

IMPROVING DECLASSIFICATION

A REPORT TO THE PRESIDENT
FROM THE PUBLIC INTEREST DECLASSIFICATION BOARD



“A popular Government, without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance; And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”

James Madison to W.T. Barry
AUGUST 4, 1822

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EXECUTIVE SECRETARY

J. William Leonard

January 3, 2008

The Honorable George W. Bush
President of the United States
Washington, DC 20500

Dear Mr. President:

The Public Interest Declassification Board is an advisory group created in 2000 (Public Law 106-567) to promote “the fullest possible public access to a thorough, accurate, and reliable documentary record of significant ... national security decisions and ... activities.” The law provides that the Board will be composed of nine members drawn from the public, five of whom are appointed by the President and four by the respective leaders of the Congress. (A list of the Board’s members is found in Appendix A in this report.) It was not until late 2005, however, that Congress appropriated funds for the Board’s operations, allowing it to meet for the first time in February 2006.

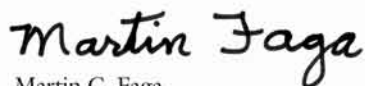
For the remainder of 2006, the Board met on a nearly monthly basis, primarily to hear testimony from representatives of the departments and agencies with the largest declassification programs as well as representatives from the National Archives, including the Presidential libraries. During the first half of this year, we used our meetings principally to obtain the views of knowledgeable members of the public. (A list of the witnesses to appear before the Board is found in Appendix B in this report.)

On the basis of the information gathered over the past year and a half, the Board has arrived at certain conclusions regarding the strengths and weaknesses of the existing declassification system in meeting the objective cited above. Exercising the discretion provided in our statutory charter to make recommendations to you for improving the declassification system, we provide you with this initial report of our findings and recommendations.

The Board offers these recommendations based principally on what we perceive to be the public’s interests and concerns. We believe that the Board is intended to serve as a voice for the public within the Federal Government concerning declassification policies and programs. Although such policies and programs must ensure the protection of our national security interests as long as such protection is needed, we believe that they should also take into account the interest of ordinary citizens in having as “thorough, accurate, and reliable” a record of their country’s history as soon as it is possible to provide it. It is primarily this interest that has motivated the recommendations that follow. In addition, because these recommendations will enhance the integrity of the classification system, we believe that they are in the interest of the departments and agencies that are involved in classification, safeguarding, and declassification activities.

With the life of the Board extended until 2012, we plan to address other aspects of the classification and declassification process, including classified information contained in electronic records and monitoring the actions taken to address the issues identified in the attached report. We stand ready to assist you and your staff, as well as affected departments and agencies, in addressing and protecting the interests of the public in this important area. Board member Britt Snider chaired the PIDB from its inception in February 2006 until October 2007. He ably led the work of the Board and is a principal author of our report. The Board members’ recommendations in the enclosed report were unanimous.

Sincerely,



Martin C. Faga
Acting PIDB Chair

Attachment

INTRODUCTION

Understanding history is essential in a democracy. Without such an understanding, the public cannot know which candidates to vote for or which policies to support. They cannot judge the best course for the country. Without historic understanding, the mistakes of the past are destined to be repeated; the triumphs, unappreciated.

Yet, the public cannot always be told all that its Government is doing. To do so would reveal information that might harm the country's interests. Diplomatic problems might be created, military capabilities could be undermined, or the ability to gather information about threats to security might be damaged. To protect sensitive information, the U.S. Government, like other democratic Governments, has established a classification system whereby such information is identified, marked, handled, and stored in a manner designed to prevent its unauthorized disclosure. For the most part, the public has accepted, and continues to accept, the need for such controls on information.

At the same time, the public believes its Government often keeps information classified longer than it needs to be. Eventually, all classified information will lose its potential to cause serious and demonstrable harm to U.S. security interests should it be disclosed. It might take 100 days for this to happen, or it might take 100 years, but eventually events, circumstances, and the passage of time will erode the reason for restricting access to the information. The public expects the Government to make its best effort to ascertain the point when this occurs and to make historically significant information available. Declassified information, whenever

made available, is often important — essential, in fact — to understanding the decisions and actions taken at crucial junctures in the country's history. History, after all, is cumulative: it has no finality. As historical insights evolve, the public's understanding is continually being broadened and deepened, as is the capacity of Government to learn from its mistakes and successes.

To its credit, the U.S. Government has always accepted the obligation to make classified information that is historically significant available to the public. To that end, the Government has established a number of declassification programs. Information that was previously classified is reviewed against the standards for continued classification.

In fact, the present standard for keeping historically significant information classified beyond 25 years is much more exacting than that required for its initial classification. The original classification needed only establish that “the unauthorized disclosure of the information could be expected to result in damage to the national security.” After 25 years, the standard is whether disclosure could be expected to reveal, for example, “actual U.S. military war plans that remain in effect,” or whether it would “seriously and demonstrably impair relations between the United States and a foreign Government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States.” Today, if continued classification does not satisfy these higher standards, the information is declassified and ordinarily made available to the public in some manner.



A Brief Historical Perspective on Declassification Activity in the U.S. Government

The first governmentwide system providing for security classification was promulgated in an Executive order issued by President Dwight Eisenhower in 1953. Before that, departments and agencies with responsibilities in the national security area protected their information as they saw fit, in accordance with their own internal regulations. The Eisenhower Order acknowledged in principle the need to declassify documents when they no longer required protection, specifically requiring departments and agencies to assign dates or events at the time documents were classified to govern their declassification. But the Eisenhower Order did not require agencies to systematically review such documents for declassification, nor did it require them to review for declassification documents requested by the public.

In 1961, President John Kennedy amended the Eisenhower Order to require departments and agencies to designate officials with responsibility for “continuing reviews” of classified documents and for responding to requests for such documents “from all sources.” The amended order also provided for the automatic declassification of documents that had not been exempted by the agencies at the end of 12 years. Although they were an improvement over the Eisenhower Order from the public’s perspective, the Kennedy amendments still left it to the departments and agencies to determine the size and scope of their continuing reviews of classified documents, as well as how requests from the public would be handled. No agency saw fit to allow its documents to be automatically declassified after 12 years.

The Nixon Executive order on security classification, issued in 1972, reduced the maximum length of time a document could be classified to 10 years but also allowed agencies to exempt their documents from this requirement. Similarly, it provided that all documents would be automatically declassified after 30 years unless the agency head extended the period required for protection. For the first time, however, agencies were required to establish internal procedures to provide for “mandatory declassification reviews” of documents requested by members of the public. The Nixon Order also provided, for the first time, that the Archivist of the United States would be required to systematically review for declassification all 30-year-old records that had been transferred to NARA’s custody, i.e., records determined to be “permanently valuable.”

For the next 23 years — until Executive Order 12958 was issued by President Bill Clinton in 1995 — the National Archives was the only agency of the Federal Government that was required to conduct systematic declassification reviews. A few agencies, such as the State Department and the Central Intelligence Agency, instituted systematic reviews over certain of their record collections, but none chose to institute

systematic reviews of all their classified records. Indeed, virtually all the declassification reviews that occurred at the agencies from 1972 until 1995 (apart from what was being done at the National Archives, including the Presidential libraries and declassification reviews initiated by the Department of State in support of the published Foreign Relations of the United States series) were undertaken pursuant to an access demand (e.g., Freedom of Information Act (FOIA) or mandatory declassification review request) or a legal requirement (e.g., a congressionally mandated special search), or were part of limited agency initiatives.

As a result, by 1995, a mountain of unreviewed classified documents — estimated at that time to be nearly 700 million pages — had accumulated at the National Archives with no prospect, given the level of resources then available, of ever being reviewed. To make matters worse, with each passing year the mountain was growing, and many millions more pages of such records were held by the agencies as well. To resolve this situation, Executive Order 12958 (hereinafter, “the Order”) introduced the concept of “automatic declassification,” whereby all classified records deemed to be “permanently valuable records of the Government” — those required to be legally transferred by agencies or Presidents and Vice Presidents to the National Archives, including its Presidential libraries — would be presumed declassified when they reached 25 years of age, unless the agency that originated them acted to exempt them pursuant to the provisions of the Order. At the time, it was believed that this requirement would encourage agencies to allow certain files or categories of records to be declassified in bulk, without the necessity of document-by-document review. With limited exceptions, however, this did not turn out to be the case. Instead, agencies hired additional staff and contractors to review their records at the National Archives and among their own holdings. They were initially given five years to complete their work; however, this deadline was ultimately extended to December 31, 2006. (The automatic declassification of documents containing the equities of multiple agencies was delayed until December 31, 2009; and the automatic declassification of information contained in “special media” was delayed until December 31, 2011.)

