Subject: FW: LRM JAB33 – OMB Request for Views on S165 Air Cargo Security Act
From: "Bumatay, Patrick J."
Date: 3/20/03, 2:47 PM
To: "Kavanaugh, Brett M."

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Tue Oct 16 17:24:45 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:

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b(3),P3,P5

Notes:

_______

50 USC 3507

Case ID: gwb.2018-0013-P

Additional Information:

________________________
No objections, but defer to DOJ, DOT, and WH DPC.

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

From: Brown, James A.

Sent: Thursday, March 20, 2003 9:41 AM

To: dodirs@osdpc.osd.mil; dot.legislation@ost.dot.gov; lirr@do.treas.gov; state-lrm@state.gov; laffairs@ustr.gov; justice.lrm@usdoj.gov; CLRM@doc.gov; Nsc Lrm

Cc: Ohs Lrm; McMillin, Stephen S.; Schwartz, Kenneth L.; Haun, David J.; Rosado, Timothy A.; Suh, Stephen; Mertens, Steven M.; Doherty, Clare C.; Benson, Meredith G.; Clarke, Edward H.; Dougherty, Elizabeth S.; Sharp, Jess; Knuffman, Nathan L.; Boden, James; Ostp Lrm; Jukes, James J.; Green, Richard E.; Lobrano, Lauren C.; Addington, David S.; Whgc Lrm; Perry, Philip J.; Wood, John F.; Schneider, Matthew J.; Joseffer, Daryl L.

Subject: LRM JAB33 - - OMB Request for Views on S165 Air Cargo Security Act

- S165RS.pdf << S165RS.pdf >>

LRM ID: JAB33

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001
Thursday, March 20, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: James A. Brown

PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on S165 Air Cargo Security Act

DEADLINE: 10:00 A.M. Thursday, March 27, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: As ordered reported by the Senate Commerce, Science and Transportation Committee.

DISTRIBUTION LIST

AGENCIES:

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117 & 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687

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128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755

061-JUSTICE - Jamie E. Brown - (202) 514-2141

025-COMMERCE - Michael A. Levitt - (202) 482-3151

083-National Security Council - Greg Schulte - (202) 456-9221

EOP:

OHS LRM

Stephen S. McMillin

Kenneth L. Schwartz

David J. Haun

Timothy A. Rosado

Stephen Suh

Steven M. Mertens

Clare C. Doherty
Meredith G. Benson
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Lauren C. Lobrano
David S. Addington
WHGC LRM
Philip J. Perry
John F. Wood
Matthew J. Schneider
Daryl L. Joseffer

**LRM ID:** JAB33  **SUBJECT:** OMB Request for Views on S165 Air Cargo Security Act

**RESPONSE TO**

**LEGISLATIVE REFERRAL**

**MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

1. calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

2. faxing us a memo or letter.
Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109

Office of Management and Budget

FROM: ____________________________ (Date)

______________________________ (Name)

______________________________ (Agency)

______________________________ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _________

_____ Other: _________________________

_____ FAX RETURN of ______ pages, attached to this response sheet
108TH CONGRESS
1ST SESSION

S. 165

[Report No. 108-   ]

To improve air cargo security.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2003

Mrs. Hutchison (for herself and Mrs. F. Einstein) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH ——, 2003

Reported by Mr. McCain, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To improve air cargo security.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Air Cargo Security
5 Improvement Act”.

March 13, 2003 (1:30 p.m.)
SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) of title 49, United States Code, is amended to read as follows:

"(f) CARGO.—

"(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

"(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

"(B) all-cargo aircraft in air transportation and intrastate air transportation.

"(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1).”.

SEC. 3. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

“§44922. Regular inspections of air cargo shipping facilities

“The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air

March 13, 2003 (1:30 p.m.)
transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.”.

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by adding at the end the following:

“44922. Regular inspections of air cargo shipping facilities”.

SEC. 4. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is further amended by adding at the end the following:

“§ 44923. Air cargo security

(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use
the results of the pilot program to improve the known
shipper program.

"(b) INDIRECT AIR CARRIERS.—

"(1) RANDOM INSPECTIONS.—The Under Sec-
retary shall conduct random audits, investigations,
and inspections of indirect air carrier facilities to de-
termines if the indirect air carriers are meeting the
security requirements of this title.

"(2) ENSURING COMPLIANCE.—The Under Sec-
retary may take such actions as may be appropriate
to promote and ensure compliance with the security
standards established under this title.

"(3) NOTICE OF FAILURES.—The Under Sec-
retary shall notify the Secretary of Transportation
of any indirect air carrier that fails to meet security
standards established under this title.

