

Public Interest Declassification Board  
Minutes of the Meeting  
July 22, 2010

The Public Interest Declassification Board met on Thursday, July 22, 2010, at the U.S. Capitol Visitor Center, Congressional Meeting Room North, Washington, DC. Martin Faga chaired the meeting. Board Members present were Herbert Briick, Elizabeth Rindskopf Parker, Jennifer Sims, David Skaggs, William Studeman, and Sanford Ungar. Also present: William J. Bosanko, Director, Information Security Oversight Office (ISOO), serving as the Executive Secretary for the PIDB; John Powers, John Bell, Carolina Palacios, and Neena Sachdeva, ISOO, serving as the PIDB staff. In addition, 65 members of the public attended the meeting.

### **Welcome**

The Chair welcomed all participants and attendees.

### **Introduction of the New Director of the National Declassification Center**

The session began with Sheryl Shenberger, the first Director of the National Declassification Center (NDC). Ms. Shenberger spoke of her background working at the Central Intelligence Agency's Declassification Center. She stated her experience in reviewing intelligence and other classified information for declassification provided particular expertise and insight concerning the challenges in declassifying the backlog of 410 million pages due for completion by December 2013.

Ms. Shenberger described the two principal challenges currently facing the NDC. The NDC must (1) implement process changes and (2) design metrics to adequately measure progress in reviewing records of the backlog. These metrics need to address both the volume of records being reviewed as well as the quality of decisions from those reviews. To be successful, the NDC must be faster and more efficient with reviewing classified records. Next, Ms. Shenberger spoke about the NDC's recent draft plan on prioritizing the review of the backlogged records. The public comments on the draft plan from their blog and from a Public Forum suggested first examining records of high value including: 9/11 Commission records, Watergate records, Church Committee records, all remaining John F. Kennedy Assassination Records Collection Act records, and Presidential Library records that have been scanned as part of the Remote Archives Capture (RAC) project. Also, the public comments indicated that the records of the Secretaries of Defense (OSD) and the Office of the Assistant Secretary of Defense for International Security Affairs (ISA) should be accessioned and reviewed earlier as they provide historical perspective on national security decisions and policies during the Cold War. The public provided suggestions and criticism regarding reviewing procedures which included: benefit of reviewing records at the series level rather than at the record group level; and giving oldest records priority in reviewing 50 percent of the time.

A discussion followed which broadly included: the effectiveness of first declassifying older records as opposed to the effectiveness of declassifying records by topical importance; a need for a mix of contractors and agency and NARA employees for a flexible and dynamic pool of reviewers; the use of metrics to gauge performance successes and failures; the importance of providing better documentation and a more accessible platform for released documents; the

desire to reduce the number of withdrawal sheets; and increasing the need for efforts to publicize and report on records that have been released along with other NDC statistics on the review.

### **Formerly Restricted Data Issues: The View from Outside**

Panelists: R. Standish Norris, Natural Resources Defense Council (NRDC); Steven Aftergood, Federation of American Scientists (FAS); and William Burr, National Security Archive (NSA)

Dr. Norris stated that in his historic research he has used publicly available Formerly Restricted Data (FRD) documentation to write on the topic of nuclear arsenals in the United States and other nations. He used the Freedom of Information Act (FOIA), read Congressional hearings and government reports, and conducted research at various archives. His most successful FOIA request had been the declassification of a Department of Defense (DoD) document titled, *History of the Custody and Deployment of Nuclear Weapons July 1945 through September 1977*.<sup>1</sup> He has paid particular attention to Department of Energy (DOE) and DoD public releases along with other open source material, which have aided his research in all areas concerning United States and global nuclear arsenals. The [statement](#) made by Dr. Norris before the board supported Messrs. Aftergood and Burr's recommendations noting that the Obama Administration's commitment to transparency necessitate a change from past practice.

Mr. Aftergood stressed that FRD as a classification category should be eliminated as it remains anachronistic. He believes that three classification systems are too many. Studies have recommended the abolition of FRD, Mr. Aftergood stated.<sup>2</sup> FRD needs to be partitioned and processed under separate procedures and treated as either national security information, Restricted Data (RD) or declassified. He acknowledged that partition would encumber the already heavily burdened classification structure. In his [statement](#), Mr. Aftergood maintained the solution would be legislative action in amending the Atomic Energy Act (AEA) and treating FRD as national security information henceforth.

