis whenever there is money in the fund.

The First Secretary recommends an official presentation by high-ranking representatives of the Treasury, the Mint, and the State Department, to the GCC representatives in Washington. He asked for a letter from Treasury that would summarize the situation, and request a meeting with the Ambassadors from Kuwait and the other GCC nations. The First Secretary suggested this meeting be scheduled for mid-to-late September of this year.

Unfortunately, the total cost of this project remains unclear. The First Secretary referenced a figure of \$2.240 million, a number that had been suggested by the Mint and which I had used in my first meeting with the Ambassador. I mentioned that the figure could change based on OMB's pending decision

regarding the source of the silver, and its assigned value. The First Secretary asked that an official determination of costs be sent to the Ambassador immediately, so that it can be shared with the GCC representatives prior to any September meeting.

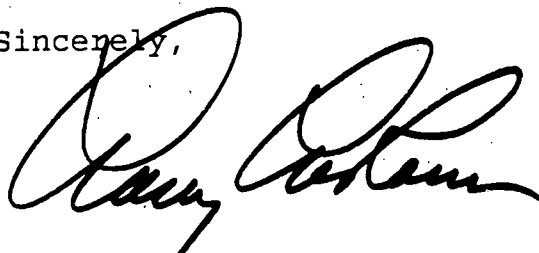
My specific request is that you again serve as the focal point to push this situation to some decision, secure the necessary cost information, and coordinate a September meeting on behalf of myself and the administration with the Ambassadors of Kuwait and the other GCC nations.

Throughout this process, your assistance with my Persian Gulf silver medallion project has been invaluable, and sincerely appreciated. If you need any other information or assistance in preparation for this meeting, feel free to contact me directly.

With best wishes,



Sincerely,



Larry LaRocco
Member of Congress

Enclosures

CC: Phil Diehl
Phil Lader

Thanks for your help.

LARRY LAROCCO

1ST DISTRICT IDAHO

COMMITTEE ON NATURAL RESOURCES

COMMITTEE ON BANKING
FINANCE AND URBAN AFFAIRS

AT LARGE WHIP



Congress of the United States
House of Representatives
Washington, DC 20515

August 16, 1994

1111 LINDSEY DRIVE
WASHINGTON, DC 20015-1211
(202) 775-6511

DISTRICT OFFICES

304 N. 8TH STREET
BOISE, ID 83702
(208) 343-4211

109 S. KIMBALL AVENUE
P.O. BOX 57
CALDWELL, ID 83605
(208) 459-2362

621 MAIN STREET
LEWISTON, ID 83501
(208) 746-6593

408 SHERMAN AVENUE
COEUR D'ALENE, ID 83814
(208) 667-2110

Abdul-Al S. Al-Qenae
Counselor and First Secretary
Embassy of the State of Kuwait
2940 Tilden Street, N.W.
Washington, D.C. 20008

Dear Mr. Secretary:

Thank you for the gracious hospitality you extended to me this afternoon. Once again, I sincerely enjoyed the opportunity to meet you and to discuss our countries' many mutual concerns.

As you requested, I am enclosing specific information regarding the amendment we discussed. This amendment has been passed by the House of Representatives, and the Senate is expected to approve it very soon. Once signed into law, it will enhance our opportunity to produce and distribute the "Desert Storm" silver medallions authorized by my original legislation.

I would be pleased to provide any additional information that the Ambassador may need when he meets with the other members of the Gulf Cooperation Council (GCC). With your help, we can speed the delivery of these expressions of gratitude to the American men and women who served so honorably in Operation Desert Storm.

Thank you again for your consideration, and I look forward to meeting again in September as we discussed.

With best wishes,

Sincerely,

Larry LaRocco
Member of Congress

Enclosure

**LaRocco Amendment --
Silver Medals for Persian Gulf Veterans**

The purpose of the LaRocco amendment is to permit immediate production of the Persian Gulf silver medallion, which was authorized by the 102nd Congress and signed into law by President Bush. These medallions are in recognition of service rendered to the nation by members of the U.S. Armed Forces who served in the gulf war. The amendment will allow funds that have already been generated for the purpose of production through ongoing sales of bronze replicas to be used immediately, and continuously, so long as the fund balance remains positive.