"(4) SUSPENSION OR REVOCATION OF CERTIFI-
CATE.—The Secretary, as appropriate, shall suspend
or revoke any certificate or authority issued under
chapter 411 to an indirect air carrier immediately
upon the recommendation of the Under Secretary.
Any indirect air carrier whose certificate is sus-
pended or revoked under this subparagraph may ap-
peal the suspension or revocation in accordance with
procedures established under this title for the appeal of suspensions and revocations.

"(5) INDIRECT AIR CARRIER.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

"(c) CONSIDERATION OF COMMUNITY NEEDS.—In implementing air cargo security requirements under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities."

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 1548 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.
(c) Report to Congress on Random Audits.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section.

(e) Conforming Amendment.—The chapter analysis for chapter 449 of title 49, United States Code, as amended by section 3, is amended by adding at the end the following:

"44923. Air cargo security".

SEC. 5. Training Program for Cargo Handlers.

The Under Secretary of Transportation for Security shall establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

SEC. 6. Cargo Carried Aboard All-Cargo Aircraft.

(a) In General.—The Under Secretary of Transportation for Security shall establish a program requiring
that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) PLAN REQUIREMENTS.—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section 44901(f)(1)(B) of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(c) CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.—

(1) CIRCULATION OF PROPOSED PROGRAM.—

The Under Secretary shall—
(A) propose a program under subsection
(a) within 90 days after the date of enactment
of this Act; and

(B) distribute the proposed program, on a
confidential basis, to those air carriers and
other employers to which the program will
apply.

(2) Comment period.—Any person to which
the proposed program is distributed under para-
graph (1) may provide comments on the proposed
program to the Under Secretary not more than 60
days after it was received.

(3) Final program.—The Under Secretary of
Transportation shall issue a final program under
subsection (a) not later than 45 days after the last
date on which comments may be provided under
paragraph (2). The final program shall contain time
frames for the plans to be implemented by each air
carrier or employer to which it applies.

(4) Suspension of procedural norms.—
Neither chapter 5 of title 5, United States Code, nor
the Federal Advisory Committee Act (5 U.S.C.
App.) shall apply to the program required by this
section.
SEC. 6. REPORT ON PASSENGER PRESCREENING PROGRAM.

(a) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Attorney General, shall submit a report in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the potential impact of the Transportation Security Administration’s proposed Computer Assisted Passenger Prescreening system, commonly known as CAPPS II, on the privacy and civil liberties of United States Citizens.

(b) SPECIFIC ISSUES TO BE ADDRESSED.—The report shall address the following:

(1) Whether and for what period of time data gathered on individual travelers will be retained, who will have access to such data, and who will make decisions concerning access to such data.

(2) How the Transportation Security Administration will treat the scores assigned to individual travelers to measure the likelihood they may pose a security threat, including how long such scores will be retained and whether and under what circumstances they may be shared with other governmental, non-governmental, or commercial entities.

(3) The role airlines and outside vendors or contractors will have in implementing and operating the
system, and to what extent will they have access, or
the means to obtain access, to data, scores, or other
information generated by the system.

(4) The safeguards that will be implemented to
ensure that data, scores, or other information gen-
erated by the system will be used only as officially in-
tended.

(5) The procedures that will be implemented to
mitigate the effect of any errors, and what procedural
recourse will be available to passengers who believe
the system has wrongly barred them from taking
flights.

(6) The oversight procedures that will be imple-
mented to ensure that, on an ongoing basis, privacy
and civil liberties issues will continue to be considered
and addressed with high priority as the system is in-
stalled, operated and updated.

SEC. 7. MODIFICATION OF REQUIREMENTS REGARDING
TRAINING TO OPERATE AIRCRAFT.

(a) ALIENS COVERED BY WAITING PERIOD.—Sub-
section (a) of section 44939 of title 49, United States Code,
is amended—

(1) by resetting the text of subsection (a) after
"(a) WAITING PERIOD.—" as a new paragraph 2 from the left margin;
(2) by striking "A person" in that new paragraph and inserting "(1) In general.—A person";
(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;
(4) by striking "any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more" and inserting "an aircraft";
(5) by striking "paragraph (1)" in paragraph (1)(B), as redesignated, and inserting "subparagraph (A)"; and
(6) by adding at the end the following:
"(2) Exception.—The requirements of paragraph (1) shall not apply to an alien who—
"(A) has earned a Federal Aviation Administration type rating in an aircraft; or
"(B) holds a current pilot’s license or foreign equivalent commercial pilot’s license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation."
(b) Covered Training.—Section 44936(c) of title 49, United States Code, is amended to read as follows:
“(c) COVERED TRAINING.—

“(1) IN GENERAL.—For purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.

“(2) EXCEPTION.—For the purposes of subsection (a), training does not include classroom instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.”.

(c) PROCEDURES.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement section 44939 of title 49, United States Code.