At the end of 2006, virtually all departments and agencies were deemed to have complied with the requirements of the Order, at least with respect to the initial implementation of automatic declassification. Over the 12-year period in which the reviews were conducted, approximately 1 billion pages of permanently valuable records were declassified. Each year thereafter, millions more pages of permanently valuable records will become 25 years old and be subject to automatic declassification, and thus will likely undergo declassification review.

What the Declassification System Generally Looks Like Today

The declassification system of 2007 is a far cry from what it used to be. Far more resources are being applied to declassification activity and far greater results are being achieved. One witness before the Board opined that it might take a generation for the public to fully appreciate what has been declassified over the past 12 years.

At the same time, although collaboration among the agencies has clearly increased since 1995, the Government continues to have a decentralized, largely autonomous system to carry out these activities. The pertinent guidance at the national level is principally designed to provide latitude, rather than direction, to the agencies, and oversight at the top remains relatively weak. Ultimate authority and control rest with the departments and agencies involved and, unsurprisingly, they do not all see (or execute) their responsibilities in quite the same way. However, all departments and agencies face the same problem: burgeoning demands on their resources. Not only have the automatic declassification provisions of the Order forced them to commit resources, they are constantly bombarded by requests and requirements emanating from a variety of other sources, such as the FOIA, mandatory declassification reviews, and congressionally mandated searches. There is also pressure from within many agencies to get their own stories out. No agency is currently able to keep up with the demand. All must juggle their resources and allocate their personnel to satisfying whatever requirements seem to be the most pressing at the time — for legal reasons, political reasons, agency needs, or reasons of public relations. What can be put off is put off; what can go to the end of the queue goes to the end of the queue. “Robbing Peter to pay Paul” is the inevitable outcome.

What appears to be missing is a common understanding of the public interest and a common approach to effectuating it. Though the Government is committed, as a matter of policy, to making historically significant information available to the public as soon as it can safely do so, there is no common understanding among the agencies of what “historically significant” information is, nor any common understanding of how such information will be treated once identified as such. Rather, it becomes part of the “queue,” lost in the shuffle of automatic declassification reviews, FOIA requests, specially mandated searches, and the like. What of historical significance is actually being declassified is unclear both to the public and to the Government.

Making matters worse, declassification does not necessarily mean that information will be available to the public any time soon. Once declassified, documents undergo archival processing, which includes determining whether they should be withheld for reasons other than security classification, conducting archival description (which may include indexing the documents), and conducting any necessary preservation activities. The National Archives lacks sufficient resources to keep pace with agency declassification reviews, resulting in enormous backlogs. It will likely take years for hundreds of millions of pages of materials declassified over the past 12 years to become available to the public. Moreover, many declassified documents will continue to be withheld from the public because they contain other types of controlled, unclassified information, such as investigative or personal information. Many more years are likely to pass before this protected information is allowed into the public domain.

Nevertheless, there are many hopeful signs. A great deal of information has been declassified since 1995 that otherwise would not have been, largely because departments and agencies devoted major resources to their declassification activities. Testimony to the Board indicated that they are developing professional cadres of experienced and dedicated reviewers. They also appear to be making greater use of information technology and working more closely and more effectively with each other than ever before — and, in particular, with the National Archives.

The tasks ahead remain daunting, and the resources needed to meet existing deadlines and workloads will never be sufficient and are under constant threat of reduction. The Board is optimistic that success is possible, but not if the Government stays on its present course. Some things need to change.

Declassification is, and will always be, a staff-intensive activity, but manpower is not the sole key to success. Declassification can and must be done in a smarter way. It needs to be better focused with greater uniformity among departments and agencies. It needs to use technology to a greater extent to accomplish its mission and institute better strategic planning to address the needs of the future, especially the declassification of information stored in existing as well as emerging digital, optical, and other nontextual formats.

What the Declassification System Must Look Like Tomorrow

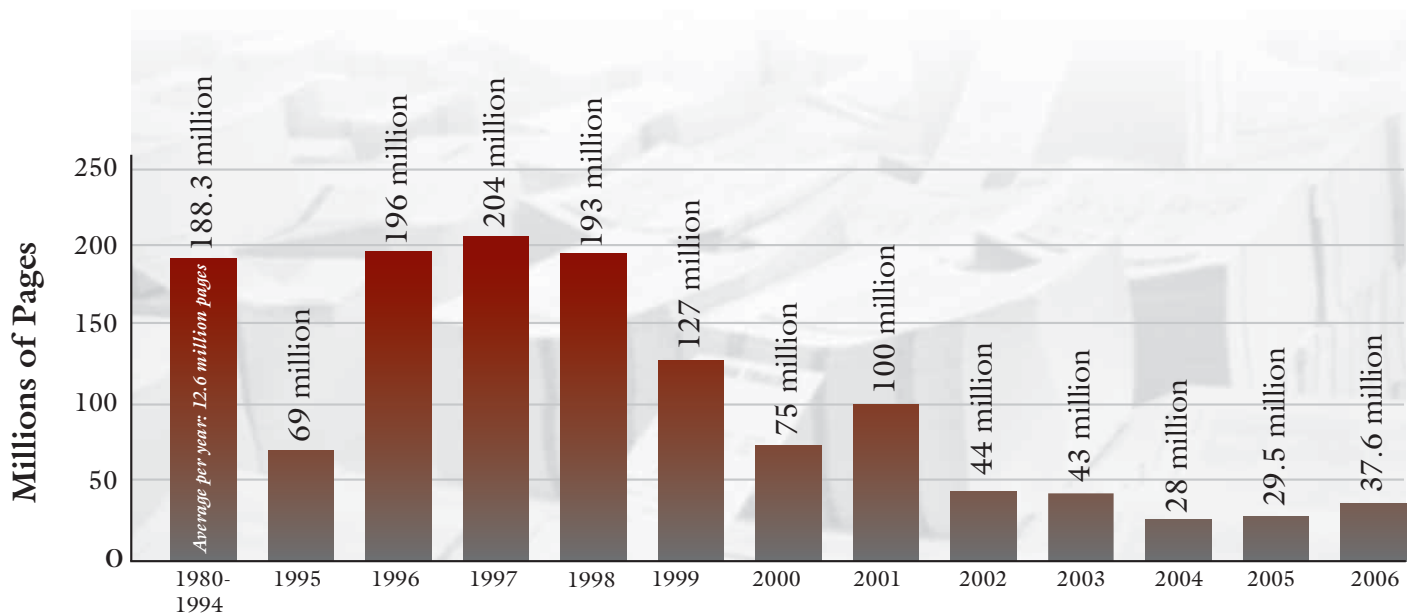
Whatever may be done to improve the declassification system of today, it is apparent that this system is ill-equipped to deal with the requirements of tomorrow. Rather than focusing on the review of classified information contained in paper documents, it will increasingly focus on the review of classified information contained in electronic records, such as e-mails and PowerPoint presentations, which are stored in a variety of databases and in various electronic formats. The volume of such records, in fact, is apt to dwarf the volume of classified records now being reviewed by departments and agencies in paper form on a document-by-document basis. In all likelihood, if departments and agencies are to continue to identify “permanently valuable” classified records among these holdings for review as they reach 25 years of age, some means of doing this electronically will be required both for the identification and the declassification review of such records. Moreover, after these declassification reviews have taken place, an electronic means will be needed to transfer the records that have been declassified to the National Archives, where they can be subjected electronically to archival processing and ultimately be made available electronically to the public. In short, a declassification system is needed that makes far greater use

of information technology to achieve its objectives — including technology that is compatible across the entire system at every step of the declassification process.

The National Archives has anticipated the need for a governmentwide system for identifying and processing “permanently valuable” electronic records of the Government by establishing the Electronic Records Archives (ERA) initiative, which envisions a comprehensive, dynamic system for preserving virtually any kind of electronic record, regardless of its form or how it is stored at the department or agency that created it. The idea is that once such a system is operational, the Archives would make such records available to the public electronically.

It is unclear to the Board, however, whether the needs of the declassification system could be folded into, and would be assimilated by, the ERA initiative that is now under way. The Board intends to examine this issue in depth over the coming year. In the meantime, much can be done to improve the existing declassification system, and it is to this end that the following recommendations are offered.

1.33 BILLION PAGES DECLASSIFIED, FYs 1980-2006



Source: Fiscal Year 2006 Report to the President, Information Security Oversight Office.

SUMMARY OF ISSUES & CORRESPONDING RECOMMENDATIONS

ISSUE No. 1:

Understanding What the Declassification System is Accomplishing. There are at least eight ways by which security classified national security information may become declassified, including through Freedom of Information Act requests and through automatic declassification under Executive Order 12958. The Board presents several recommendations that would increase the efficiency of the system as a whole.