1 (2) the President should persuade allies of the
2 United States to promote mutual security interests
3 by preventing rogue regimes from obtaining mili-
4 tarily critical products and technologies.

5 **SEC. 704. AMENDMENTS RELATING TO SILVER MEDALS**
6 **FOR PERSIAN GULF VETERANS.**

7 Title III of Public law 102-281 (31 U.S.C. 5111
8 note) is amended—

9 (1) in section 303(b), by striking “entitlement”
10 and inserting “enactment”; and

11 (2) in section 307 by striking subsection (b)
12 and inserting the following:

13 “(b) NO EXPENDITURES IN ADVANCE OF RECEIPT
14 OF FUNDS.—The Secretary of the Treasury shall begin
15 minting and issuing the medals described in section 302
16 whenever there are any funds available to cover the cost
17 of minting and issuing any such medals from amounts re-
18 ceived by the Secretary under section 305 and donations
19 by private persons, and shall continue minting and issuing
20 such medals, subject to the availability of funds to cover
21 the costs, until all of the medals authorized have been is-
22 sued.”.

23 **SEC. 705. COMMEMORATION OF 1995 SPECIAL OLYMPIC**
24 **WORLD GAMES.**

25 (a) COIN SPECIFICATIONS.—

Sandie:

Prepare memo from
me to Lake (with
Kieczko down
for concurrence)

Recommending NSC
Concur in this.

We'll also need
as a tab the
staffing memo that
is already attached
with a concurrence
sentence typed in. - Bob

NATIONAL SECURITY COUNCIL EXECUTIVE SECRETARIAT STAFFING DOCUMENT

TIME STAMP

SYSTEM LOG NUMBER:

8916

ACTION OFFICER:

Hahn

DUE:

11/4/94

☒ Prepare Memo For Lake/

☐ Prepare Memo For Podesta

☐ Prepare Memo

☒ Appropriate Action

☐ Prepare Memo For Itoh

to

CONCURRENCES/COMMENTS*

PHONE* to action officer at ext.

Concur

FYI

Concur

FYI

Concur

FYI

☐ Andreasen

☐ Andricos

☐ Aoki

☐ Atkins

☐ Beers

☒ Bell

☐ Beyrle

☐ Blakeman

☐ Bradley

☐ Breeland

☐ Burns

☐ Clarke

☐ Claussen

☒ Danvers

☐ Darragh

☐ DeShazer

☐ Fauver

☐ Feinberg

☐ Forsythe

☐ Fried

☐ Froman

☐ Genton

☐ Gottemoeller

☐ Hahn

☐ Halperin

☐ Harris

☐ Indyk

☐ Jenson-Moran

☐ Jones

☐ Kerrick

☒ Kreczko

☐ Kristoff

☐ Kyle

☐ Laipson

☐ Leary

☐ LeBourgeois

☐ Mislock

☐ Mitchell

☐ Murase

☐ Poneman

☐ Punke

☐ Reed

☐ Rice

☐ Rocha

☐ Ross

☐ Rossin

☐ Roth

☐ Satterfield

☐ Schifter

☐ Schwartz

☐ Seaton

☐ Simon

☐ Sonenshins

☐ Spalter

☐ Steinberg

☐ Stephens

☐ Suettinger

☐ Tenet

☐ Van Tassel

☐ Vershbow

☐ Wales

☐ Walsh

☐ Whyman

☐ Witkowski

☒ Seaton

INFORMATION

☒ Itoh

☐ Lake

☒ Sens

☐ Berger

☐ Soderberg

☐ Wolin

☐ Exec Sec Desk

☒ Records Mgmt.

