PUBLIC INTEREST DECLASSIFICATION BOARD

MINUTES OF THE MEETING

April 1, 2006

(As approved at the May 9, 2006 PIDB Meeting)

The Public Interest Declassification Board (PIDB) held its second meeting on Saturday, April 1, 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, 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; Professor Allen Weinstein, Archivist of the United States; William H. Leary, National Security Council (NSC), Senior Director for Records and Access Management; Gary Stern, National Archives and Records Administration (NARA) General Counsel; Michael J. Kurtz, NARA, Assistant Archivist for Record Services; Jeanne Schauble, NARA, Director, Initial Processing and Declassification Division; Sharon K. Fawcett, NARA, Assistant Archivist for Presidential Libraries; Nancy K. Smith, NARA, Director, Presidential Materials Staff; and William J. Bosanko, Pamela J. Carcirieri, Kristofer L. Johnson, Lee H. Morrison, and Dallas L. Perry, ISOO, serving as PIDB Staff Members.

I.   Introductions

The Chair provided introductions.

II.   Opening Comments

The Archivist of the United States provided the opening remarks. Professor Weinstein spoke about the opportunities the Board has to affect positive change in the declassification framework. The Archivist also emphasized his full support for the Board and indicated that he would like to attend future meetings. The Chair advanced that the Board would like to develop some compelling ideas to capture the public's interest and stated that input from the public will be critical to the success of effecting change.

III.   Briefing on Declassification of Federal Records at the National Archives

Dr. Kurtz provided a briefing on the declassification process at NARA. He explained that E.O. 11652 of March 1972 was the first to require the Archivist to declassify records transferred to NARA. NARA began a systematic review program in 1973 and has continued under subsequent executive orders. Dr. Kurtz explained that NARA has no authority to declassify archival records, but that it is instead the responsibility of the originator of the records. NARA performs declassification reviews based upon the

guidance provided to the Archivist by the originating agencies. He further explained that there are two types of guidance: declassification guidance and equity identification guidance. Each type of the guidance is applied differently. Declassification guidance identifies still sensitive material and grants authority to declassify anything that does not fall into a sensitive category. Equity identification guidance helps the reviewer recognize the equities of an agency, which must be referred to the agency for review. He further explained that agencies are increasingly restricting the use of declassification guidance and wish to review all classified records containing their equity. Mr. Smith asked if this was a post 9/11 phenomenon, to which Dr. Kurtz replied that it really stemmed from the problems with equity identification that surfaced in the late 1990s. Ms. Schauble stated that when sensitive records were released through NARA, that the instinct is to blame the NARA rather the declassification guidance or actions of other Executive-branch agency personnel.

A discussion followed concerning the specific procedures for declassification reviews at NARA. This discussion included the availability within NARA of agency declassification guidance and the obstacles that confront NARA personnel during the declassification process. Ms. Schauble provided an overview of the process by which agency personnel gain permission and access for performing declassification reviews at NARA. Dr. Kurtz spoke about agency personnel being very active in the stacks, more so than they would like. He explained there is a lot of coordination that goes on at a working-level to make sure what agencies are doing is appropriate. Ms. Schauble explained that NARA personnel were monitoring agency access. The Board members expressed their interest in having a tour of the processing areas and classified stack areas at NARA to make the process clear to them.

Dr. Kurtz then explained the Systematic Review process. He stated that most systematic review is done on a pass/fail basis, whereby an entire document is withheld based on whether or not any portion of a document contains classified information. Dr. Kurtz explained that redaction is too time consuming given the volume of records and if documents cannot be declassified, they are withdrawn from the files and stored separately. Withdrawal notices are then inserted into the files to inform the researcher. The withdrawal notices also provide the information needed to make an access request. Information about the withdrawn documents is recorded in a classified database, called the Archives Document Review and Redaction System, for tracking and referral purposes.

Dr. Kurtz concluded his presentation by describing another NARA initiative, the Interagency Referral Center (IRC). The IRC was established by NARA with support from the United States Air Force to coordinate the referral process. The goals of the IRC are to ensure that all agencies that need to review a document have the opportunity to do so, to process referrals in high interest records on a priority basis, to record agency determinations consistently, to avoid misinterpretation and inadvertent releases, and to protect permanently valuable archival records from excess handling, loss, or damage.

IV. Briefing on Declassification and the Presidential Libraries

Ms. Nancy Smith provided a briefing on the declassification process in the Presidential Libraries. She spoke about a high volume of material found in Foreign Relations of the United States (FRUS) coming from the Presidential libraries and stated that as much as 60% of the documents contained within the FRUS came from the Presidential Libraries. Ms. Smith explained that one of the big challenges is that information contained in the documents are not portion marked and even today, many documents contain unmarked classified information

Ms. Sharon Fawcett stated that the Presidential libraries have many times been accused of "classifying" documents when they have to treat the documents as classified even though they are unmarked. Ms. Smith then explained that the declassification guidance they receive never covers the high level material, only things like specific speeches or low level communications. She continued by stating that Freedom of Information Act (FOIA) does not apply to Nixon and earlier records, and only through a Mandatory Declassification Review (MDR) request can anyone obtain the materials. Ms. Smith spoke briefly about the different statutory authorities governing Presidential materials and in particular about the Presidential Records Act (PRA) and said that this Act applies to Presidential Libraries from Reagan forward.