RECOMMENDATIONS

1. The Board recommends establishing by Executive Order or by statute a National Declassification Program under the Archivist of the United States.
2. A new National Declassification Center (NDC) to be established within the National Archives and Records Administration (NARA) should administer the program, and the Archivist should establish a new position — Deputy Archivist for Declassification Policy and Programs — to oversee all aspects of the NDC’s operations
3. Departments and agencies should be required to consolidate all of their declassification activities in one office or bring them under the control of one office.
4. All departments and agencies should be required to record declassification decisions on a single computerized system, regardless of the avenue by which declassification occurs and within five years to make these databases available to the public containing at least pertinent information such as the titles of the documents and the locations where they are available.
5. All departments and agencies should report to the NDC at least annually what they have declassified.

ISSUE No. 2:

Prioritizing the Declassification Review of Historically Significant Information. There is no satisfactory means at present of identifying historically significant information within the vast body of information that is being reviewed and declassified. Accordingly, no priority is given to the declassification and release to the public of such information.

RECOMMENDATIONS

1. To ensure that historically significant classified records are given priority at the 25-year review point, both in terms of what records are taken first and in terms of the quality of the review they receive, the President should promulgate by Executive order, or other appropriate issuance, a system for identifying such information.
2. A board consisting of prominent historians, academicians, and former Government officials would be appointed by the Archivist to determine which events or activities of the U.S. Government should be considered historically significant from a national security and foreign policy standpoint, for a particular year. The board would require input of agency records managers and historians as well as NARA’s archivists, to include those within the Presidential libraries, to determine the specific records series that most likely contain the records about the topics the board identifies as historically significant.
3. Once the records series determined to be “likely to contain information of historical significance” had been identified and approved, these records would receive the highest priority for declassification.
4. The Archivist of the United States, through the NDC, would oversee the implementation of this process within affected departments and agencies, and would establish within the NDC, a mechanism for resolving disagreements that might arise in the course of such implementation.
5. If this system were adopted, E.O. 12958, as amended, would need to be amended to allow departments and agencies to give priority to the review of classified records deemed to be historically significant as they reach 25 years of age.
6. It is recognized that “routine” records may still have significance, especially to particular individuals. Such records would still be subject to timely review for declassification in response to a specific access demand (e.g. a FOIA or MDR request).

ISSUE NO. 3:

Expediting the Declassification of Presidential Records. The declassification of Presidential records takes far too long under the current system.

RECOMMENDATIONS

1. The Archivist should establish a single center within the Washington, D.C. metropolitan area, to house all future classified Presidential records from the end of a Presidential administration until their eventual declassification, at which time, they would be physically transferred to the appropriate Presidential library and made available to the public.
2. If establishing a separate center for the storage and review of classified Presidential records were not considered feasible, then the new NDC should consider establishing as part of its mechanism for the review of classified documents with multiple equities, an office or division dedicated to the reviews requested by Presidential libraries.
3. If neither of these options is considered feasible, Congress should consider amending the Presidential Records Act to provide, similar to the FRUS statute, that departments and agencies will give priority to the declassification of Presidential records over other declassification reviews, except those otherwise made pursuant to law, e.g. the FOIA or other searches mandated by statute.
4. In the absence of statutory change, a similar policy could be set forth in Executive order, or other Executive branch policy issuance.
5. If the current decentralized system is retained without structural change, NARA needs to consider means of augmenting the archival capabilities at Presidential libraries, e.g. by increasing their staffs, contracting out, granting security clearances to volunteers, to accelerate the archival processing of classified Presidential records.

ISSUE NO. 4:

Preserving a Capability within Agencies to Review Records less than 25 Years of Age. Agencies typically allocate their declassification review personnel to whatever the pressing need may be at the time, which often leaves insufficient resources to perform declassification reviews of records *less than 25 years old* that they know to be historically significant.

RECOMMENDATIONS

1. Either pursuant to uniform guidelines issued by the National Declassification Center or pursuant to an appropriate Executive branch issuance, agencies should be directed to dedicate some specific percentage of their declassification review personnel to conducting reviews of records less than 25 years old that they know to be historically significant and are reasonably likely to provide the public with meaningful results.
2. The Archivist should annually recognize in some appropriate fashion the agency or agencies that declassify and release to the public on their own initiative historically significant information less than 25 years old.

ISSUE NO. 5:

Bringing Greater Uniformity, Consistency, and Efficiency to the Declassification Process. All executive departments and agencies of the Federal Government are bound by the Order on security classification, but, when it comes to their declassification programs, there is a wide disparity in terms of their implementation, including the level of resources being applied to such activities, training, use of technology, interface with the public, and approach to declassification reviews.

RECOMMENDATIONS

1. The President, by executive order or other appropriate issuance, should charge the new NDC with prescribing uniform guidelines to govern the declassification activities of all executive departments and agencies.
2. In addition to prescribing uniform guidelines, the NDC should be responsible for providing “services of common concern” for the declassification activities of the Federal Government where appropriate, to include the review of classified documents that contain multiple equities, as well as the review of classified information contained in special media and electronic records.
3. The NDC should also be authorized to conduct declassification reviews for other departments and agencies on a reimbursable basis.
4. The Order should be amended to prescribe a uniform policy to govern the subsequent review of all exempted records.

ISSUE No. 6:

Expediting the Declassification Reviews of Multiple Equity Documents. The declassification of documents involving “multiple equities” (i.e. documents originated by one agency that contain information classified by one or more other agencies) has proven especially difficult and time-consuming.

RECOMMENDATIONS

1. The centralized approach currently being taken pursuant to the National Declassification Initiative needs to be made permanent and institutionalized, preferably within the new National Declassification Center, and departments and agencies that have “equities” in such reviews should be required to provide adequate personnel to conduct them.
2. While the Board recognizes that as a practical matter, the “automatic declassification” deadline for multiple equity documents may have to be extended by the President, it recommends that the deadline be extended no more than once and only after the Archivist has presented him with a comprehensive and realistic plan, agreed to by the departments and agencies involved, for achieving the objective within the time frame contemplated.

ISSUE No. 7:

Performing Declassification Review Involving Special Media and Electronic Records. Too little has been done with regard to meeting the deadline of December 31, 2011, for the review of classified information contained in special media records as well as developing plans to cope with the truly monumental problem looming on the horizon: the review of classified information contained in electronic records.

RECOMMENDATIONS

1. NARA should be formally charged with leading a special effort, within the new National Declassification Center, for analyzing the special media records problem and for creating a governmentwide plan for addressing it to include declassification and access.
2. As part of this process, the Center needs to consider at the outset how much classified information stored in special media is permanently valuable according to 44 U.S.C. and the PRA, and thus requires preservation.
3. The Center might consider whether the declassification review of special media records at age 25 or older ought to be limited to, or give priority to, the special media records containing historically significant information.
4. The Center should also consider what “services of common concern” it might be able to provide on a reimbursable basis to help agencies cope with the special media records problem, such as the procurement of obsolete hardware and software for the use of all participating agencies.
5. The Center should serve a similar role with respect to the review of classified electronic records, putting uniform policies in place to ensure activities of departments and agencies are synchronized and standardized with what NARA itself is planning in terms of the Electronic Records Archive, i.e., digitizing its archival records and making them available to the public electronically.

ISSUE No. 8:

Re-reviews of Previously Disclosed Information. In recent years, there have been several instances where agencies have discovered that records created by other agencies (but containing their classified information) have been declassified and made available to the public at the National Archives without their having had an opportunity to review the records themselves for declassification.

RECOMMENDATIONS

1. Such action should be taken only when the potential harm to the national security from continued public disclosure is clear and convincing (after all, these records are most often far more than 25 years old), and the potential for future harm can be significantly ameliorated by withdrawing the records.
2. Any withdrawal of records that were previously available to the public at the National Archives should require the approval of the Archivist; this concept should be codified in the Executive Order.
3. The Order or pertinent statutes should be amended to provide that no member of the public shall be criminally prosecuted, or suffer any other adverse consequences, for maintaining, using, or disseminating a record, or information contained in a document, that they had lawfully obtained from the National Archives or any other agency of the Federal Government.
4. These reviews should be undertaken only where there is a clear indication (and subsequent showing) that the benefits to our national security are worth the costs.

ISSUE No. 9:

Dealing with other Exempted Information and the Delays Entailed in Archival Processing. Because a record has been declassified does not necessarily mean it will be made available to the public any time soon.