COMMENTS

Logged By

Return to Records Mgmt.
379 OEOB

*staff
please*

WHITE HOUSE STAFFING MEMORANDUM

DATE: 11/2/94 ACTION/CONCURRENCE/COMMENT DUE BY: 11/4/94

SUBJECT: PROPOSED EXECUTIVE ORDER ENTITLED "AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1984"

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McGINTY	☐	☐
PANETTA	☐	☒	MYERS	☐	☐
McLARTY	☐	☐	QUINN	☐	☐
ICKES	☐	☐	RASCO	☐	☐
BOWLES	☐	☐	RUBIN	☐	☐
RIVLIN	☐	☐	SEGAL	☐	☐
BAGGETT	☐	☐	STEPHANOPOULOS	☐	☐
EMANUEL	☐	☐	TYSON	☐	☐
GEARAN	☐	☐	VARNEY	☐	☐
GERGEN	☐	☐	WEBSTER	☐	☐
GIBBONS	☐	☐	WILLIAMS	☐	☐
GRIFFIN	☐	☐	<u>Clerk</u>	☒	☐
HALE	☐	☐		☐	☐
HERMAN	☐	☐		☐	☐
LAKE	☒	☐		☐	☐
LINDSEY	☐	☐		☐	☐
MIKVA	☒	☐		☐	☐

REMARKS: Have you reviewed + cleared?

RESPONSE:

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
Ext. 2702



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

THE DIRECTOR

October 27, 1994

94 OCT 31 P12:10

MEMORANDUM FOR THE PRESIDENT

FROM: Alice M. Rivlin *AMR*
Director

SUBJECT: Proposed Executive Order Entitled "Amendments to
the Manual for Courts-Martial, United States,
1984"

SUMMARY: This memorandum forwards for your consideration a proposed Executive order that was prepared by the Department of Defense. The proposed order would update the Manual for Courts-Martial ("Manual").

BACKGROUND: The proposed order would implement the President's requirement, prescribed by Executive Order No. 12473, as amended, for an annual review of the Manual. The Joint Services Committee of the Department of Defense has reviewed the Manual and recommends the following changes to the President.

The proposed order would amend the Rules for Courts-Martial relating to, among other things: (1) notice of defense requests for privileged information, (2) protective orders for release of privileged information, (3) the admissibility of evidence of an accused's rehabilitative potential, and (4) aggravating factors for sentencing in capital murder cases.

The proposed order would also amend the Military Rules of Evidence relating to an accused's rights to the presence of counsel during interrogation and notice to the defense of evidence of other crimes, wrongs, or acts that the prosecution intends to introduce at trial.

A Discussion and Analysis of the changes to the Manual accompany the proposed order and are issued with the order as guidance to assist the users of the Manual.

None of the affected agencies objects to the proposed Executive order.

RECOMMENDATION: I recommend that you sign the proposed Executive order.

Attachments



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

October 28, 1994

MEMORANDUM

Re: Proposed Executive Order Entitled
"Amendments to the Manual for Courts-
Martial, United States, 1984"

The attached proposed Executive order was prepared by the Department of Defense. The Office of Management and Budget, with the approval of the Director, forwarded the proposed order to this Department for review with respect to form and legality.

The proposed Executive order will amend certain Rules for Courts-Martial, Military Rules of Evidence, Punitive Articles, and discussion and analysis accompanying the Manual for Courts-Martial, United States, 1984. Specifically, the proposed order will amend the rules governing disclosure of privileged matters, testimony concerning rehabilitative potential, interrogation, protective sweeps, and evidence of other crimes or acts. The proposed order will also modify the maximum penalties for certain offenses such as manslaughter and carnal knowledge with a child.

The proposed Executive order is approved with respect to form and legality.

Walter Dellinger
Assistant Attorney General



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

October 28, 1994

The President,

The White House.

My dear Mr. President:

I am herewith transmitting a proposed Executive order entitled "Amendments to the Manual for Courts-Martial, United States, 1984."

The proposed Executive order was prepared by the Department of Defense. The Office of Management and Budget, with the approval of the Director, forwarded the proposed order to this Department for review with respect to form and legality.

The proposed Executive order is approved with respect to form and legality.

