

PUBLIC INTEREST DECLASSIFICATION BOARD

MINUTES OF THE MEETING

January 19, 2007

The Public Interest Declassification Board (PIDB) held its tenth meeting on Friday, January 19, 2007. This meeting was held in the Archivist's Reception Room, Room 105, the National Archives Building in Washington, D.C. Representatives from the public including Mark Zaid, Attorney and Executive Director of the James Madison Project, Meredith Fuchs, General Counsel to the National Security Archives, and Scott Armstrong, Executive Director of the Information Trust, presented their experiences, views, and suggestions on the declassification system to the Board. L. Britt Snider, Chairman of the PIDB, chaired the meeting. Professor Allen Weinstein, Archivist of the United States also attended the meeting. Board Members present were Elizabeth Rindskopf Parker, David E. Skaggs and William O. Studeman. Also present: J. William Leonard, Director, Information Security Oversight Office (ISOO), serving as Executive Secretary for the PIDB; Paul M. Wester, Jr., Director, Modern Records Program, Office of Records Services, National Archives and Records Administration (NARA); William J. Bosanko, Kristofer L. Johnson, Lee H. Morrison, and Dallas L. Perry, ISOO, serving as the PIDB staff.

I. Pre-Brief – Executive Session (Closed)

The Board members and staff met briefly in executive session prior to the public portion of the meeting. Among the issues discussed were the method for identifying members of the public to testify before the Board; the drafting of an op-ed piece for the upcoming Sunshine Week; the drafting of a report to the President; and progress made to date on proposed changes to the PIDB legislation. Additionally, the Chair indicated that he would not be in attendance at the February meeting and it was agreed that the Vice-Chair, Mr. Skaggs, would instead Chair that meeting. The Board then moved to the Archivist's Reception Room to begin the public portion of the meeting.

II. Board Meeting – Opening Comments (Open)

The Chair began by welcoming the guest speakers and attendees. The Chair discussed the status of the declassification review requested by the Senate Select Committee on Intelligence. Additionally, he noted that the the first PIDB Annual Report would be approved during the afternoon Executive Session and would be subsequently posted to the PIDB website. Mr. Snider then turned to Professor Weinstein for his opening comments. The Archivist devoted his statement to an update on the declassification backlog at NARA and the progress made to date on the National Declassification Initiative (NDI). He then turned to Mr. Wester for a further update on the NDI. Mr. Wester reported on the establishment of the Executive Steering Group and the Work Process Working Group, improvements to the quality assurance process, and related resource issues. Following this update, the Chair turned to the public speakers for their presentations.

III. Selective Representatives of the Public (Open)

Mr. Zaid provided the attached outline and spoke to those issues in his testimony before the Board. Most of his work involves Freedom of Information Act (FOIA) litigation against intelligence agencies. Mr. Zaid expressed his frustration with the FOIA process. He stated that the current twenty day deadline for agencies to respond to FOIA requests is unrealistic and he suggested expanding the deadline to 120 days. Mr. Zaid also expressed his frustration with the pre-publication review process. In the pre-publication review process, the documents in question fall into a gray area between classified and declassified; publication does not equal declassification. Mr. Zaid also suggested that the Board find a way to educate federal judges on classification and declassification procedures. He alleged that because the judges lack expertise in the field of intelligence, they tend to err on the side of caution by not challenging the agencies and thus keeping the documents classified.