RECOMMENDATIONS

1. Records identified as being of historical significance should undergo a concurrent review for personal privacy or “controlled but unclassified” information at the same time as the review for declassification is conducted.
2. Standardization is required as to how Executive branch agencies handle “controlled unclassified information” at the end of its life-cycle.
3. The Archivist should develop a personnel plan, to be funded as part of NARA’s annual budget submission to the Administration (and later presentation to Congress), that would address the current archival processing backlog and to otherwise enable the National Archives in the future to fully process all declassified records within five years of their declassification so that they may be released to the public.

ISSUE No. 10:

Exercising Discretion for Disclosure in Exceptional Cases. The latitude given departments and agencies by the Order to declassify information when the public interest in disclosure outweighs the risk of damage is not being seriously exercised.

RECOMMENDATIONS

1. The Order should be amended to provide that where the entity that originally requested declassification review of the record in question is a Government entity (including a Presidential library, the office that prepares the Foreign Relations of the United States (FRUS) series, a congressional committee, or a court) who is seeking disclosure of the record for a public purpose, *and that entity* objects to the continued classification of the record on the grounds that the public interest outweighs the risk of damage caused by disclosure, it ought to trigger a referral to the senior agency official for a “weighing of the interests” under this provision of the Order.

ISSUE No. 11:

Removing an Impediment to Comprehensive Review. Not infrequently, requests to agencies from individual members of the public actually hamper the agency’s ability to make historically significant records available to the public in general.

RECOMMENDATIONS

1. In the view of the Board, when an agency receives a request from an individual for a particular document or documents that are part of a larger collection of historically significant documents currently undergoing review for declassification, the agency receiving the request should be permitted to hold such request in abeyance for up to one year, provided it advises the individual requestor that the document or documents at issue are part of a larger collection undergoing declassification review and advises the requestor when the results of the larger declassification review are expected to be made available.

ISSUE No. 12:

Expanding the Uses and Roles of Historians and Historical Advisory Boards. Relatively few agencies with responsibilities in the national security currently employ historians and/or maintain historical advisory boards.

RECOMMENDATIONS

1. Amend the Order to require that all departments and agencies with significant classification activity establish historical advisory boards — composed of experts from inside and outside the agency — who report to the head of the agency.
2. By appropriate Executive branch issuance, require all departments and agencies with responsibilities in the national security area to hire an appropriate number of historians, either to select classified records of historical significance for declassification review and publication (as part of the department or agency’s ongoing declassification initiatives), or to write historical accounts based upon the department or agency’s classified holdings.
3. The declassification review of historical accounts written by agency historians ought to take place 25 years after the most recent event considered in the account, rather than 25 years after the historical account is written.

ISSUE NO. 13:

Clarifying the Status and Treatment of Formerly Restricted Data (FRD). In practice, information identified by statute as Formerly Restricted Data (FRD) remains outside the scope of information that can be requested by the public and is not subject to the declassification review requirements of the Order.

RECOMMENDATIONS

1. Preferably, the President should make clear by an amendment to the Order that FRD should be treated as “defense information” and should be safeguarded and declassified in accordance with the Order, thereby providing the public with the same rights of access that it has to other information classified pursuant to the Order.
2. If, on the other hand, the President believes that the information currently designated as FRD, because of its particular sensitivity, should continue to remain outside the classification system, consideration should be given to transitioning FRD to the normal classification system as it reaches 25 years of age (and presumably has become less sensitive).
3. If the President determines that the current system should remain as it is, the Board recommends that an appropriately cleared representative of the public, familiar with the issues, should participate in the Government’s periodic deliberations with respect to what should remain in FRD, i.e. excluded from the normal classification and/or release to the public. In addition, DOD, DOE, and State should promulgate clear and consistent guidance to the larger declassification community with respect to what constitutes FRD, e.g. former storage locations of nuclear weapons, which may be identified in permanent historical records more than 25 years old.

ISSUE NO. 14:

The Handling of the President’s Daily Brief. The President’s Daily Brief (PDB), which is prepared each day by the CIA, has not been retained as part of the records of the White House since the beginning of the Reagan administration, which deprives historians and researchers (and ultimately the public) of an ability to learn what a particular President was being told by the Intelligence Community regarding the world situation.

RECOMMENDATIONS

1. The President should clarify as a matter of policy that he will not foreclose declassification review of the PDB by claiming “executive privilege” for it. He or she may reserve the right as a former President to assert executive privilege with respect to particular documents that are being considered for release by his or her Presidential library.
2. The President should direct that the PDB be retained by the White House as a Presidential record under the Presidential
3. Records Act. It can then later be reviewed for declassification at the request of the Presidential library concerned.
3. The President should direct that the PDBs that were not allowed to remain in the Presidential materials of past Presidents be provided to each Presidential library. Before they are sent to the Presidential library, they should undergo a declassification review. The Presidential library should maintain the PDBs as a distinct series.

ISSUE NO. 15:

Declassification Reviews of Certain Congressional Records. The declassification procedures for classified records created by committees of Congress, particularly classified reports and closed hearing transcripts, are irregular and limited.

RECOMMENDATIONS

1. Formal procedures should be established for the declassification review of classified committee reports and hearing transcripts created by committees within their respective bodies.
2. If a new National Declassification Center is established it should have responsibility for review of congressional records.

DETAILS OF THE 15 ISSUES

ISSUE NO. 1:

UNDERSTANDING WHAT THE DECLASSIFICATION SYSTEM IS ACCOMPLISHING.

The declassification system of the Federal Government is composed of many “moving parts.” So many, in fact, that no one knows what is actually being accomplished by it; in particular, whether information of historical significance is being identified, reviewed, declassified, and released at the earliest possible time. Consequently, the public has a difficult time simply finding out what information of historical interest has been declassified and what may now be available to it.

BACKGROUND

Classified information may be reviewed, declassified, and released to the public in at least eight ways:

1. **Freedom of Information Act (FOIA) Requests.** Any member of the public may ask for most classified documents, however old, to be declassified and made available for any reason. The requestor must be able to specify the document(s) with reasonable certainty. Adverse decisions by a department or agency ultimately can be appealed to the courts.
2. **Mandatory Declassification Review (MDR) Requests.** Similar to FOIA requests, under E.O. 12958 as amended, any member of the public may request that a classified document (that can reasonably be identified), regardless of its age, be reviewed for declassification. MDRs are handled administratively within the executive branch. Ultimate appeal of denials is to the Interagency Security Classification Appeals Panel (ISCAP) rather than the courts.
3. **Automatic Declassification.** Under this program, established in 1995 by E.O. 12958, all classified documents 25 years of age or older determined to be permanently valuable under 44 U.S.C. were subject to automatic declassification on December 31, 2006, unless departments or agencies exempted them from declassification. This program forced departments and agencies to review these records before the deadline established by the Order. Owing to the volume of such records (an estimated 1.3 billion pages), nearly all agencies performed only a “pass/fail” review, exempting from declassification any record they found to contain information that continued to be classified, rather than redacting such information. Records that were exempted then became subject to the “systematic declassification” provisions of the Order, which require agencies to conduct subsequent and ongoing declassification review(s) based on researcher interest and the likelihood of declassification upon review.

Since the Order requires that all permanently valuable classified records will be automatically declassified as they reach 25 years of age, unless appropriately exempted from

declassification by the originating agency, most agencies have chosen to institute an ongoing process for considering the records subject to the automatic declassification provisions of the Order.

4. **Special searches mandated by law or Executive order.** On occasion, Congress has enacted laws requiring the review of classified records relating to a particular event or series of events, such as the assassination of President John F. Kennedy, human radiation experiments, and Nazi or Japanese war crimes. Additionally, through action taken by the executive branch, agencies have conducted special reviews, such as the declassification of documents related to prisoners of war/missing in action and human rights abuses in Chile during General Augusto Pinochet’s regime.
5. **Department and agency initiatives.** Departments and agencies sometimes review collections of classified records on their own initiative, especially when the public interest is high and the agency itself wants to get the records out to improve the public’s understanding of its performance. These efforts are often tied to specific historical events or efforts by agency historians.
6. **The Foreign Relations of the United States (FRUS) Series.** This series, published by the State Department, documents the history of diplomatic relations between the United States and other countries. Historians working for the State Department decide which subjects will be covered (e.g., relations with country X from 1955 through 1958) and in what priority, then attempt to identify relevant documents both at the State Department and elsewhere in the U.S. Government, most often at the Department of Defense (DOD), the Central Intelligence Agency (CIA), and NARA’s Presidential libraries. Once key documents are identified, the Department of State asks the department or agency concerned to conduct a declassification review, which can include redactions of documents or substitutions of one document for another if it contains the same substantive information needed to be declassified for information deemed to be classified. Once the review is completed, declassified documents are published as part of the FRUS series. The Department of State began publishing FRUS in 1861, although it did not have to contend with classified documents until after World War II. Still, it is the oldest and arguably most significant declassification program in the Federal Government. In 1991, Congress gave FRUS its own statutory charter, which, among other things, required the Department of State to publish FRUS volumes within 30 years of the events they described and required other Government agencies to assist the Department of State in the preparation of these volumes.

