

PUBLIC INTEREST DECLASSIFICATION BOARD

MINUTES OF THE MEETING

February 25, 2006

(As approved at the April 1, 2006 PIDB Meeting)

The Public Interest Declassification Board (PIDB) held its inaugural meeting on Saturday, February 25, 2006, at 10:00 a.m. in the Archivist's Board Room of the National Archives Building, Archives I, located 700 Pennsylvania Avenue, N.W., Washington, D.C. L. Britt Snider, Chairman of the PIDB, chaired the meeting. Other Board Members that attended included Martin C. Faga, Steven Garfinkel, Joan Vail Grimson, Elizabeth Rindskopf Parker, Richard Norton Smith, and David E. Skaggs. Also present: J. William Leonard, Director, Information Security Oversight Office (ISOO), serving as Executive Secretary for the PIDB; and William J. Bosanko, Pamela J. Carcirieri, Kristofer L. Johnson, Lee H. Morrison, and Dallas L. Perry, PIDB Staff Members.

I. Welcome, Introductions, and Administrative Matters

The meeting began with a representative from the General Services Administration (GSA), Cassandra Browner, performing the swearing-in ceremony. Ms. Browner was assisted by Bernadette Wiggins, also from GSA. Various personnel related documents were signed by the Board Members and collected by Ms. Wiggins.

II. Opening Comments

The Chair provided the opening remarks and explained the nature of the Board. He stated that unlike most other Boards, the PIDB is charged with representing the Public's interest. He went on to say that it was an interesting juxtaposition, in that the Board must balance public access to records against the possibility of damaging national security. Mr. Snider explained that the Board was an advisory committee and that they will make recommendations on both the classification and declassification of documents. Although the Board is serving in an advisory capacity, that is not an insignificant role. Mr. Snider ended his comments by stating that he hopes the PIDB will have a positive impact on the classification system. He then asked each member to give a brief introductory statement.

III. Overview of State of Declassification

Mr. Leonard began by explaining that the Information Security Oversight Office (ISOO) is focused on ensuring the integrity of the President's classification system. He stated that the strength of the process is that it allows agencies the flexibility to exercise their discretion. He went on to explain that this same strength was also a weakness in that some of the agencies do not always employ informed judgment in that classification often occurs by rote. Mr. Leonard also stated that he welcomed the Board's input with respect to ISOO's oversight role and what they thought of the process. Mr. Leonard and Mr. Bosanko then delivered a briefing, a copy of which is attached. A summary of the briefing and some of the related discussion are included below.

Mr. Bosanko began the presentation by explaining that information becomes declassified under E.O. 12958, as amended, in three ways: by instructions set forth in a classification or declassification guide (and often annotated on the documents themselves); under review by an agency official authorized to change its status (mandatory, section 3.5 or systematic, section 3.4); or automatically (section 3.3), without the benefit of review. With respect to systematic declassification review, he noted that this program is meant to consist of a review of items exempted from automatic declassification prioritized by the degree of researcher interest and the likelihood of declassification upon review. He stressed that under section 3.1 of the Order, information shall be declassified as soon as it no longer meets the standards for classification under the Order (see sections 1.1, 1.4, and 3.3(b) of the Order).

He continued by stating that prior to E.O. 12958, as amended (the Order), the determination to declassify was left to the discretion of the originating agency and that a mountain of classified historical documents resulted. The Order was a watershed moment in declassification in that it provided real consequences, deadlines, and dates for automatic declassification. Mr. Leonard stated that there will not be any further extensions of the December 31, 2006 deadline for automatic declassification. There was a brief discussion of the costs of secrecy, both tangible and intangible. Mr. Bosanko referred to some of the intangible costs as: undermining well-informed decision-making; uninformed public; and the loss of faith in the system by both the users and the public. He noted that agencies finite resources need to be focused on protecting that information which is most at risk and of the greatest sensitivity.

Mr. Bosanko discussed the future of declassification. Agencies cannot exempt records unilaterally and decisions to exempt records from automatic declassification are now subject to review and approval of the Interagency Security Classification Appeals Panel (ISCAP). He also stated that only the President has the authority to unilaterally classify records beyond twenty-five years. He explained that if an agency intends to exempt information from automatic declassification, they must have an ISCAP approved declassification guide (section 3.3(d) of the Order). The end of June, 2006 is the deadline for submitting the guides to the ISCAP.

Mr. Bosanko continued the presentation by explaining the integral file block concept as well as referrals. He stated that multiple equity records continue to be a problem for the agencies. Mr. Leonard reiterated that one agency does not have the authority to declassify another agency's equity. He further stated that nearly every agency is stepping-up and performing their responsibility. There was a brief discussion of the volume of information declassified under the automatic declassification provisions (more than 1 billion pages since 1995) and the fact that even in a post-9/11 environment the Executive branch is still declassifying more than twice the average annual rate than was declassified annually prior to the implementation of automatic declassification.