Mr. Burr stated that the status of historical FRD as a category should be rescinded. Historians, journalists, and others have discovered much through public records, but secrecy remains entrenched. Secrecy is often pointless as exemplified by an article co-authored by Lord George Robertson, former NATO Secretary General. The article cited facts from the non-governmental Federation of American Scientist (FAS) website, an open source site.<sup>3</sup> In his [statement](#) Mr. Burr noted transparency offers confidence and good faith both diplomatically and politically. Declassification of historical FRD, particularly nuclear weapons stockpile information, might

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<sup>1</sup> See: [http://www.dod.gov/pubs/foi/reading\\_room/306.pdf](http://www.dod.gov/pubs/foi/reading_room/306.pdf)

<sup>2</sup> For studies cited see: *Statement of Steven Aftergood, Federation of American Scientists before the Public Interest Declassification Board, July 22, 2010* available at <http://www.fas.org/sgp/eprint/sa-frd.pdf>.

<sup>3</sup> Franklin Miller, George Robertson, and Kori Schake *Germany Open's Pandora's Box*, February 2010 available at [http://www.cer.org.uk/pdf/bn\\_pandora\\_final\\_8feb10.pdf](http://www.cer.org.uk/pdf/bn_pandora_final_8feb10.pdf); see reference at: *Federation of American Scientists*, <http://www.fas.org/blog/ssp/2009/03/russia-2.php>.

also advance policy initiatives, such as the New START Treaty. He concluded that the public deserves the right to have access to historical FRD information.

The following ideas relating to FRD were discussed: the elimination of FRD as a classification category to improve productivity in declassification efforts; the standardization of FRD policies between DoD and DOE; the need for consensus by using either the legislative process or Executive order; and the incorporation of FRD into the framework of E.O. 13526 as classified national security information that would also require fundamental classification guidance review. An exchange concerning the distinction between RD and FRD also resulted. The RD category constitutes technical information and the FRD category constitutes information about the military use of nuclear weapons, including numbers and deployment information. Some noted that FRD should be trans-classified to E.O. 13526 as classified national security information for better control. However, cases such as the "Smyth Report"<sup>4</sup> commissioned by General Leslie C. Groves of the Manhattan Project support the view that information is sometimes embedded and its release should be carefully controlled. Despite this concern the panelists thought that advantages of abolishing FRD as a classification category would outweigh any lingering concerns. The panelists believe the Board could act as a catalyst for change. Mr. Aftergood noted that the elimination of FRD as a classification category would make the overall declassification process work more efficiently.

### **Formerly Restricted Data Issues: A Conversation with the Agencies**

Panelists: Andrew Weston-Dawkes, Department of Energy; S. Steve Henry, Department of Defense; Robert Miller, Department of State

Dr. Weston-Dawkes began his [statement](#) by saying that his office has doubled staff support for the NDC so they can conduct document reviews under the Kyl-Lott public law provisions. He expressed concern that trans-classifying FRD to classified national security information would allow it to be automatically declassified without further review by DoD or DOE. The AEA defined military utilization of nuclear weapons as an FRD category, which could not be transferred to other nations without joint agreements. He concluded that the effort to alter or overhaul the system would be too costly and that current legislation mandates review requirements for RD and FRD.

Mr. Henry provided DoD's perspective on the classification of FRD. The DoD interest in FRD includes information about nuclear weapons use by the military, stockpile volume, weapons locations, weapons-effect testing, disablement, vulnerabilities, delivery-fusion information and war planning activities involving nuclear weapons deployments. DoD's goal is to be more transparent while at the same time complying with internal security directives regarding open source risks, adhering to foreign bilateral agreements, and protecting against terrorist threats.