7. **Presidential libraries.** While copies of classified White House documents may be held by departments and agencies, the only place where a complete collection of the records of a Presidential administration is maintained is at the relevant Presidential library, which is part of the National Archives. The NARA archivists who work at these libraries process the collections and submit classified records for review and declassification by the departments or agencies that have equities in them. Most of these declassification activities are undertaken in response to FOIA or mandatory declassification review requests, to support FRUS, or pursuant to the automatic declassification requirements of the Order.

8. **Ad hoc requests for assorted governmental purposes.** Departments and agencies carry out declassification reviews at the request of other Government agencies for a variety of purposes. These purposes include use in domestic and international judicial and quasi-judicial proceedings, support for U.S. diplomatic efforts, support for U.S. border control activities, assistance with the global response to terrorism, support for the operations of the United Nations and other international bodies, ensuring that documents donated by former Government officials do not contain classified information, and support for U.S. or foreign Government intervention in environmental or humanitarian crises.

In addition to the above, some departments and agencies require their current and former employees to submit manuscripts they have written for a national security review prior to publication. Rarely are actual records declassified as part of this prepublication review process. Rather, agencies simply clear manuscripts for publication after determining that they have no objection to their publication. “No objection” does not constitute official release, confirm accuracy, or endorse the author’s views.

Of these eight avenues for declassification, only one — automatic declassification review when a document reaches 25 years of age — is intended to precipitate a systematic review of all classified documents at a particular point. The Board has been informed that more than a billion pages were declassified between 1995 and 2006 in response to this Executive order requirement. Even though all these records are deemed to be of permanent archival value for preservation in the National Archives, the amount of truly historically significant information that has been declassified is unclear.

What is reviewed and declassified under the other avenues for declassification identified above depends upon what is requested by private individuals or Government entities (e.g., Presidential libraries, FRUS); what is mandated by Congress; and what is done at the initiative of the agencies themselves. Presumably, classified information of historical significance is being released pursuant to all these additional avenues, but there is no comprehensive, systematic way to know. A number of obstacles stand in the way.

First, there is no single entity in the Federal Government formally charged with keeping track even in macro terms,



nor is there any one entity in the Federal Government that members of the public can turn to find out what has been declassified of historical significance and is now available to them.

Second, departments and agencies do not routinely make available to the public everything they declassify. The CIA is the only agency that makes available what it declassifies pursuant to its review of records under the automatic declassification provisions, but the CIA does not routinely make available what it declassifies pursuant to other avenues. Most agencies will make the public aware of certain of their declassification actions; they may also provide copies of documents that have been declassified upon request. However, some agencies are hampered in doing this because responsibility for declassification within the agency is not centralized. Simply because something is declassified does not mean it will be released.

Third, although most agencies have computerized databases for recording declassification decisions, not all have centralized systems, nor is the information in these systems available to the public.

The greatest practical hurdle to alerting the public to the records that have been declassified, or making them available to the public, is the sheer volume of such records. The documents declassified as part of automatic declassification since 1995 number more than a billion pages. Even if an agency maintains a database of the documents that have been declassified, making a list of such documents available to the public (much less the documents themselves) may exceed its capabilities.

RECOMMENDATIONS

1. The executive branch needs to examine the declassification activities of the Federal Government as a whole, in terms of output, efficiency, and effectiveness. To begin this process, the Board recommends establishing by Executive order or by statute a National Declassification Program under the Archivist of the United States. The Archivist should be charged with annually evaluating the performance of the Federal declassification “system” writ large and, in particular, the declassification of information of historical significance.
2. A new National Declassification Center (NDC) should be established within the National Archives and Records Administration (NARA) to administer the program. The Archivist should establish a new position — Deputy Archivist for Declassification Policy and Programs — to oversee all aspects of the NDC’s operations. Funding for the NDC should be a separate line item in NARA’s budget.
3. Departments and agencies should be required to consolidate all their declassification activities in one office or bring them under the control of one office. Additionally, agencies should be required to better coordinate their internal efforts related to declassification and release as these functions (FOIA offices and declassification review offices) are entirely separate in some agencies. This will facilitate public access and make it far easier to assess and coordinate declassification decisions and activities and work efficiently with the NDC.
4. All departments and agencies should be required to record declassification decisions on a single computerized system, regardless of the avenue by which declassification occurs, and within five years to make databases available to the public that contain at least pertinent information such as [the titles of the documents and the locations where they are available.
5. All departments and agencies should report to the NDC at least annually what they have declassified. The format for these reports (e.g., by collection, topic, office files, or individual document) would be worked out with individual agencies, but the objective in every case should be to describe the information of historical significance that the agency has declassified during the reporting period in sufficient detail that the public is made aware of the action taken and is able to request copies of the declassified information. The NDC would, in turn, issue a comprehensive, governmentwide report advising the public of the historically significant declassification actions taken by the Government as a whole.



ISSUE NO. 2:

PRIORITIZING THE DECLASSIFICATION REVIEW OF HISTORICALLY SIGNIFICANT INFORMATION.

There is no satisfactory means at present of identifying historically significant information within the vast body of information that is being reviewed and declassified. Accordingly, no priority is given to the declassification and release to the public of such information.

BACKGROUND

Under the existing system, classified information that is “historically significant to the country” is not identified as such. Instead, for Federal records, departments and agencies work with the National Archives to identify records series, both classified and unclassified, that constitute permanently valuable records of the agency. These records are further defined by law as including documents pertaining to the “organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities” (44 U.S.C. 3101). Thus, what is permanently valuable is defined in terms of constituting a record of the agency’s activities, rather than constituting a record of importance to the history of the country. Once identified as permanently valuable, records are typically stored at a holding facility until both physical and legal custody is transferred to the National Archives for archival processing. Permanently valuable records also include Presidential records and historical materials transferred to the legal custody of NARA by a variety of statutes, including 44 U.S.C. 2111, 2111 note, and 2201; they are stored at the Presidential libraries.

The Board has been told that, overall, approximately 8 percent of the Government’s total classified holdings are deemed to constitute permanently valuable records. (Two to 3 percent of all Federal records are deemed permanently valuable.) Nevertheless, the number of classified records deemed to be permanently valuable is huge, totaling billions of pages. While the Government may need to retain them as a record of a particular department’s or agency’s activities, most will not be considered “important to the history of the United States.” Thus, we have a system in which far more classified records are subject to declassification review after 25 years than could possibly be considered historically significant where the national security activities of the country are concerned. Yet, because there is no means of identifying and segregating historically significant classified records within this vast population, the historically significant records are treated like all other permanently valuable records requiring declassification review at the end of 25 years. They do not go to the head of the queue, nor are they given preference in terms of the quality of the review they receive (e.g., pass/fail, redaction). Nor is the public typically alerted in any meaningful way to their declassification. In short, they are simply treated like all other permanently valuable classified records. Put another way,

records of historical significance to the country are being buried in a mountain of permanently valuable agency records. Unless something is changed, it will take years, if not decades, to unearth them.

RECOMMENDATIONS

1. To ensure that historically significant classified records are given priority at the 25-year review point, both in terms of what records are taken first and in terms of the quality of the review they receive, the President should promulgate by Executive order or other appropriate issuance a system for identifying such information.
2. Such a system might operate as follows:
 - a. A board consisting of prominent historians, academicians, and former Government officials would be appointed by the Archivist to determine which events or activities of the U.S. Government should be considered historically significant from a national security and foreign policy standpoint for a particular year. Presumably, this board would begin with the year coming due for the next review of 25-year-old classified records. For example, in 2008, the board would determine which events or activities of the U.S. Government occurring in 1983 were historically significant. These might include such things as President Reagan’s Strategic Defense Initiative program, the U.S. reaction to the downing of Korean Airlines Flight 007, the U.S. invasion of Grenada, the U.S. reaction to the terrorist bombing of the Marine barracks in Beirut, and Reagan’s relations with Prime Minister Margaret Thatcher or Soviet Premier Yuri Andropov.
 - b. Then the board would identify the officials or offices and pertinent series or collections where records would be presumed to contain information of historical significance relating to the subjects identified. More often than not, these would include the records of the incumbent President as well as the Secretaries of Defense and State. Depending on the subject, they might also include the records of other department or agency heads (e.g., the Attorney General, the Director of Central Intelligence, or the Assistant to the President for National Security Affairs), or the records of assistant-secretary-level officials or higher who are known to have played a significant role for the U.S. Government in the event or activity.
 - c. The board would require input of agency records managers and historians as well as NARA’s archivists, including those in the Presidential libraries, to determine the specific records series that most likely contain records about the topics the board identifies as historically significant.

