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Comment on the Report of the Public Interest Declassification Board

Knowledge of history is important to the public and to government as well as to the academic world. The current system of classification and declassification of U. S. government records hampers our ability to write and to learn from history. The Public Interest Declassification Board has released an extraordinarily broad and thoughtful report about how to transform and improve this system.

The Declassification Board calls for an effort to centralize and standardize declassification practices, in part through the creation of a new National Declassification Center within the National Archives and Records Administration (NARA), which could assume some functions and educate agency reviewers about how to carry out tasks better. This report would, on balance, confer somewhat more authority on declassification to NARA, and it would require greater funding for NARA, at least in the short run. It also calls for greater attention in government to certain areas of history and certain historical issues labeled high priority, and it suggests more use of historians and advisory boards in the executive agencies. Finally, it offers an excellent beginning of a strategy to store and declassify electronic records. These changes would fundamentally improve how this government handles classified records and declassifies them.

I have three different concerns. First, the report suggests such a major shift in organization, policy, and in behavior in the executive branch that it may not be politically realistic to expect full implementation in the near future, especially in a period of financial duress. Second, there is no visible fall-back strategy. The new system depends upon interrelated changes in several areas, and if some of them are not adopted, it may not work very well. In fact, it may prove disruptive in the short run. Third, the Declassification Board's report leaves untouched certain problems with the present system. I would like to explain my concerns further in the course of comments on the details of this report. If I concentrate on what I see as weaknesses, this is not meant to detract from the very real merits of the Declassification Board's proposals. I have often limited my comments on the recommendations I agree with to a simple "I endorse."

This report fails to make the fairly obvious point that too many documents are classified in the first place. This is the beginning of the problem of overload of the declassification system. When too much is classified, it also engenders cynicism, and it can make it more difficult to protect what really needs to be kept secret. It also creates a very expensive problem for future declassifiers.

The Declassification Board correctly notes (p. 4) that Executive Order 12958, despite its merits and its beneficial results, has not substantially shortened the process of declassifying older documents, because the executive agencies have avoided bulk

declassification. The use of agency contractors to review older documents series by series and document by document is not only time-consuming and expensive, but inevitably leads to different judgments by different agencies and even by different reviewers within an agency. It is an example in miniature of the much broader problems of decentralized declassification—or non-declassification. One absurd result was that a very substantial body of World War II records from the Office of Strategic Services was screened and withheld under Executive Order 12958 in the late 1990s.

With one exception, all laws and executive orders have routinely exempted from declassification certain classes of documents (such as matters whose release would adversely affect American foreign relations, information supplied by foreign governments, intelligence sources and methods, and matters affecting national security.) Such general exemptions have made it possible for agencies to keep large numbers of older documents classified, and they have justified document by document reviews.

Only the Nazi War Crimes Disclosure Act of 1998 impinged on these blanket exemptions. This law initiated a different standard, stating that there should be a presumption that the public had a right to know and would benefit from release of formerly classified information. An agency defending continued classification of a particular document had to show that the damage from release would outweigh the benefit. Finally, the law set up a new process for adjudicating disagreement, culminating with a potential report to a committee of Congress.

The Declassification Board has adopted the general notion of balancing benefit from release against risk of damage from release. But the proposed National Declassification Center would not have enough authority to enforce this standard. I would suggest that authority to declassify in whole or in part records more than thirty years old should shift to the National Archives, which can apply a reasonably uniform standard. If NARA runs into systematic difficulty with a particular agency refusing to agree to declassification of older documents or to turn them over, NARA should have the ability to report such disagreement to appropriate committees of Congress. It is not realistic to expect that, under most circumstances, the White House will have time for such disputes.

Let me now comment specifically on the detailed recommendations under each issue listed by the Declassification Board. For the sake of brevity, I have not here repeated the Declassification Board's recommendations.

Recommendations under Issue No. 1: I endorse.

Recommendations under Issue No. 2: I endorse with qualifications. The Declassification Board correctly notes that agencies have used too narrow a standard in defining what is permanently valuable. It proposes that the President establish a board of historians, academics, and former government officials to determine which events or activities for a given year were historically significant *from a national security and foreign policy standpoint*. This may be too narrow a standpoint for a good many

historians. But the concept of looking for key events and issues and moving such records along swiftly is a good one.

Recommendations under Issue No. 3: although I endorse the concept of a center in the Washington area to house presidential records, I don't think this proposal is as important as many others in this report. If the expense makes it infeasible, there should be other and cheaper ways to expedite declassification of older records at presidential libraries.

Recommendations under Issue No. 4: I endorse.

Recommendations under Issue No. 5: as noted above, I don't believe that the proposed National Declassification Center and NARA have enough clout to bring about meaningful change in some agency practices.

Recommendations under Issue No. 6: while the recommendations are sensible, an easier solution would be for agencies to shift authority to NARA to declassify or redact documents at least thirty years old.

Recommendations under Issue No. 7: special media and electronic records represent, as the Declassification Board notes, a monumental future problem. I think this is an area where the best minds at NARA, in government generally, in the academic world, and in business need to work together. NARA should establish a committee of experts, whose non-government members should be reimbursed for their expertise. It should receive special funding from Congress for this purpose.

Recommendations under Issue No. 8: I have yet to see an example where reclassification of information is anything but foolish. I agree with the recommendations but am not sure that they go far enough.

Recommendations under Issue No. 9: I endorse. Of course, unless Congress provides adequate funding to NARA, there will continue to be backlog problems.

Recommendations under Issue No. 10: I endorse.

Recommendations under Issue No. 11: They are sensible if carried out fairly and honestly, but they contain the potential for abuse and for misunderstanding by the individual making a request.

Recommendations under Issue No. 12: I endorse.

Recommendations under Issue No. 13: I am not sure that I have enough experience with these kinds of data to take a point of view.

Recommendations under Issue No. 14: I strongly endorse.

Recommendations under Issue No. 15: I endorse.