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<sup>4</sup> Smyth, Henry DeWolf. *Atomic Energy for Military Purposes: The Official Report on the Development of the Atomic Bomb under the Auspices of the United States Government, 1940-1945*. Princeton, NJ: Princeton University Press, 1945. See also: Department of Energy. Office of History and Heritage Resources. *The Manhattan Project: An Interactive History*. Available at: <http://www.cfo.doe.gov/me70/manhattan/openness.htm>

For these reasons, Mr. Henry's office maintains a “neither confirm nor deny” policy. In some instances DoD may declassify FRD information when public safety is affected. Trans-classifying FRD to the national security information classification system does not appear to be a viable option; as it would then be subject to automatic declassification. The Nuclear Matters office in DoD works closely with DOE utilizing shared declassification guides. Although there are procedures for the release of FRD, it is clear that there is room for improvement in processing FOIA and Mandatory Declassification Review (MDR) requests. He remains open to procedures which will make these reviews more efficient. Mr. Henry noted that DoD is presently exploring the possibility of declassifying historical nuclear weapons storage locations.

Ambassador Miller asserted that the Department of State would review FRD documents in as much as these documents relate to foreign relations, but otherwise the Department has no interest in FRD.

The Board began its discussion after Ambassador Miller presented his brief statement. The exchange included the following topics: the risk of disclosure of sensitive nuclear information if FRD as a classification category was abolished; the failure of the DOE 1997 "*Report of the Fundamental Classification Policy Review Group*" to address an alternative set of guidelines, regulations, or laws for replacing the eliminated FRD category; and, the assertion that the decision to release FRD information remains a joint DoD and DOE determination. Were FRD to convert to classified national security information, it would fall under E. O. 13526 and therefore be subject to automatic declassification, or release could be determined by an appeal to the Interagency Security Classification Appeals Panel (ISCAP). DOE foresaw two problems with the conversion: foreign restriction issues (bilateral agreements) and prohibitive costs. Another concern was the proliferation of open source materials and its potential use by terrorist organizations intent on causing harm. Ms. Sims mentioned the calutron mass spectrometer<sup>5</sup> as a piece of open source information readily available. DOE replied it weighed materials in the public domain, particularly from Internet resources, when taking declassification decisions into consideration. Finally, the development of a robust discretionary declassification program for historical FRD information and the necessity for more resources were discussed.

## **Open Forum**

The Chair welcomed comments from members of the public. Mr. Michael Binder stressed the AEA remains the more stable classification system it has not changed over time unlike the classified national security system that is governed by Executive Order and changes with Presidential administrations.

## **Declassification of Historical Congressional Records Panels**

David Skaggs acted as Chair for the session on classified historical records of Congress while Mr. Faga was absent.

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<sup>5</sup> The United States discarded this technology, but the Iraqi Baath government revived it and used it during the Gulf War. See <http://www.fas.org/nuke/guide/iraq/nuke/program.htm>

Mr. Skaggs welcomed those attending and participating in the afternoon session. He gave a brief statement about the general scope of the Board's interest in making accessible the classified historical records of various House and Senate committees. He stated that the non-partisan Board, promulgated by statute, was clearly aware of the essential separation of power issues involved. Additionally, he acknowledged that there are internal House, Senate and individual committee rules that apply to those records. However, the Board considers the classified historical records of Congress to be of significant value to scholars, historians, policy-makers and the public. These unique records provide insight into Congressional oversight of national security policy decisions. The records from closed hearings containing Executive branch statements, testimony and responses to Congressional questions provide critical understanding of Executive branch decisions and policy. Finally, he noted that several Board members have served on Capitol Hill as committee staff.

### **Declassification of Historical Congressional Records: Panel 1**

Panelists: Harold Reylea, retired, Congressional Research Service (CRS); Donald Ritchie, Historian of the Senate; David M. Barrett, Villanova University

Mr. Reylea noted in his [statement](#) that Congress receives classified information in closed or executive sessions. The sessions are subject to rules and practices that prevent unauthorized disclosure of classified national security information. This information is also protected by "the privileges and prerogatives" of the Senate or House. The protected status of classified information may only be removed by the positive vote of the committee members. As the 2007 *Improving Declassification* report suggested, Congress may wish to establish policies and procedures whereby the NDC would conduct declassification reviews of classified national security information in historical Congressional records. To maintain its impartial standing, the NDC might maintain a staff which includes historians and reviewers from various Executive agencies such as DoD, DOE, Central Intelligence Agency (CIA) and the Department of State. An alternative would be the formation of a special review panel for unique situations similar to that which was created by the President John F. Kennedy Assassination Records Collection Act. Mr. Reylea recommended that the Board, with Congressional support, seek legislation to enact a statutory status for the NDC. The statute would permit, upon Congressional request, the NDC to conduct declassification reviews of classified national security information of closed Congressional records. He also thought the various committees might be willing to amend their rules and practices.