- d. Once the board had identified the records of likely historical significance for purposes of the forthcoming 25-year declassification review, it would turn its attention to previous years and compile similar lists.
 - e. The board might wish to compile tentative lists (that it would update and finalize over time) for the years prior to the forthcoming 25-year reviews. Using our previous example, the board would start with 1984 and work forward toward the present. Such lists could also serve as a guide to agencies conducting reviews of records less than 25 years old (see Issue No. 4, *infra*).
 - f. In formulating these lists, the board should solicit outside comments, including publication in the Federal Register.
 - g. The lists of historically significant series compiled by the board, once approved by the Archivist of the United States, would be announced to the public.
3. Once the records series determined to be “likely to contain information of historical significance” had been identified and approved, the following actions would occur:
 - a. As part of their declassification review of records at age 25, affected departments and agencies would identify within the larger series the individual classified records “likely to contain information of historical significance.”
 - b. Such records would be given priority in terms of their declassification review at age 25. They would be reviewed by the department or agency’s most experienced reviewers and be redacted as appropriate, rather than being considered on a pass/fail basis. The presumption would be that such records would be released unless their disclosure could reasonably be expected to cause serious and demonstrable harm. In other words, they would receive the most thoughtful scrutiny and broadest latitude in terms of what the agency would make available to the public, in recognition that it is in our national interest to disclose our historical record.
 - c. The public would be informed (by record series) of the records of historical significance declassified pursuant to this process at age 25. To the extent possible, individual records would also be identified to the public, scanned, and made available electronically.
 - d. Any record declassified pursuant to this process would be given priority in terms of subsequent archival processing. Dates that may have been previously established between the National Archives and the department or agency concerned for public disclosure of the records at issue (see Issue No. 9, *infra*) would be trumped by this review process.
 - e. Records that were determined to be historically significant but were not declassified at the 25-year review would be set aside and reviewed every five years thereafter until they had been declassified.
 - f. The lists of historically significant events and activities developed by the board would become the principal criteria used by the Archivist to evaluate the declassification system

in terms of its producing information of historical significance for the public and for periodically advising the public of such actions (see Issue No. 1, *supra*).

4. The Archivist of the United States, through the NDC, would oversee the implementation of implementation of this process in affected departments and agencies, and would establish within the NDC a mechanism for resolving disagreements that might arise in the course of such implementation.
5. If this system were adopted, E.O. 12958, as amended, would need to be amended to allow departments and agencies to give priority to the review of classified records deemed to be historically significant as they reach 25 years of age.
6. It is recognized that “routine” records may still have significance, especially to particular individuals. Such records would still be subject to timely review for declassification in response to a specific access demand (e.g., a FOIA or MDR request).



ISSUE NO. 3:

EXPEDITING THE DECLASSIFICATION OF PRESIDENTIAL RECORDS.

The declassification of Presidential records takes far too long under the current system.

BACKGROUND

From the standpoint of their historical significance, the records of former Presidents are, arguably, the most important records needed by the public to obtain an accurate and complete understanding of the country's history. At the end of an administration, these records (including classified records) are transferred to the legal custody of the Archivist of the United States as Presidential records (44 U.S.C. 2201), then boxed and moved to the library of the President concerned, where they fall under the provisions of the Presidential Records Act (PRA) and are in the custody of the National Archives (which operates the library). Older Presidential library collections (from Herbert Hoover to Jimmy Carter) are transferred as historical materials (44 U.S.C. 2111, or 2111note), and the staffs archivally process their materials according to the terms of a Deed of Gift or the Presidential Recordings and Materials Preservation Act (PRMPA). Archivists at the PRA libraries (Reagan forward) have five years to achieve "intellectual control" of their collections before they are subject to FOIA or MDR requests from the public. They have the latitude of making unclassified documents available earlier if they are able to do so.

For the most part, the NARA archivists at the Presidential libraries cannot declassify and release information to the public unless and until the agency that originated the record and/or the agency or agencies that have equities in the record have reviewed and agreed to declassify it, or the record has otherwise been subjected to the automatic declassification provisions. Some agencies have delegated declassification authority to the Archivist for the Presidential libraries to declassify lower level items, such as items that were originally time sensitive, but for the most part these libraries are required to submit classified records in their holdings to equity-holding agencies for a declassification review before they can be made available to the public. The Archivist of the United States has received additional, more substantive, delegated declassified authority and discretion with respect to reviewing and acting on specific equities and information in documents found in older Presidential libraries through the Ford administration. Additionally, it should be noted that the incumbent President has the authority under the Presidential Records Act and E.O. 13233 to review and close any Presidential or Vice Presidential record (Reagan forward), including declassified ones, by claiming executive privilege.

Each of the records submitted for such review must be catalogued and indexed at the library before it is submitted for review by the equity-holding agencies in order for it to be

subsequently tracked. And, because there are typically so few archivists at the libraries and their records collections are relatively large (NARA estimates that the Presidential libraries currently hold 30 million pages of classified records, 8 million of which are from Hoover through Carter), this review process takes years and years to accomplish. Archivists at the Reagan Library, for instance, advised the Board that given their current level of archival resources, it will take 100 years before all the Reagan White House records, including those that are classified, will be reviewed for release.

In 1997, both NARA's Presidential libraries and the CIA sought to help facilitate the declassification review of records in the Presidential libraries by establishing the Remote Archives Capture (RAC) program. Rather than have each Presidential library send requests for declassification review to each agency that has equity in a Presidential document, the libraries scan the items they wish to have reviewed, captured electronically on media, and then taken to a facility in the metropolitan Washington, DC, area for review by the appropriate agencies. The CIA coordinates the declassification review of these records, including overseeing and managing the referral process. Once all declassification reviews have been conducted, the libraries receive media containing the declassified materials, noting the various actions taken by the agencies, and process these materials for release.

While the RAC program has, by all accounts, considerably accelerated the declassification review process, the review of materials furnished by the Presidential libraries still takes an inordinate amount of time. Typically, agencies consider FOIA requests, MDR requests, and special searches of their own records first, and these often take priority over systematic review of materials in the RAC program. Additionally, even within the Presidential libraries, resources are limited, and the few resources available to support automatic and systematic declassification are often pulled away to respond to access demands and special search projects.

Presidential libraries are severely constrained and understaffed in terms of their ability to process their classified materials and are at the mercy of departments and agencies whose approval they must obtain before they are able to release the materials of their respective presidencies to the public. Thus, the very materials that are apt to mean the most in terms of their historical significance are being bottled up by the system, often for decades on end. Moreover, if the Board's recommendation in Issue No. 2 were adopted, giving priority to the declassification review of historically significant records, even greater demands would be placed on the existing system for reviewing Presidential records. In light of this, the Board believes fundamental change is called for.

RECOMMENDATIONS

The Board recommends, in order of preference, the following actions:

1. The Archivist should establish a single center in the Washington, DC, metropolitan area to house all future classified Presidential records, from the end of a Presidential administration until their eventual declassification, when they would be physically transferred to the appropriate Presidential library and made available to the public. Such a center — established, maintained, and administered by the National Archives — would leverage economies of scale by concentrating the classified holdings of future Presidents



in a single facility. The center could support more efficient and effective safeguarding of classified information as well as facilitating the review of such information for declassification by departments and agencies in the Washington, DC, area. Once operational, consideration should be given to accommodating the still-classified holdings of existing Presidential libraries within such a center until they, too, can be declassified.

2. If establishing a separate center for the storage and review of classified Presidential records is not considered feasible, the new NDC should consider establishing, as part of its mechanism for the review of classified documents with "multiple equities," an office or division dedicated to the reviews requested by Presidential libraries.
3. If neither of these options is considered feasible and the current decentralized review system is retained, Congress should consider amending the Presidential Records Act to provide, similar to the FRUS statute, that departments and agencies will give priority to the declassification of Presidential records over other declassification reviews, except those otherwise made pursuant to law (e.g., the FOIA or other searches mandated by statute).
4. In the absence of statutory change, a similar policy could be set forth in an Executive order or other executive branch policy issuance.
5. If the current decentralized system is retained without structural change, NARA needs to consider ways to augment the archival capabilities at Presidential libraries (e.g., increasing their staffs, contracting out, granting security clearances to volunteers) to accelerate the archival processing of classified Presidential records. Indeed, NARA needs to systematically examine the way it manages declassification and access issues in the Presidential library system. Adding staff capability is a necessary step, but existing policies and practices at each library need to be examined. Depending on the nature of their classified collections, the way that one library handles declassification may not be the same way that another library should handle it. This will be especially true in the future as libraries come to grips with increasing amounts of classified information stored in electronic records and special media.