Respectfully,

Walter Dellinger
Assistant Attorney General

EXECUTIVE ORDER NO. _____

AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL,
UNITED STATES, 1984

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801-946), in order to prescribe amendments to the Manual for Courts-Martial, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484, Executive Order No. 12550, Executive Order No. 12586, Executive Order No. 12708, Executive Order No. 12767, and Executive Order No. 12888, it is hereby ordered as follows:

Sec. 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 405(g)(1)(B) is amended to read as follows:

"(B) Evidence. Subject to Mil. R. Evid., Section V, evidence, including documents or physical evidence, which is under the control of the Government and which is relevant to the investigation and not cumulative, shall be produced if reasonably available. Such evidence includes evidence requested by the accused, if the request is timely. As soon as practicable after receipt of a request by the accused for information which may be protected under Mil. R. Evid. 505 or 506, the investigating officer shall notify the person who is authorized to issue a protective order under subsection (g)(6) of this rule, and the convening authority, if different. Evidence is reasonably available if its significance outweighs the difficulty, expense, delay, and effect on military operations of obtaining the evidence."

b. R.C.M. 405(g) is amended by inserting the following new subparagraph (6) at the end thereof:

"(6) Protective order for release of privileged information. If, prior to referral, the Government agrees to disclose to the accused information to which the protections afforded by Mil. R. Evid. 505 or Mil. R. Evid. 506 may apply, the convening authority, or other person designated by regulations of the Secretary of the service concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified in Mil. R. Evid. 505(g)(1)(B) through (F) or Mil. R. Evid. 506(g)(2) through (5)."

c. R.C.M. 905(f) is amended to read as follows:

"(f) Reconsideration. On request of any party or sua sponte, the military judge may, prior to authentication of the record of trial, reconsider any ruling, other than one amounting to a finding of not guilty, made by the military judge."

d. R.C.M. 917(f) is amended to read as follows:

"(f) Effect of ruling. A ruling granting a motion for a finding of not guilty is final when announced and may not be reconsidered. Such a ruling is a finding of not guilty of the affected specification, or affected portion thereof, and, when appropriate, of the corresponding charge. A ruling denying a motion for a finding of not guilty may be reconsidered at any time prior to authentication of the record of trial."

e. R.C.M. 1001(b) (5) is amended to read as follows:

"(5) Evidence of rehabilitative potential. Rehabilitative potential refers to the accused's potential to be restored, through vocational, correctional, or therapeutic training or other corrective measures to a useful and constructive place in society.

(A) In general. The trial counsel may present, by testimony or oral deposition in accordance with R.C.M. 702(g) (1), evidence in the form of opinions concerning the accused's previous performance as a servicemember and potential for rehabilitation.

(B) Foundation for opinion. The witness or deponent providing opinion evidence regarding the accused's rehabilitative potential must possess sufficient information and knowledge about the accused to offer a rationally-based opinion that is helpful to the sentencing authority. Relevant information and knowledge include, but are not limited to, information and knowledge about the accused's character, performance of duty, moral fiber, determination to be rehabilitated, and nature and severity of the offense or offenses.

(C) Bases for opinion. An opinion regarding the accused's rehabilitative potential must be based upon relevant information and knowledge possessed by the witness or deponent, and must relate to the accused's personal circumstances. The opinion of the witness or deponent regarding the severity or nature of the accused's offense or offenses may not serve as the principal basis for an opinion of the accused's rehabilitative potential.

(D) Scope of opinion. An opinion offered under this rule is limited to whether the accused has rehabilitative potential and to the magnitude or quality of any such potential. A witness may not offer an opinion regarding the appropriateness of a punitive discharge or whether the accused should be returned to the accused's unit.

(E) Cross-examination. On cross-examination, inquiry is permitted into relevant and specific instances of conduct.