(2) USE OF OVERSEAS FACILITIES.—In order to implement the amendments made to section 44939 of title 49, United States Code, by this section, United States Embassies and Consulates that have fingerprinting capability shall provide fingerprinting services to aliens covered by that section if the Attorney General requires their fingerprinting in the administration of that section, and transmit the fingerprints to the Department of Justice and any other appropriate agency. The Attorney General shall co-
operate with the Secretary of State to carry out this paragraph.

(d) EFFECTIVE DATE.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement the amendments made by this section. The Attorney General may not interrupt or prevent the training of any person described in section 44939(a)(1) of title 49, United States Code, who commenced training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less before, or within 120 days after, the date of enactment of this Act unless the Attorney General determines that the person represents a risk to aviation or national security.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation and the Attorney General shall jointly submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, in reducing risks to aviation and national security.

SEC. 8. PASSENGER IDENTIFICATION.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Under Secretary of Trans-
portation for Security, in consultation with the Adminis-
trator of the Federal Aviation Administration, appropriate
law enforcement, security, and terrorism experts, represent-
atives of air carriers and labor organizations representing
individuals employed in commercial aviation, shall develop
guidelines to provide air carriers guidance for detecting
false or fraudulent passenger identification. The guidelines
may take into account new technology, current identifica-
tion measures, training of personnel, and issues related to
the types of identification available to the public.

(b) AIR CARRIER PROGRAMS.—Within 60 days after
the Under Secretary issues the guidelines under subsection
(a) in final form, the Under Secretary shall provide the
guidelines to each air carrier and establish a joint govern-
ment and industry council to develop recommendations on
how to implement the guidelines.

(c) REPORT.—The Under Secretary of Transportation
for Security shall report to the Senate Committee on Com-
merce, Science, and Transportation and the House of Rep-
resentatives Committee on Transportation and Infrastruk-
ture within 1 year after the date of enactment of this Act
on the actions taken under this section.

SEC. 9. PASSENGER IDENTIFICATION VERIFICATION.

(a) PROGRAM REQUIRED.—The Under Secretary of
Transportation for Security may establish and carry out
a program to require the installation and use at airports
in the United States of the identification verification tech-
nologies the Under Secretary considers appropriate to assist
in the screening of passengers boarding aircraft at such air-
ports.

(b) TECHNOLOGIES EMPLOYED.—The identification
verification technologies required as part of the program
under subsection (a) may include identification scanners,
biometrics, retinal, iris, or facial scanners, or any other
technologies that the Under Secretary considers appropriate
for purposes of the program.

(c) COMMENCEMENT.—If the Under Secretary deter-
mines that the implementation of such a program is appro-
priate, the installation and use of identification verification
technologies under the program shall commence as soon as
practicable after the date of that determination.

SEC. 10. BLAST-RESISTANT CARGO CONTAINER TECH-
NOLOGY.

Not later than 6 months after the date of enactment
of this Act, the Under Secretary of Transportation for Secu-
ritiy, and the Administrator of the Federal Aviation Admin-
istration, shall jointly submit a report to Congress that
contains—
(1) an evaluation of blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) an examination of the advantages associated with the technology in preventing damage and loss of aircraft from terrorist action and any operational impacts which may result from use of the technology (particularly added weight and costs);

(3) an analysis of whether alternatives exist to mitigate the impacts described in paragraph (2) and options available to pay for the technology; and

(4) recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

SEC. 11. ARMING PILOTS AGAINST TERRORISM.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress makes the following findings:

(A) During the 107th Congress, both the Senate and the House of Representatives overwhelmingly passed measures that would have armed pilots of cargo aircraft.

(B) Cargo aircraft do not have Federal air marshals, trained cabin crew, or determined passengers to subdue terrorists.
(C) Cockpit doors on cargo aircraft, if present at all, largely do not meet the security standards required for commercial passenger aircraft.

(D) Cargo aircraft vary in size and many are larger and carry larger amounts of fuel than the aircraft hijacked on September 11, 2001.

(E) Aircraft cargo frequently contains hazardous material and can contain deadly biological and chemical agents and quantities of agents that caused communicable diseases.

(F) Approximately 12,000 of the Nation’s 90,000 commercial pilots serve as pilots and flight engineers on cargo aircraft.

(G) There are approximately 2,000 cargo flights per day in the United States, many of which are loaded with fuel for outbound international travel or are inbound from foreign airports not secured by the Transportation Security Administration.

(H) Aircraft transporting cargo pose a serious risk as potential terrorist targets that could be used as weapons of mass destruction.
(I) Pilots of cargo aircraft deserve the same ability to protect themselves and the aircraft they pilot as other commercial airline pilots.

(J) Permitting pilots of cargo aircraft to carry firearms creates an important last line of defense against a terrorist effort to commande a cargo aircraft.