ISSUE NO. 4:

PRESERVING A CAPABILITY IN AGENCIES TO REVIEW RECORDS LESS THAN 25 YEARS OF AGE

Agencies typically allocate their declassification review personnel to whatever the pressing need may be at the time: meeting the automatic declassification deadline of 25 years, satisfying FOIA requests, MDRs, congressionally mandated searches, or the requirements of the FRUS statute. As a result, there are often insufficient resources to perform declassification reviews of records less than 25 years old that agencies know to be historically significant.

BACKGROUND

For most agencies, self-initiated declassification reviews of material they are not otherwise required to review (i.e., because it is less than 25 years old) are a luxury they cannot afford. Indeed, most are hard-pressed to find the resources needed to conduct the reviews that are *required* of them. Yet, when agencies have found the resources needed to conduct self-initiated reviews, the results have often been of great value to the historical record.

The Board believes it critical that room be left in the declassification system for agencies to initiate and conduct declassification reviews of material they know to be historically significant without waiting for it to reach 25 years of age.

The recent NARA initiative to subject the records of the 9/11 Commission to declassification review by affected agencies, rather than waiting for 25 years, provides an excellent example of the importance of leaving sufficient capability within the system to undertake reviews of classified materials known to be historically significant.

RECOMMENDATIONS

1. Either pursuant to uniform guidelines issued by the National Declassification Center, contemplated in Issue No. 3, *supra*, or pursuant to an appropriate executive branch issuance, agencies should be directed to dedicate some specific percentage of their declassification review personnel to conducting reviews of records less than 25 years old that they know to be historically significant and that are reasonably likely to provide the public with meaningful results.
2. The Archivist should annually recognize in some appropriate fashion agencies that declassify and release to the public on their own initiative historically significant information less than 25 years old.



ISSUE NO. 5: BRINGING GREATER UNIFORMITY, CONSISTENCY, AND EFFICIENCY TO THE DECLASSIFICATION PROCESS.

All executive departments and agencies of the Federal Government are bound by the Order on security classification, but when it comes to their declassification programs, there is a wide disparity in terms of implementation, including the level of resources applied to such activities, training, use of technology, interface with the public, and approach to declassification reviews. As a result, opportunities to be more efficient in the declassification process are being lost, results vary from agency to agency, and the treatment accorded the public depends largely on the particular department or agency a person happens to be dealing with.

The current Order also does not provide uniform guidance in terms of when agencies will “re-review” the classified documents they have exempted from declassification at the initial 25-year review. This could lead to wide variations among agencies and to even more complications in subsequent declassification reviews of documents involving multiple agency equities.

RECOMMENDATIONS

1. The President, by Executive order or other appropriate issuance, should charge the new NDC (see Issue No. 1, supra) with prescribing uniform guidelines to govern the declassification activities of all executive departments and agencies. These should include guidelines for the allocation of resources, use of technology, and training of reviewers, and should establish a uniform approach to the declassification of classified information. The NDC should have oversight of these guidelines.
2. In addition to prescribing uniform guidelines, the NDC should be responsible for providing “services of common concern” for the declassification activities of the Federal Government where appropriate. These services should clearly include the review of classified documents that contain multiple equities (see Issue No. 6, infra), as well as the review of classified information contained in special media and electronic records (see Issue No. 7, infra). The NDC should become the focal point for governmentwide training in declassification as well as for the research and development of technology to be applied to declassification activities. Technology could also be purchased and used by the NDC, on a reimbursable basis, for the benefit of affected departments and agencies.
3. The NDC should be authorized to conduct declassification reviews for other departments and agencies on a reimbursable basis. For agencies with relatively small classified holdings, this might be a preferable alternative to establishing their own declassification programs. In time, in fact, departments and agencies with larger classified holdings may find it preferable to rely on the NDC to conduct their declassification reviews, particularly if the NDC demonstrates the capability to process information

more efficiently and effectively (owing to its superior technical capabilities, for example).

4. If the Board’s recommendation under Issue No. 2 (supra) were adopted, classified documents containing historically significant information that were exempt from declassification at their 25-year review would be reviewed every five years thereafter until they were declassified. For exempted records that were not determined to be historically significant, however, a uniform policy governing the subsequent declassification review of such records would need to be placed in the Order. If the Board’s recommendation under Issue No. 2, supra, were not adopted, the Order should be amended to prescribe a uniform policy to govern the subsequent review of all exempted records.



ISSUE NO. 6:

EXPEDITING THE DECLASSIFICATION REVIEWS OF MULTIPLE EQUITY DOCUMENTS.

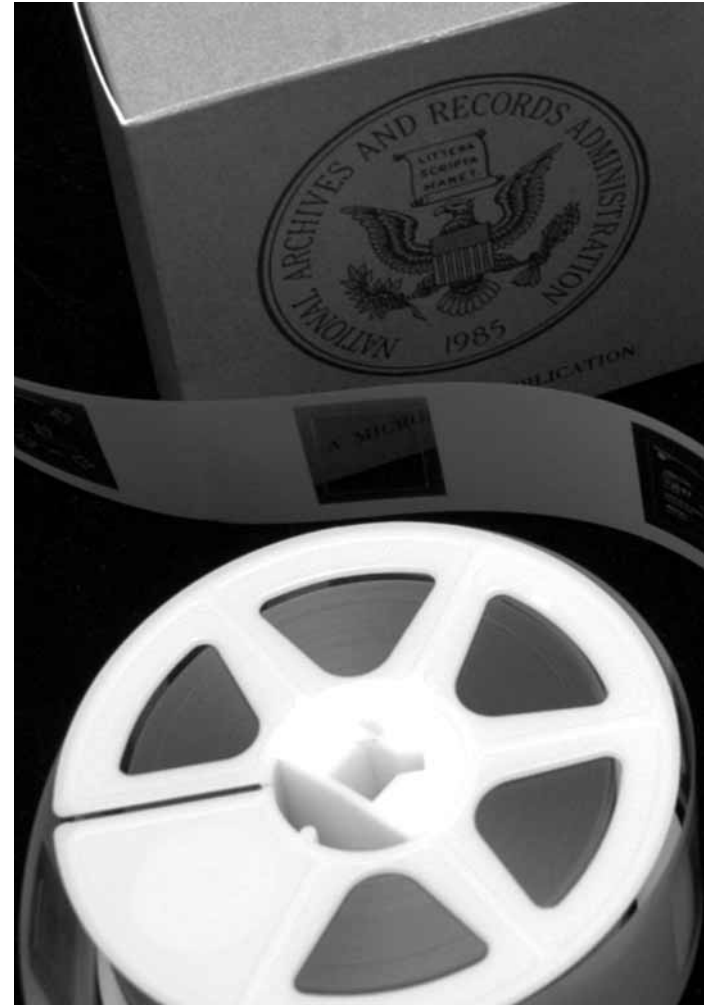
The declassification of documents involving multiple equities (i.e., documents originated by one agency that contain information classified by one or more other agencies) has proven especially difficult and time-consuming.

BACKGROUND

Classified documents are not meant to be declassified and released to the public until all the agencies that have equities in the classification of the documents have had an opportunity to review them and authorize their release. Often, however, the department or agency that originally created the record, in conducting its declassification review, has failed to identify the classified equity information of other agencies. As a result, no referral was made and records containing classified information were improperly made public. This has led to thousands of records being withdrawn from the “open shelves” (see Issue No. 8, *infra.*). Owing to these flawed reviews, few departments and agencies allow other departments and agencies to review their equity for declassification.

Over time, however, the more pervasive problem has been simply the time and effort required for the declassification review of documents that contain multiple equities. To be declassified, such documents have to be circulated and reviewed by each agency thought to have equity in them. Usually, these documents go to the end of the queue at each agency, often taking months or even years before they are reviewed. In recognition of this problem, the automatic declassification review of classified documents involving multiple equities was delayed for three additional years (until December 31, 2009) to allow time for this multiple-agency review.

Meanwhile, several things were done to help agencies meet the 2009 deadline. Where Presidential materials and records were concerned, the CIA and NARA collaborated to develop the Remote Archives Capture (RAC) program so that multiple equity documents in the Presidential libraries could be identified, referred to the departments and agencies with equities in them, and reviewed in a center in the Washington, DC, area. Second, in an effort to help the various departments and agencies better identify other agencies' equity information, the CIA led the establishment of an informal body of agency declassification personnel known as the External Referral Working Group (ERWG), which still meets on a periodic basis. Much later, NARA created an Interagency Referral Center (IRC), where Federal records containing information with multiple equities could be referred and reviewed onsite by the participating agencies. In addition, the CIA created an automated system known as the Document Declassification Support System (DDSS) that permitted departments and agencies to alert other departments and agencies of classified records believed to contain their equities and require their review. Many departments and agencies also began to offer



periodic equity recognition training for their own reviewers and for other department and agency reviewers. Finally, and most recently, as part of efforts related to the IRC and the National Declassification Initiative (NDI), NARA has put together “equity training labs,” using a variety of means to discuss agency equities, declassification review decisions, and referral procedures to ensure that all departments and agencies have the opportunity to review and declassify their equity information before it becomes public.