(F) Redirect. Notwithstanding any other provision in this rule, the scope of opinion testimony permitted on redirect may be expanded, depending upon the nature and scope of the cross-examination."

f. R.C.M. 1003(b) (2) is amended to read as follows:

"(2) Forfeiture of pay and allowances. Unless a total forfeiture is adjudged, a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last. Allowances shall be subject to forfeiture only when the sentence includes forfeiture of all pay and allowances. The

maximum authorized amount of a partial forfeiture shall be determined by using the basic pay, retired pay, or retainer pay, as applicable, or, in the case of reserve component personnel on inactive-duty, compensation for periods of inactive-duty training, authorized by the cumulative years of service of the accused, and, if no confinement is adjudged, any sea or foreign duty pay. If the sentence also includes reduction in grade, expressly or by operation of law, the maximum forfeiture shall be based on the grade to which the accused is reduced."

g. R.C.M. 1004(c)(4) is amended to read as follows:

"(4) That the offense was committed in such a way or under circumstances that the life of one or more persons other than the victim was unlawfully and substantially endangered, except that this factor shall not apply to a violation of Articles 104, 106a, or 120."

h. R.C.M. 1004(c)(7)(B) is amended to read as follows:

"(B) The murder was committed: while the accused was engaged in the commission or attempted commission of any robbery, rape, aggravated arson, sodomy, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense."

i. R.C.M. 1004(c)(7)(I) is amended to read as follows:

"(I) The murder was preceded by the intentional infliction of substantial physical harm or prolonged, substantial mental or physical pain and suffering to the victim. For purposes of this section, "substantial physical harm" means fractures or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs or other serious bodily injuries.

The term "substantial physical harm" does not mean minor injuries, such as a black eye or a bloody nose. The term "substantial mental or physical pain and suffering" is accorded its common meaning and includes torture."

j. R.C.M. 1102(b)(2) is amended to read as follows:

"(2) Article 39(a) sessions. An Article 39(a) session under this rule may be called for the purpose of inquiring into, and, when appropriate, resolving any matter which arises after trial and which substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may also call an Article 39(a) session, upon motion of either party or sua sponte, to reconsider any trial ruling that substantially affects the legal sufficiency of any findings of guilty or the sentence."

k. R.C.M. 1105(c)(1) is amended to read as follows:

"(1) General and special courts-martial. After a general or special court-martial, the accused may submit matters under this rule within the later of 10 days after a copy of the authenticated record of trial, or, if applicable, the recommendation of the staff judge advocate or legal officer, or an addendum to the recommendation containing new matter is served on the accused. If, within the 10-day period, the accused shows that additional time is

required for the accused to submit such matters, the convening authority or that authority's staff judge advocate may, for good cause, extend the 10-day period for not more than 20 additional days; however, only the convening authority may deny a request for such an extension."

1. R.C.M. 1106(f)(7) is amended to read as follows:

"(7) New matter in addendum to recommendation. The staff judge advocate or legal officer may supplement the recommendation after the accused and counsel for the accused have been served with the recommendation and given an opportunity to comment. When new matter is introduced after the accused and counsel for the accused have examined the recommendation, however, the accused and counsel for the accused must be served with the new matter and given ten days from service of the addendum in which to submit comments. Substitute service of the accused's copy of the addendum upon counsel for the accused is permitted in accordance with the procedures outlined in subparagraph (f)(1) of this rule."

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 305(d)(1)(B) is amended to read as follows:

"(B) The interrogation is conducted by a person subject to the code acting in a law enforcement capacity or the agent of such a person, the interrogation is conducted subsequent to the preferral of charges, and the interrogation concerns the offenses or matters that were the subject of the preferral of charges."

b. Mil. R. Evid. 305(e) is amended to read as follows:

"(e) Presence of counsel.

(1) Custodial interrogation. Absent a valid waiver of counsel under subdivision (g)(2)(B), when an accused or person suspected of an offense is subjected to custodial interrogation under circumstances described under subdivision (d)(1)(A) of this rule, and the accused or suspect requests counsel, counsel must be present before any subsequent custodial interrogation may proceed.

(2) Post-preferral interrogation. Absent a valid waiver of counsel under subdivision (g)(2)(C), when an accused or person suspected of an offense is subjected to interrogation under circumstances described in subdivision (d)(1)(B) of this rule, and the accused or suspect either requests counsel or has an appointed or retained counsel, counsel must be present before any subsequent interrogation concerning that offense may proceed."

c. Mil. R. Evid. 305(f) is amended to read as follows:

"(f) Exercise of rights.