The Chair then introduced Ms. Fuchs. In her testimony, Ms. Fuchs expressed her concern about the subjectivity and expense of the classification system and the ridiculousness of the things that were kept classified stating that the current system favors over-classification. She fears the need to control information encourages over-classification in agencies. She stated that ISCAP is the only place the real reasons for classification are revealed. Government briefs in litigation are boiler plate and judges do not feel competent enough to question the position. She feels that if judges put more pressure on agencies, more information would be released. Ms. Fuchs spoke about the Moynihan Commission recommendations. She felt that outside public historical representation is missing from the National Declassification Initiative (NDI). She suggested one way to counter the predisposition would be to create a non-partisan, non-governmental board of private citizens to represent the interest of professional researchers, historians, and the general public in the declassification process. Such a board would serve as a conduit for public input and oversight. Ms. Fuchs cited the President John F. Kennedy Assassination Records Collection Act of 1992 and the Nazi War Crimes Disclosure Act as precedents for such boards. Ms. Fuchs spoke of the overwhelming backlog that NARA is facing and she is afraid that the standards of review will not be the same as for current documents. She suggested changing the system to focus on protection of genuinely current information which would speed up the process and save resources. Ms. Fuchs suggested linking FOIA budgets with Public Affairs budgets and declassification budgets with classification budgets in order to help FOIA and declassification budgets from being pushed down the list of priorities. She feels that agencies should be required to financially contribute to the NDI. Ms. Fuchs spoke about "Secrecy Fetishes" at agencies, such as the President's Daily Brief and intelligence budgets. Ms. Fuchs discussed the need for some judicial review, such as in the NSA wiretapping. She also suggested Vaughn indexes being required before summary judgments. The Board generally agreed with many of Ms. Fuchs suggestions. Mr. Snider talked about the different standards for review depending on what level the review occurs at. He felt that loosening the standards of review could be beneficial.

The Chair then introduced Mr. Scott Armstrong. Mr. Armstrong stated in his testimony before the Board that the classification system has failed, it does not protect information and as it exists is not meant to, but rather has come to serve to control public debate. He believes a new system is the only thing that will work. He stated that there is an erosion of public confidence in the classification system because of the failure of accountability. Mr. Armstrong stated that the failure of Congressional Oversight is an acknowledged problem of the Intelligence Community. He suggested creating a specialized court to deal with National Security issues. Mr. Armstrong

stated that he does not favor legislation because of how difficult it is to craft effectively. The Archivist and the Chair both expressed their thanks to the presenters.

IV. Interagency Security Classification Appeals Panel (ISCAP) (Open)

The presentations from the representatives of the public ran over and because of time constraints the Chair decided that the ISCAP presentation will be given at the February 24, 2007 PIDB meeting.

V. Open Forum (Open)

The Chair opened the floor to the public and no one from the public came forward to speak.

VI. Executive Session – Working Lunch (Closed)

The Chair provided an update on the declassification review request made by the Senate Select Committee on Intelligence. Mr. Snider received a response from the White House noting that the Presidents approval is required before the Board can act on such a request. The Chair noted that if the President requests that the Board take action, the Board will need to obtain information regarding the previous review process and results. The staff noted that this point had been discussed with staff from the Office of the Director of National Intelligence (ODNI) The PIDB staff also indicated that they will provide a chart and analysis of the redacted information for the Board to consider. The PIDB staff will make briefing materials available onsite and for those not located in the Washington, DC area, the staff will attempt to make the materials available other facilities nearby. The members of the Board will most likely need to be read into a special access program for review. It was noted that if we get the green light from the White House we need to send a letter to Congress to let them know we are proceeding.

Mr. Snider stated that we also need to address PIDB sunset at the same time if the enabling legislation was revised to address the issue concerning declassification requests. The members agreed to have staff draft some proposed language in consultation with pertinent staff of the involved Congressional Committees. The Board voted to approve the draft annual report and the draft minutes from the last meeting.

The Board asked to be briefed on how Executive Branch classified information is handled within the Legislative branch and expressed an interest in hearing from Congressional staffers, historians and other experts on the issue. The PIDB staff asked if there were additional members of the public that the Board would like to hear from. Steve Aftergood was mentioned and Dean Parker had a few ideas of individuals the Board might benefit from hearing from. The Board stated that they would like some professional associations to give presentations, for example, the Standing Committee for Law and National Security. Mr. Studeman suggested talking to a foreign country with progressive methods, suggesting the United Kingdom. Dean Parker suggested hearing from the Canadian government as well. Mr. Leonard suggested having a panel of representatives from foreign countries.

The Board asked the PIDB staff to set up a meeting with a senior representative at GSA in order to resolve issues related to the pay for retired annuitants. It was noted that the term for Mr.

Skaggs had expired, but that he will continue to serve on the Board until his term is extended or he is replaced.

VII. Adjournment

The Chair adjourned the meeting at 1:30 p.m.