(2) SENSE OF CONGRESS.—It is the sense of Congress that a member of a flight deck crew of a cargo aircraft should be armed with a firearm to defend the cargo aircraft against an attack by terrorists that could result in the use of the aircraft as a weapon of mass destruction or for other terrorists purposes.

(b) ARMING CARGO PILOTS AGAINST TERRORISM.—Section 44921 of title 49, United States Code, is amended—

(1) in subsection (a), by striking “passenger” each place that it appears; and

(2) in subsection (k)—

(A) in paragraph (2)—

(i) by striking “or,” and all that follows; and

(ii) by inserting “or any other flight deck crew member.”; and

(B) by adding at the end the following new paragraph:
“(3) ALL-CARGO AIR TRANSPORTATION.—For the purposes of this section, the term air transportation includes all-cargo air transportation.”.

(d) IMPLEMENTATION.—

(1) TIME FOR IMPLEMENTATION.—The training of pilots as Federal flight deck officers required in the amendments made by subsection (b) shall begin as soon as practicable and no later than 90 days after the date of enactment of this Act.

(2) EFFECT ON OTHER LAWS.—The requirements of subparagraph (1) shall have no effect on the deadlines for implementation contained in section 44921 of title 49, United States Code, as in effect on the day before the date of enactment of this Act.

SEC. 12. REPORT ON DEFENDING AIRCRAFT FROM MAN-PORTABLE AIR DEFENSE SYSTEMS (SHOULDER-FIRED MISSILES).

Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall issue a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on how best to defend turbo and jet passenger aircraft from Man-Portable Air Defense Systems (shoulder-fired missiles). The report shall also include actions taken to date, counter-
measures, risk mitigation, and other activities. The report may be submitted in classified form.
Subject: Re: FW: LRM JAB33 – OMB Request for Views on S165 Air Cargo Security Act
From: "Kavanaugh, Brett M."
Date: 3/26/03, 8:30 PM
To: "Bumatay, Patrick J.", "Brown, James A."

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Mon Aug 06 15:11:01 EDT 2018

Releasability: Withheld In Part

Reasons for Withholding:

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b(3), P3

Notes:

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50 USC 3507

Case ID: gwb.2018-0012-P

Additional Information:

------------------------
Subject: Re: FW: LRM JAB33 - - OMB Request for Views on S165 Air Cargo Security Act
From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
Date: 3/26/03, 8:35 PM
To: James A. Brown (CN=James A. Brown/OU=OMB/O=EOP@EOP [OMB]), Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Thu Aug 16 11:01:06 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:

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b(3),P5,P3

Notes:

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50 USC 3507

Case ID: gwb.2018-0012-P

Additional Information:

___________________________
Subject: FW: LRM JAB93 – TRANSPORTATION Report on S165 Air Cargo Security Act
From: "Bumatay, Patrick J."
Date: 5/20/03, 6:29 PM
To: "Kavanaugh, Brett M."

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Wed Oct 24 14:39:55 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:

__________________________

b(3), P3, P5

Notes:

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50 USC 3507

Case ID: gwb.2018-0013-P

Additional Information:

__________________________
Subject: FW: LRM JAB93 -- TRANSPORTATION Report on S165 Air Cargo Security Act
From: "Bumatay, Patrick J."
Date: 5/28/03, 7:45 PM
To: "Kavanaugh, Brett M."

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Tue Oct 23 11:00:56 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:

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P3,b(3),P5

Notes:

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50 USC 3507

Case ID: gwb.2018-0013-P

Additional Information:

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Subject: Re: FW: LRM JAB93 – – TRANSPORTATION Report on S165 Air Cargo Security Act
From: "Kavanaugh, Brett M."
Date: 5/28/03, 8:09 PM
To: "Bumatay, Patrick J.", "Messenger, P. Thaddeus"

THIS RECORD IS A WITHDRAWAL SHEET
Date created: Thu Aug 02 12:03:48 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:
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b(3),P5,P3

Notes:
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Case ID: gwb.2018-0012-P

Additional Information:
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Subject: Re: FW: LRM JAB93 - - TRANSPORTATION Report on S165 Air Cargo Security Act
From: P. Thaddeus Messenger (CN=P. Thaddeus Messenger/OU=OMB/O=EOP [ OMB ])
Date: 5/28/03, 8:17 PM
To: James A. Brown (CN=James A. Brown/OU=OMB/O=EOP@EOP [ OMB ])
CC: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ])

THIS RECORD IS A WITHDRAWAL SHEET
Date created: Fri Oct 26 16:04:25 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:
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b(7f),b(3),P5, P3

Notes:
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b(3): 50 USC 3507

Case ID: gwb.2018-0014-P

Additional Information:
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Subject: Re: FW: LRM JAB93 - TRANSPORTATION Report on S165 Air Cargo Security Act
From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
Date: 5/28/03, 8:17 PM
To: P. Thaddeus Messenger (CN=P. Thaddeus Messenger/OU=OMB/O=EOP@EOP [OMB]),
    Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

THIS RECORD IS A WITHDRAWAL SHEET
Date created: Wed Aug 08 16:26:03 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:
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P5,b(7f)

Notes:
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Unreadable file - attach. 1 and 2.