Mr. Bosanko stated that ISOO is working with the agencies that anticipate difficulties with meeting the automatic declassification deadlines. Mr. Leonard stated that declassification does not equal release and that other statutes may apply for withholding the information from public release. Mr. Leonard noted that the agency-centric approach that had been utilized to date would not work for the future, particularly with dealing with the problem of multi-agency equities. He stressed that full and efficient implementation of automatic declassification will succeed only with an Executive branch-wide approach.

Mr. Garfinkel discussed his background as Chair of the Nazi War Criminal Records Interagency Working Group (IWG) and how the IWG has dealt with some of these issues. He stressed that declassification can continue to occur without having an adverse impact on national security. Mr. Garfinkel said that an IWG briefing to the Board would be beneficial. He also stressed the need for a digital record policy versus policy based on textual records.

Mr. Leonard explained that the framework for automatic declassification is in place within the agencies and that December 31, 2006 is a beginning for automatic declassification rather than an end. Mr. Bosanko stated that the Presidential Libraries are also subject to the same requirements. Mr. Leonard then explained that NARA, the Central Intelligence Agency, and the Presidential Libraries are the centers of gravity for declassification. Mr. Bosanko ended the briefing by stating that all information of permanent historical value will end up at NARA at some point and that automatic declassification has forced the agencies to look at the way they do business. The Chair then stated that he would like to have a briefing from the National Archives and Records Administration (NARA) on the life-cycle of Federal records and the critical role of NARA in declassification.

IV. Discussion of the New York Times Article

Mr. Leonard facilitated this session of the meeting. He spoke about how agencies can only declassify their own information. The Order speaks to reclassification in a very specific context. He gave examples of legitimate reclassification actions. He stated that reclassification actions are required by the Order to meet a very high standard and that ISOO has not once been notified that any specific reclassification action has occurred since the Order was revised in 2003. Mr. Leonard spoke about the re-review efforts such as the legislatively mandated Kyle-Lott reviews. He then discussed what events led up to the New York Times article on reclassification at NARA.

Mr. Snider inquired about the goals of the ISOO audit of potential reclassification actions at NARA. Mr. Leonard explained that ISOO is looking at the appropriateness of the decisions being made. This issue goes to the heart of the integrity of the classification system and the examples provided by Mr. Aid make a mockery of the classification system if they represent true classification action. Mr. Leonard stated that beyond a security point of view, there appeared to be a lack of judgment in the decision to remove these specific examples from the open shelves. Mr. Garfinkel expressed his opinion that agency reviewers do not use discretion and instead identify information based on keywords and general guidelines, without the benefit of internal agency oversight. Mr. Leonard spoke about the importance of making informed declassification decisions and the severe consequences of poor judgment.

Dean Parker asked about what procedures exist for an agency to follow when conducting a re-review of previously released records. Mr. Bosanko explained that determining what procedures are in place and where they are lacking is one of the focus areas of the ISOO audit. Mr. Leonard stated he did not want to presuppose any findings, but believes that the lack of appropriate policy and guidance may be the primary finding of the audit. He further stated that for any re-review of records previously released to the public, an agency should begin with the presumption that its declassification procedures and guidance have been properly applied. Before a re-review effort

begins, an agency's first responsibility must be to evaluate whether a reclassification action is required or if an inappropriate declassification has taken place.

Ms. Grimson asked if ISOO was aware prior to the New York Times article that the reclassification and re-review problem existed. Mr. Leonard explained that ISOO has been focused primarily on ensuring that agencies have a declassification program in place prior to the onset of automatic declassification on December 31, 2006. ISOO had turned attention to the quality of declassification decisions over the past year and intended to focus more on the quality of agency declassification reviews after it reached a level of confidence that all agencies would in fact meet the December 31, 2006 deadline.

Mr. Leonard emphasized that the Archivist is very concerned about the reclassification issue and wanted to be present at this meeting. The Board discussed preparing a press release stating that the PIDB was now active and had held its first meeting. There was general agreement that the Chair should represent the Board for media inquiries. There was discussion about the preference for holding future meetings or portions of meetings open to the public. Mr. Leonard discussed future funding requirements and challenges.

V. Overview and Discussion of Board Roles and Responsibilities

Mr. Leonard and Mr. Bosanko then provided a brief overview of the roles and responsibilities of the Board as defined by the enabling legislation. There then ensued a brief discussion of a variety of related issues. There was general consensus that the Board would seek briefings from CIA, DoE, DoD, FBI, State, NARA, and NSA in the future and that the Board would seek input from public interest groups, academics, historians, etc. Additionally, the Board expressed interest in seeking input from Congress, declassification advisory panels at CIA, State, and DoD, as well as the 9/11 Commission and the IWG.

VI. Summary of Action Items

- The staff will prepare a draft press release for coordination with the Board and released by the NARA Press Office.
- The staff will prepare a proposed work plan for the Board for the year (possible briefings, progression of meetings, etc.).

VII. Presentation of Appointments

The Members were then presented with framed documentation of their appointments.

VIII. Upcoming Meeting Date

The Board will meet again on Saturday, April 1, 2006.

IX. Adjournment

The meeting was adjourned at 2:00 p.m.