As Historian of the Senate, Dr. Ritchie addressed the uniqueness and historical importance of Senate records. In 1980, the Senate adopted Resolution 474 in which records would be transferred to the National Archives and, under Senate Rule XI these transferred records are to be made available to the public.<sup>6</sup> The Resolution exempted Senate investigative records and privacy information from disclosure for fifty years; other Senate records were exempted from disclosure for twenty years. Additionally, Congress exempted its own records from the FOIA.

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<sup>6</sup> Senate Resolution 474 (96<sup>th</sup> Congress), available at: <http://www.archives.gov/legislative/research/senate-resolution-474.html>; Senate Rule XI, available at: <http://rules.senate.gov/public/index.cfm?p=RulesOfSenateHome>

Congress publishes its open session records regularly; however, it has not been systematic in publishing closed committee records. In July 2010, the Senate Foreign Relations Committee released more than 1,000 pages of previously classified testimony and transcripts from closed hearings of the Foreign Relations Committee from 1967 and 1968 regarding U.S. policy in Vietnam.<sup>7</sup> He also noted that the Foreign Relations Committee closed hearings from the 1970s are being compiled for release. The Select Committee on Intelligence is also interested in pursuing the declassification and publication of its predecessor committee records, the Church Committee (the Select Committee to Study Governmental Operations with Respect to Intelligence Activities). Dr. Ritchie remarked that much committee work is *ad hoc* and urgent, therefore little thought is given to the historical significance and value of the records; thus, he concluded that a systematic approach to declassifying closed committee records is crucial.

Dr. Barrett has conducted research on Congress and the CIA for the early Cold War period (1947 – 1961).<sup>8</sup> For his last book, he examined papers and records at approximately 20 archival repositories across the country, at the National Archives, at the Presidential Libraries, in the papers of the committees of House and Senate Appropriations, Armed Services, Foreign Relations, the House Un-American Activities Committee (HUAC), and Permanent Subcommittee on Investigations. As he conducted his research at various archival repositories, he found that CIA-related information had been either destroyed or removed. He also found many records at various repositories where the classification markings remained on the records yet it did not appear that they had been reviewed by a Government agency. He noted that Congress has done a poor job of preserving and making accessible its records detailing Congressional oversight of national security policy in the early Cold War era. Given historical distance, it is frustrating to the researcher that these records remain unavailable. He would like more Congressional records processed and hopes the Board will urge Congress and their various committees to do so.

A discussion followed the panelists' statements resulting in these main points: the statutory delegation of processing Congressional records to the NDC would be a more permanent solution and would appear not to intrude upon the prerogatives of Congress; the creation of the Senate Historian's Office in 1970 and the hiring of archivists for the Senate, the House, and some Senate committees have led to more systematic and standardized handling of records; the fact that declassification review requests to Executive agencies have been met with mixed results and often depend on the cooperation of those agencies; and the management of e-records requires specialists and email (managed as correspondence) will be invaluable to the historical record. Further, it was noted that committees decide on which records remain closed and it was also noted that no special caveats for handling FRD information exist, but consultation with the appropriate agency occurs when necessary. Since 1975, there has been a marked increase of classified national security information in Congressional records.

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<sup>7</sup> Executive Session of the Senate Foreign Relations Committee (Historical Series) Volume XX, Ninetieth Congress, Second Session, 1968. Available at: <http://foreign.senate.gov/reports/>

<sup>8</sup> David M. Barrett, *The CIA & Congress: The Untold Story from Truman to Kennedy* (2005).