Case ID: gwb.2018-0012-P

Additional Information:
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Subject: Re: FW: LRM JAB93 -- TRANSPORTATION Report on S165 Air Cargo Security Act
From: James A. Brown (CN=James A. Brown/OU=OMB/O=EOP [OMB])
Date: 5/30/03, 6:17 PM
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Thu Oct 11 16:01:03 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:

_____________________

P5,P3,b(3)

Notes:

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50 USC 3507

Case ID: gwb.2018-0013-P

Additional Information:

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Subject: Re: FW: LRM JAB93 - - TRANSPORTATION Report on S165 Air Cargo Security Act
From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
Date: 5/30/03, 6:23 PM
To: James A. Brown (CN=James A. Brown/OU=OMB/O=EOP@EOP[OMB])

THIS RECORD IS A WITHDRAWAL SHEET
Date created: Fri Aug 10 12:21:48 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:
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b(7f),P5,b(3),P3

Notes:
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50 USC 3507
unreadable files

Case ID: gwb.2018-0012-P

Additional Information:
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Subject: FW: LRM JAB119 -- OMB Request for Views on HR2115 Flight 100--Century of Aviation Reauthorization Act (House and Senate Passed Versions)
From: "Bumatay, Patrick J."
Date: 6/17/03, 2:27 PM
To: "Kavanaugh, Brett M."

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Wed Oct 24 12:48:22 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:

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P5

Notes:

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Case ID: gwb.2018-0013-P

Additional Information:

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Subject: FW: LRM JAB119 -- OMB Request for Views on HR2115 Flight 100--Century of Aviation Reauthorization Act (House and Senate Passed Versions)
From: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
Date: 6/17/03, 3:03 PM
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Tue Oct 09 11:09:17 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:
___________________________
P5

Notes:
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Case ID: gwb.2018–0013–P

Additional Information:
___________________________
Subject: FW: UPDATE -- LRM JAB119 -- OMB Request for Views on HR2115 Flight 100--(House and Senate Passed Versions)
From: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
Date: 6/20/03, 11:18 AM
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

### Begin Original ARMS Header ###
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
SUBJECT: FW: UPDATE -- LRM JAB119 -- OMB Request for Views on HR2115 Flight 100--(House and Senate Passed Versions)
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
### End Original ARMS Header ###

-----Original Message-----
From: Brown, James A.
Sent: Friday, June 20, 2003 10:43 AM
To: justice.lrm@usdoj.gov; dot.legislation@ost.dot.gov; Scott.Murphy@dhs.gov; usdaobpaleg@obpa.usda.gov; usdaocrleg@obpa.usda.gov; CLRM@doc.gov; dodlrs@dodgc.osd.mil; epalrm@epamail.epa.gov; Cea Lrm; Ceq Lrm; ocl@ios.doj.gov; justice.lrm@usdoj.gov; dol-sol-leg@dol.gov; llr@do.treas.gov; pla@opm.gov; lrm@osc.gov; laffairs@ustr.gov; mccullc@ntsb.gov; NASA_LRM@hq.nasa.gov; Ostp Lrm; Leg@flra.gov; legteam@oge.gov
Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen; Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg, Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.; Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando, Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green, Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.; Bear, Dinah; Dove, Stephen W.; Call, Amy L.; Aguilera, Ricardo A.
Subject: UPDATE -- LRM JAB119 -- OMB Request for Views on HR2115 Flight 100--(House and Senate Passed Versions)

We expect to circulate a proposed letter to the conferees on H.R. 2115 for comment next week. Agencies and other commentators should be prepared with any issues which they believe should be addressed in the letter. Agencies and others who have concerns they would like considered for inclusion in the draft conference letter circulated for comment should submit such concerns to me NO LATER THAN 5:00 P.M. MONDAY, JUNE 23RD. Thanks.

---------------------- Forwarded by James A. Brown/OMB/EOP on 06/20/2003 10:43 AM ----------------------

From: James A. Brown on 06/17/2003 10:25:28 AM
Record Type: Record
To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM JAB119 -- OMB Request for Views on HR2115 Flight
100--Century of Aviation Reauthorization Act (House and Senate Passed Versions)

LRM ID: JAB119
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, June 17, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on HR2115 Flight 100--Century of Aviation Reauthorization Act (House and Senate Passed Versions)

DEADLINE: 10:00 A.M. Friday, June 27, 2003
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Timing of conference action on this bill is uncertain. The versions passed by both the House and the Senate are attached.