(1) The privilege against self-incrimination. If a person chooses to exercise the privilege against self-incrimination under this rule, questioning must cease immediately.

(2) The right to counsel. If a person subjected to interrogation under the circumstances described in subdivision (d)(1) of this rule chooses to exercise the right to counsel, questioning must cease until counsel is present."

d. Mil. R. Evid. 305(g)(2) is amended to read as follows:

"(2) Counsel.

(A) If the right to counsel in subdivision (d) is applicable and the accused or suspect does not decline affirmatively the right to counsel, the prosecution must demonstrate by a preponderance of the evidence that the individual waived the right to counsel.

(B) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(A) requests counsel, any subsequent waiver of the right to counsel obtained during a custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that -

(i) the accused or suspect initiated the communication leading to the waiver; or

(ii) the accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver.

(C) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(B) requests counsel, any subsequent waiver of the right to counsel obtained during an interrogation concerning the same offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that the accused or suspect initiated the communication leading to the waiver."

e. Mil. R. Evid. 314(g)(3) is amended to read as follows:

"(3) Examination for other persons.

(A) Protective sweep. When an apprehension takes place at a location in which other persons might be present who might endanger those conducting the apprehension and others in the area of the apprehension, a reasonable examination may be made of the general area in which such other persons might be located. A reasonable examination under this rule is permitted if the apprehending officials have a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(B) Search of attack area. Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched."

f. Mil. R. Evid. 404(b) is amended to read as follows:

"(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided, that upon request by the accused, the prosecution shall provide reasonable notice in advance of trial, or during trial if the military judge excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial."

Sec. 3. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 44e(1) is amended to read as follows:

"(1) Voluntary manslaughter. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years."

b. Paragraph 44e(2) is amended to read as follows:

"(2) Involuntary manslaughter. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years."

c. Paragraph 45e is amended to read as follows:

"e. Maximum punishment.

(1) Rape. Death or such other punishment as a court-martial may direct.

(2) Carnal knowledge with a child who, at the time of the offense, has attained the age of 12 years. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(3) Carnal knowledge with a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life."

d. Paragraph 51e is amended to read as follows:

"e. Maximum punishment.

(1) By force and without consent. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life.

(2) With a child who, at the time of the offense, has attained the age of 12 years, but is under the age of 16 years. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(3) With a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life.

(4) Other cases. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years."

e. Paragraph 85e is amended to read as follows:

"e. Maximum punishment. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years."

Sec. 4. These amendments shall take effect on _____ 1994, subject to the following:

(a) The amendment made to Rule for Courts-Martial 1004(c)(4) shall apply only to offenses committed on or after _____ 1994.

(b) Nothing contained in these amendments shall be construed to make punishable any act done or omitted prior to _____ 1994, which was not punishable when done or omitted.

(c) The maximum punishment for an offense committed prior to _____ 1994, shall not exceed the applicable maximum in effect at the time of the commission of such offense.

(d) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to _____ 1994, and any such restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Sec. 5. The Secretary of Defense, on behalf of the President, shall transmit a copy of this order to the Congress of the United States in accord with section 836 of title 10, United States Code.

THE WHITE HOUSE,

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002a. memo	Memorandum for James Timbie et al from Robert Bell. Subject: Russian BW Meeting. [vz4651_004a is a draft of this] (1 page)	11/02/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 377

FOLDER TITLE:

Chron File - November 1994 #1 [1]

2016-0152-F

vz4652

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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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002b. paper	Considerations of the Russian Side as to the USA's Concerns, June 1994 [English Translation]. (3 pages)	06/00/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 377

FOLDER TITLE:

Chron File - November 1994 #1 [1]

2016-0152-F

vz4652

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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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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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]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002c. paper	Considerations of the Russian Side as to the USA's Concerns, June 1994 [Russian]. (2 pages)	06/00/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 377

FOLDER TITLE:

Chron File - November 1994 #1 [1]

2016-0152-F
vz4652

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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P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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