## Declassification of Historical Congressional Records: Panel 2

Panelists: Michael Sheehy, former House Permanent Select Committee on Intelligence Staff Director and Porter Goss, former Chairman of the House Permanent Select Committee on Intelligence

Mr. Sheehy agreed with the Board regarding the importance of the declassification of historical Congressional records but added that there have been developments since the Board's 2007 report, *Improving Declassification*. Congressional records offer a unique perspective on historic policy-making activities: such as the formation of US foreign policy in Central America in the 1980s; the change in the US intelligence community after the collapse of the Soviet system; and the intelligence practices in wake of the 1991 Kuwait invasion. To declassify and publish the records of Congress, a uniform, systematic, and predictable process is needed. Committees use historical records for two purposes: to ascertain previous committee positions and to prepare for upcoming hearings. No process exists within the committees for establishing a mechanism for review; therefore, any action must integrate rule changes. Mr. Sheehy had the following particular suggestions for the Board: (1) recommend specific language for committee rules; (2) enlist the advice of retired House Parliamentarian, Charles W. Johnson, III; (3) enroll the assistance of former staff director of the House Committee on Rules, Muftiah McCartin; (4) solicit the guidance of Senate Legal Counsel and SSCI Counsel, Michael Davidson; and, (5) advance a draft proposal with the assistance of those aforementioned individuals. He also advised that it would be fitting to carve out an exemption for any information that may be embarrassing to current members. With the trend toward open and transparent government, the Board may wish to convince Congressional leadership to change House and Senate rules. Mr. Sheehy concluded by noting that the moment is ripe to begin testing new ideas since it takes time to determine where impediments may arise to legislative or procedural actions.

Mr. Goss emphasized that over-classification remains a critical problem. Declassification of closed Congressional records continues to be politically delicate. Declassification of classified portions of Congressional records would potentially demonstrate the valuable interaction between the Executive and Legislative branches by revealing the deliberative processes of Congressional oversight regarding Executive branch activities. Here, history is not merely an academic pursuit, but informs the public of the country's governance; this historical education affords the public the opportunity to judge the actions of its government. The 9/11 Commission provides an example of how release of information offers value to the public.

A discussion followed the panelists' statements resulting in these main points: it was stated regarding closed hearing transcripts that Congressional records should be subject to declassification review akin to Executive branch documents; the adversarial relationship between the Executive branch and Congress about the release of information must be addressed; the Jennifer Harbury case was mentioned as an example of the adversarial relationship between a public figure seeking information through Congress and the Executive response.<sup>9</sup> *Ad hoc*

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<sup>9</sup> Statement of Jennifer K. Harbury to the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, May 11,

disclosures continue, but no regular mechanism exists to declassify historical records. An exchange arose about creating a pilot case study in which 25-year information could be automatically declassified either chronologically or topically; however, a concern surfaced that selective declassification by subject could be misinterpreted as disclosure for political gain; as a further complication to effectuate declassification, it was noted the House and Senate have differing release time frames.<sup>10</sup> Mr. Sheehy advocated keeping the same period for declassification of historical Congressional records as the Executive branch and the process for declassification regularized. Ms. Parker acknowledged that the Cold War paradigm was moot and the shift must be toward action. The panelists and the Board, in concert, articulated that the way forward was by legislative action.

### **Open Forum**

The Chair welcomed comments from members of the public. Mr. Burton Wides discussed the issue of separation of powers. The Board needs to assist the Executive and Legislative branches of government in finding effective means to release information. Mr. Kevin Kosar remarked that committees of Congress require assistance in records management. The committees need to evaluate records management processes and procedures. They could start this by examining which committees conduct records management processes well and which ones perform poorly in this function. He expressed some concern about the effect of electronic records on the recordkeeping in Congress.

### **Adjournment**

Chairman Faga adjourned the Public Meeting at 4:15 PM.

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1998, Hearing on the "Human Rights Information Act" available at:  
<http://www.fas.org/sgp/congress/hr051198/harbury.html>

<sup>10</sup> The House discloses records at 30 years, the Senate at 20 years and investigative or executive session records of both Houses are disclosed at 50 years.

## **Additional Documents:**

### Panel Statements

1. [Dr. Robert S. Norris](#)
  - [US Nuclear Weapons](#)
  - [Where They Were](#)
  - [How Much Did Japan Know](#)
2. [Steven Aftergood](#)
3. [Dr. William Burr](#)
4. [Dr. Andrew Weston-Dawkes](#)
5. [Harold Reylea, retired, \(CRS\)](#)
6. [David M. Barrett](#)

[FRD Joint Statement by Aftergood, Norris, and Burr](#)