DISTRIBUTION LIST

AGENCIES:
061-JUSTICE - William E. Moschella - (202) 514-2141
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019-Council on Environmental Quality - Debbie S. Fiddelke - (202) 395-3113
059-INTERIOR - Jane Lyder - (202) 208-4371
061-JUSTICE - Daniel Bryant - (202) 514-2141
062-LABOR - Robert A. Shapiro - (202) 693-5500
118-TREASURY - Thomas M. McGivern - (202) 622-2317
092-Office of Personnel Management - Harry Wolf - (202) 606-1424
093-Office of the Special Counsel - Jane McFarland - (202) 653-9001
128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755
085-National Transportation Safety Board - David Balloff - (202) 314-6120
069-National Aeronautics and Space Administration - Charles T. Horner III - (202) 358-1948
095-Office of Science and Technology Policy - Maureen O'Brien - (202) 456-6037
043-Federal Labor Relations Authority - Jill Crumpacker - (202) 218-7945
EOP:
Stephen S. McMillin
Kenneth L. Schwartz
Steven M. Mertens
Clare C. Doherty
Meredith G. Benson
Timothy A. Rosado
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Mathew C. Blum
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Hester C. Grippando
Julie L. Nichols
CEA LRM
OHS LRM
James J. Jukes
Richard E. Green
Robert N. Collender
Paul Shawcross
Edward A. Boling
Dinah Bear
Stephen W. Dove
Amy L. Call
Ricardo A. Aguilera

LRM ID: JAB119 SUBJECT: OMB Request for Views on HR2115 Flight 100—Century of Aviation Reauthorization Act (House and Senate Passed Versions)
RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:
   (1) calling the analyst/attorney's direct line (you will be
connected to voice mail if the analyst does not answer); or
(2) faxing us a memo or letter.
Please include the LRM number and subject shown above.

TO: James A. Brown  Phone: 395-3473  Fax: 395-3109
Office of Management and Budget

FROM: ________________________________________ (Date)
________________________________________ (Name)
________________________________________ (Agency)
________________________________________ (Telephone)

The following is the response of our agency to your request for views on
the above-captioned subject:

_____ Concur
_____ No Objection
_____ No Comment
_____ See proposed edits on pages ________
_____ Other: _____________________________
_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To: ________________________________________
justice.lrm@usdoj.gov  @ inet
dot.legislation@ost.dot.gov  @ inet
Scott.Murphy@dhs.gov  @ inet
usdaobpaleg@obpa.usda.gov  @ inet
usdaocrleg@obpa.usda.gov  @ inet
CLRM@doc.gov  @ inet
dodlrsls@dodg.osd.mil  @ inet
epalrm@epamail.epa.gov  @ inet
CEA LRM
CEQ LRM
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justice.lrm@usdoj.gov  @ inet
dol-sol-leg@dol.gov  @ inet
llr@do.treas.gov  @ inet
olac@dol.gov  @ inet
lrm@osc.gov  @ inet
laflairs@ustr.gov  @ inet
mccullc@ntsb.gov  @ inet
NASA_LRM@hq.nasa.gov  @ inet
OSTP LRM
Leg@flra.gov  @ inet
legteam@oig.gov  @ inet
Message Copied
To:

- Stephen S. McMillin/OMB/EOP@EOP
- Kenneth L. Schwartz/OMB/EOP@EOP
- Steven M. Mertens/OMB/EOP@EOP
- Clare C. Doherty/OMB/EOP@EOP
- Meredith G. Benson/OMB/EOP@EOP
- Timothy A. Rosado/OMB/EOP@EOP
- Stephen Suh/OMB/EOP@EOP
- Kenneth S. Kelly/OMB/EOP@EOP
  - CEA LRM
  - NEC LRM
  - WHGC LRM
  - OVP LRM
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- Lauren C. Lobrano/OMB/EOP@EOP
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- Dinah Bear/CEQ/EOP@EOP
- Stephen W. Dove/OMB/EOP@EOP
- Amy L. Call/OMB/EOP@EOP
- Ricardo A. Aguilera/OMB/EOP@EOP

ATT CREATION TIME/DATE:   0 00:00:00.00
File attachment <P_VFIDH003_WHO.TXT_1>

ATT CREATION TIME/DATE:   0 00:00:00.00
File attachment <P_VFIDH003_WHO.TXT_2>

--- Attachments:

- P_VFIDH003_WHO.TXT_1.doc  1.1 MB
- P_VFIDH003_WHO.TXT_2.doc  1.1 MB
Subject: FW: UPDATE -- LRM JAB119 -- OMB Request for Views on HR2115 Flight 100--(House and Senate Passed Versions)
From: "Bumatay, Patrick J."
Date: 6/20/03, 3:16 PM
To: "Kavanaugh, Brett M."