Ms. Smith spoke to the uniqueness of declassifying Presidential papers and stated that the materials are regionally located and difficult for onsite review by equity holding agencies. She also spoke about the Remote Archives Capture (RAC) Project, explaining that the primary equity holder then handles the referrals. Ms. Smith stated that the Presidential library staff actually performs the declassification of textual records based upon the instruction contained in the RAC notification. The RAC brings referral documents to the Washington D.C. area for agencies to review and, although it was difficult to get all the agencies to participate at first, now nearly every agency is participating and progress is being made. However, Ms. Smith spoke about the challenges of this project as well. She stated that current budget of $750,000 is not enough to handle the 8 million pages of Reagan classified records, and that it was difficult to keep the agencies focused on continuing their review of the records, declassifying the records, and returning decisions on a consistent basis.

Ms. Fawcett stated another challenge has been that even though the documents have been scanned, the CIA has not granted permission to put the documents on the web. She explained that their concern is that a search tool may be able to compile the data resulting in a mosaic effect. They are allowed to let researchers view the documents electronically in the research rooms. Ms. Smith spoke about the challenges of working with Special Media records. Dean Parker asked what the proportion of records reviewed at the Libraries are declassified. Ms. Smith did not have the exact percentage but stated she would get the opinion of the staff. She stated there were varying levels of review, sometimes the documents are reviewed as pass/fail and sometimes they were redacted depending upon the agency. Mr. Leonard stated he would get the numbers for the Executive branch as ISOO has been tracking that for the past two years.

A discussion followed in which the Board members expressed their concerns about the work plan and future Board goals.

V.   Overview of ISOO Audit

Mr. Leonard provided a briefing on the preliminary results ISOO audit of the withdrawal of records from the open shelves for classification reasons. He explained the process used by the ISOO auditors to obtain a statistically relevant sample and illustrated the obstacles faced by the audit team. Discussion followed as to the reasons behind the known re-review efforts and what had directed agencies to the particular series of records in question. The Audit had thus far shown that an agency's actions with respect to its own documents are fairly accurate but fail to properly deal with other agency's equities. The importance of documentation and providing an accurate audit trail of who was informed and when they were notified is critical. Mr. Leonard stated this audit has revealed the need for additional quality controls in the review and referral process.

Mr. Leonard concluded the briefing by outlining four required actions for the removal of records from the open shelves for classification reasons in the future. The first element is that the each agency head will need to assert to the Archivist the compelling need to withdraw records. The agency will have to show that there will be serious damage by leaving the records on the open shelf and only withdrawal will mitigate that damage. The second element is that any withdrawals would be extremely focused and would not be based upon keywords but on the narrowest basis possible. The third element is an independent audit conducted by ISOO and that the agency has to commit to getting the information back onto the shelves. The fourth and final element is making public announcements on who withdrew records and includes as much detail as possible. Mr. Leonard indicated that ISOO is putting forth a regulatory change to the implementing directive and will begin the interagency coordination at the next Classification Management Working Group (CMWG). He further stated that he sees this as an opportunity and will be as transparent to the public as possible.

VI.   Briefing and Discussion – Pilot National Declassification Initiative

Mr. Leonard provided an overview of the National Declassification Initiative (NDI) pilot. He stated that the imperatives for change were inefficiencies and inconsistencies of multiple reviews, the need to continue to enhance the quality of review, the need to establish joint priorities, and stated that the successful implementation of automatic declassification can only occur on an Executive branch-wide basis. He proposed the establishment of a "confederation" that will be chaired by a Senior Executive Council with fully chartered authority. He highlighted the goals of the confederation which are: 1) to address policies, procedures, structure, and resources required to promote efficiency and reliability of decision making; 2) to ensure that current authority, expertise, and resources are committed to declassification decisions, or continued classification of historically valuable permanent records of the Federal Government, in a manner that reflects sound judgment, consistency, and efficiency; and 3) to provide a forum that will assist in developing standard guidelines and protocols for appropriate actions to take

before, during, and after declassification reviews. As part of the process improvement, under the pilot NDI, records would be reviewed no more than twice prior to becoming subject to automatic declassification provision. He went on to explain that interagency conflicts surfaced through the quality control process would be resolved through ISCAP or ISOO, as appropriate.

VII.   Discussion and Approval of By-laws and selection of Vice Chair

The Board unanimously approved the draft By-laws. Mr. Smith was elected as the Vice Chair of the Board.

VIII.   Approval of the Minutes of the February 25, 2006 Meeting

The Board unanimously approved the draft Minutes.

IX. Discussion and Approval of Draft Work Plan

The Board members discussed the draft Work Plan and made adjustments to resolve schedule conflicts. There was also discussion concerning the public element of the upcoming meeting in May. Several suggestions were advanced, including the possibility that the Board members stay after the public forum to discuss any issues raised by the public interest groups and the possibility of preparing a statement to be put out as a press release following the meeting. The Chair determined that the Board would benefit from hearing the opposing viewpoints of the agencies and engaging in thoughtful discussion prior to taking a position on the individual issues.