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Fri Oct 26 14:44:18 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:
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P5

Notes:

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Case ID: gwb.2018-0013-P

Additional Information:
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Subject: FW: UPDATE -- LRM JAB119 -- OMB Request for Views on HR2115 Flight 100--(House and Senate Passed Versions)
From: "Bumatay, Patrick J."
Date: 6/23/03, 7:42 PM
To: "Kavanaugh, Brett M."

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Sat Oct 27 15:12:59 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:

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P5

Notes:

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Case ID: gwb.2018-0013-P

Additional Information:

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Just a reminder, this was due at 10 am.

-----Original Message-----
From: Brown, James A.
Sent: Tuesday, June 17, 2003 10:13 AM
To: justice.lrm@usdoj.gov; dot.legislation@ost.dot.gov; Scott.Murphy@dhs.gov; usdaobpaleg@obpa.usda.gov; usdaocrleg@obpa.usda.gov; CLMR@doc.gov; dodlrs@dodgc.osd.mil; epalm@epamail.epa.gov; Cea Lrm; Ceqlrm; ocl@ios.doi.gov; justice.lrm@usdoj.gov; dol-sol-leg@dol.gov; lrr@do.treas.gov; pla@opm.gov; lrm@osc.gov; laffairs@ustr.gov; mccullc@ntsb.gov; NASA_LRM@hq.nasa.gov; Ostp Lrm; Leg@flra.gov; legteam@oge.gov
Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Doherity, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen; Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg, Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.; Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando, Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green, Richard E.; Colender, Robert N.; Shawcross, Paul; Boling, Edward A.; Bear, Dinah; Dove, Stephen W.; Cali, Amy L.; Aguilera, Ricardo A.
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Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Doherity, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen; Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg, Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.; Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando, Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green, Richard E.; Colender, Robert N.; Shawcross, Paul; Boling, Edward A.; Bear, Dinah; Dove, Stephen W.; Cali, Amy L.; Aguilera, Ricardo A.
Subject: LRM JAB119 -- OMB Request for Views on HR2115 Flight 100--Century of Aviation Reauthorization Act (House and Senate Passed Versions)
Legislative Reference

OMB CONTACT: James A. Brown

PHONE: (202)395-3473 FAX: (202)395-3109

SUBJECT: OMB Request for Views on HR2115 Flight 100--Century of Aviation Reauthorization Act (House and Senate Passed Versions)

DEADLINE: 10:00 A.M. Friday, June 27, 2003

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COMMENTS: Timing of conference action on this bill is uncertain. The versions passed by both the House and the Senate are attached.

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043-Federal Labor Relations Authority - Jill Crumpacker - (202) 218-7945
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EOP:
Stephen S. McMillin
Kenneth L. Schwartz
Steven M. Mertens
Clare C. Doherty
Meredith G. Benson
Timothy A. Rosado
Stephen Suh
Kenneth S. Kelly
CEA LRM
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David S. Addington
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You may also respond by:

1. calling the analyst/attorney’s direct line (you will be connected to voice mail if the analyst does not answer); or
2. faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget

FROM: ________________________________ (Date)
______________________________ (Name)
______________________________ (Agency)
______________________________ (Telephone)
The following is the response of our agency to your request for views on the above-captioned subject:

______ Concur

______ No Objection

______ No Comment

______ See proposed edits on pages _________

______ Other: _______________________________

______ FAX RETURN of _____ pages, attached to this response sheet

ATT CREATION TIME/DATE:   00:00:00.00
File attachment <P_LOLJH003_WHO.TXT_1>

ATT CREATION TIME/DATE:   00:00:00.00
File attachment <P_LOLJH003_WHO.TXT_2>

Attachments:

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</tbody>
</table>
Subject: FW: LRM JAB119 -- OMB Request for Views on HR2115 Flight 100--Century of Aviation Reauthorization Act (House and Senate Passed Versions)
From: "Bumatay, Patrick J."
Date: 6/27/03, 2:05 PM
To: "Kavanaugh, Brett M."

THIS RECORD IS A WITHDRAWAL SHEET

Date created: Mon Oct 29 15:24:39 EDT 2018

Releasability: Withheld In Full

Reasons for Withholding:

_____________________

P5

Notes:

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Case ID: gwb.2018-0013-P

Additional Information:

_____________________


Subject: FW: AP Enterprise: Administration picks disgraced judge for Homeland Security anti-terrorism post
From: "Gottesman, Blake"
Date: 7/28/04, 4:34 PM
To: "Kavanaugh, Brett M."

just wanted to make sure that you saw this.

-----Original Message-----
From: Sherzer, David
Sent: Wednesday, July 28, 2004 4:06 PM
Subject: AP Enterprise: Administration picks disgraced judge for Homeland Security anti-terrorism post

AP Enterprise: Administration picks disgraced judge for Homeland Security anti-terrorism post
By MICHAEL J. SNIFFEN and LESLIE MILLER, Associated Press Writers

WASHINGTON (AP) A key overseer of the Bush administration's unsuccessful efforts to create a more comprehensive screening process for airline passengers resigned in disgrace four years ago from the New Hampshire Supreme Court to avoid prosecution over his conduct on the bench.

W. Stephen Thayer III, who left New Hampshire's high court in 2000 under a deal with prosecutors, is now serving as deputy chief of the Transportation Security Administration's Office of National Risk Assessment.

Thayer resurrected his public career with a stint at a conservative political group in Washington before landing the job last summer where he oversees the administration's Computer-Assisted Passenger Prescreening System. The project encountered such technical difficulty and so much resistance from privacy advocates that it was sent back to the drawing board earlier this month.

The project, which was known as CAPPS II, was to develop software to bar any passenger from getting on an airplane if a computer analysis of unidentified government terrorist watchlists and private commercial electronic records judged him or her to be a security threat. The project has been sharply criticized by congressional auditors.

The administration's selection of Thayer made with no fanfare last summer has raised some eyebrows.

"To appoint someone who had to resign in public disgrace in lieu of being indicted is incredibly offensive," said Charles Lewis, executive director the Center for Public Integrity, a private ethics watchdog. CAPPS II has been "one of the most sensitive projects in the U.S. government," because "we are talking about data-mining the records of millions of Americans. The people in charge have got to be beyond reproach in every way."

Thayer declined to be interviewed.

But TSA spokesman Mark Hatfield said Thayer was qualified for the job because he helped the American Conservative Union organize a task force with other conservative and liberal groups, including the American Civil Liberties Union, to lobby on the government's handling of citizens' personal information, including CAPPS II.

"That was as direct involvement in that field as you can get," Hatfield said.

Hatfield said the New Hampshire controversy was reviewed by those who appointed Thayer and posed no bar to his getting the federal job because no charges were filed and no action was taken against him by the state judicial conduct committee or the bar association.

"He faced the allegations for a significant time and significant cost and at some point he chose to withdraw from the battle as it was in the best interests of himself and his family," Hatfield
said.

Months behind schedule, the two-year-old CAPPS II was sharply criticized in February by the Government Accountability Office, the auditing arm of Congress, for failing to fully address seven of eight targets for accuracy, privacy and security.

Concerned that the program would invade privacy and leave air travelers with no way of correcting its errors, Congress has prohibited the program's deployment until those benchmarks are met. Earlier this month, Transportation Security Administration chief David Stone told Congress the program is being "reshaped and repackaged."

Thayer's fast-moving legal career U.S. attorney at 35, state supreme court justice at 40 came to an abrupt halt March 31, 2000, when he resigned from the state's highest court in a deal with New Hampshire Attorney General Philip McLaughlin.

In return for Thayer's resignation, McLaughlin agreed to drop plans to indict him. In a public report, McLaughlin criticized Thayer for participating in deliberations on a case he was recused from. He also said he would have sought felony or misdemeanor charges against Thayer for allegedly trying to influence the choice of a judge to hear his wife's appeal of their divorce and threatening fellow justices if they allowed his conduct to be reported to judicial oversight groups.

McLaughlin's report said Supreme Court Justice John T. Broderick quoted Thayer as saying if his conduct were reported to oversight groups "I'm done. It's over for me .... We all do it. We can either hang together on this or hang separately." Chief Justice David Brock said Thayer told him, "I'm not going to hang alone."

Thayer insisted at the time, "I committed no criminal act." But McLaughlin had decided to seek the criminal indictment when Thayer volunteered to resign.

Two years after the episode, McLaughlin wrote Thayer in December 2002 and cited Thayer's reputation for scholarship and fairness as a judge. He added that during the investigation, Thayer acted "in a most professional, forthright and honest manner." But McLaughlin did not back off his findings, noting his report "will be a matter of public record forever."

In a rare public appearance last fall, Thayer did not supply a biography like other witnesses who testified before a Pentagon advisory committee on privacy and computerized data-mining.

When asked about his qualifications to supervise CAPPS II, Thayer said then he had been executive director of a nonprofit group that reviewed privacy rights in post-Sept. 11 legislation and was a lawyer and former U.S. attorney. He made no mention of his 14 years on New Hampshire's highest court.

On May 26, 2000, while trying to get his alimony and child support reduced from almost $36,000 a year to $6,000 a year, he told a New Hampshire court he had had trouble finding work after his Supreme Court resignation.

"Large law firms are not into risk. They do not want my name associated with them so long as we have this kind of publicity in New Hampshire," he said, according to the Portsmouth, N.H., Herald.