Most of this activity has been folded into the NDI, which is a temporary effort (recently established at Archives II at College Park) to provide for the referral review of the 25-year-old records involving multiple equities that remain among the boxes reviewed since 1995. Some 427,000,000 pages of records already reviewed by the originating agencies still require multiple equity review. Many agencies are sending reviewers to Archives II to review their agency's equity information. Some are fully committed to doing this now, while others participate on a limited basis. A few agencies have yet to participate.

While the NDI has been in existence for nearly a year, it is still unclear what sort of volume of multiple equity documents it will be able to move through the referral and declassification review process with regularity. While the centralized approach offered by the NDI does appear to be facilitating and expediting the review of such documents, given the large backlog to be reviewed and the relatively limited resources departments and agencies are currently devoting to it, the NDI is not apt to result in departments and agencies being able to meet the current deadline of December 31, 2009, for the automatic declassification of such documents. In all likelihood, this deadline will have to be extended by the President.

Even when the existing backlog of multiple equity documents is eliminated, of course, more classified documents containing multiple equities will require declassification review as they reach age 25.

RECOMMENDATIONS

1. In the opinion of the Board, the centralized approach currently being taken pursuant to the National Declassification Initiative represents the best option available to the Government to expedite the review of classified documents containing multiple equities. Thus, the NDI needs to be made permanent and institutionalized, preferably within the new National Declassification Center (see Issue 5, supra). Departments and agencies that have equities in such reviews should be required to provide adequate personnel to conduct them — it cannot remain an option. Without participation by all the agencies that have equities in the documents, the documents cannot be declassified.
2. Although the Board recognizes that, as a practical matter, the automatic declassification deadline for multiple equity documents may have to be extended by the President, it recommends that the deadline be extended no more than once and only after the Archivist has presented the President with a comprehensive and realistic plan, agreed to by the departments and agencies involved, for achieving the objective within the time frame contemplated.



ISSUE NO. 7:

PERFORMING DECLASSIFICATION REVIEWS INVOLVING SPECIAL MEDIA AND ELECTRONIC RECORDS.

Too little has been done with regard to meeting the deadline of December 31, 2011, for the review of classified information contained in “special media” records or developing plans to cope with the truly monumental problem looming on the horizon: the review of classified information contained in electronic records.

BACKGROUND

The Order allowed agencies to delay the automatic declassification at 25 years requirement for any classified information contained in “microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemption more difficult or costly.” Falling into this category are microfilm, microfiche, motion pictures, and sound recordings. The definition of “special media” records in the Order does not include electronic records stored in computer systems, although the Information Security Oversight Office (ISOO) has advocated treating electronic records as special media if they involve software or hardware obsolescence, data degradation, or other similar issue that would make declassification more difficult or costly.

In theory, all classified information held in special media records identified as constituting “permanently valuable records” would become declassified on December 31, 2011, unless the agencies have reviewed and exempted them from declassification. In all likelihood, the Board believes that this deadline will also have to be extended, inasmuch as most agencies will have their hands full over the next two years meeting the multiple equity deadline, leaving little time to deal with the challenging issues involved in reviewing and declassifying special media records.

Be that as it may, relatively little thought appears to have been given to how the classified information contained in special media records that are 25 years of age or older will be reviewed for declassification and, just as important, how the declassified information will be accessed by the public. Much of this information is not stored in digital format, but it may need to be in order to review it for declassification and to make it available to the public.

An overall strategic plan needs to be developed to address the unique issues posed by special media regardless of classification status. First, NARA and the agencies need to determine which special media constitute “permanently valuable” records of the Government and thus require transmittal under law to the National Archives. Second, for those determined to be permanently valuable, standards need to be developed for their preservation. Unlike documents, the information contained in some types of special media may seriously deteriorate unless action is taken to preserve them, either in their existing form or by transferring the information to new storage media. Third, standards and plans need to be developed to govern how the

declassification reviews of special media that contain classified information will be conducted. If classified information is found in a document stored on a roll of microfilm, for example, is the entire roll to be considered classified? If not, how should the rest of the documents on the roll be treated? Similarly, should some types of special media (e.g., those that duplicate what is found elsewhere in textual form) receive less priority or be exempted altogether in terms of review for declassification? Finally, the portion of the strategic plan dealing with the declassification review of special media needs to be synchronized with NARA’s plans for ultimately making declassified information available to the public. For example, if NARA plans to make such information available in digital format, the plans for preserving and conducting declassification reviews should build in compatibility with the format NARA ultimately plans to use.

Complicating the task for NARA and the agencies, some of the special media records in which classified information was stored 25 years ago (or more) are no longer in use in the departments and agencies. However, to view what is contained in these media, old or obsolete devices may need to be obtained. Many of these special media records also used formats proprietary to the agency that created them. Thus, even if the information in the special media record could be viewed, it might not be readily transferable to other kinds of systems or formats, such as digital formats.

Agencies also need to begin planning for the review of permanently valuable classified records stored in their digital computer systems. Until now, the volume of electronic records age 25 or older has been small compared to the volume of paper records, but this is clearly changing and will dramatically increase in the years ahead. Indeed, the day may come when all Federal Government records are digitized and stored electronically. Anticipating this change in archival records as well as the need to ultimately make its archival holdings available to the public electronically, NARA has contracted for the development of an Electronic Records Archives (ERA) system. Although this concept has yet to reach initial operating capability, it will ultimately (1) allow for the secure storage of classified electronic records, no matter the type of format, by migrating the information onto a standard digital format; (2) allow NARA and agency reviewers to conduct a declassification review; and (3) transfer all declassified records onto the unclassified ERA system that will provide for public access.

Many of the difficulties complicating the special media records situation also complicate the electronic records area. The devices on which classified information is stored may no longer be in use. Consequently, the hardware or software required to view the information may not be readily available. As a result, agencies may not have a capability to read what is stored or transfer it electronically.

The forthcoming exponential increase in the quantity of classified electronic records requiring declassification in the future dictates that new procedures be developed now, because the current business practices used by most agencies are based on a record-by-record review that will likely prove impossible to maintain. In addition to developing new procedures, agencies need to make better use of technology to conduct declassification in a more efficient and effective manner.

RECOMMENDATIONS

1. NARA should be formally charged with leading a special effort, within the new National Declassification Center, to analyze the special media records problem and to create a governmentwide plan for addressing it that includes declassification and access.
2. As part of this process, the Center needs to consider at the outset how much classified information stored in special media is “permanently valuable” according to 44 U.S.C. and the PRA and thus requires preservation. In most cases, the classified information found in special media records will be viewed (and ultimately reviewed for declassification) in documentary or electronic form. Thus, a more limited approach may be called for here. For example, special media records might be considered permanently valuable for archival purposes only if they can be expected to provide information that is not otherwise documented elsewhere in paper or electronic form.
3. If the idea of identifying records of historical significance were adopted (see Issue No. 2, *supra*), the Center might consider whether the declassification review of special media records at age 25 or older ought to be limited to, or give priority to, special media records containing historically significant information. Thus, any special media record that

reflected what transpired at meetings of or briefings to the President, the Secretaries of State and Defense, and other high-ranking officials, or otherwise documented topics of historical significance, would be given priority in terms of their preservation, review, and archival processing. Another means of assigning priority would be to begin with the special media records held by the Presidential libraries that would likely have the most historical value.

4. The Center should also consider what services of common concern it might be able to provide on a reimbursable basis to help agencies cope with the special media records problem. Rather than have every agency of the Government, for example, attempt to procure obsolete hardware and software to read the special media it created 25 years ago, it might be more efficient for the Center to procure such devices and systems for other agencies to use, or to contract on behalf of the Federal Government as a whole for such devices and systems. Similarly, rather than having every agency embark on its own search for technology that would allow information contained in special media records to be converted into a digital format — something all agencies are apt to want — the Center might do this for the benefit of all. As an added benefit, this will ensure standardization, so that as technology continues to improve, the special media records can be migrated in a standard and systematic fashion.
5. The Center should serve a similar role with respect to the review of classified electronic records, putting uniform policies in place to ensure that activities of departments and agencies are synchronized and standardized with what NARA itself is planning in terms of the Electronic Records Archive; that is, digitizing its archival records and making them available to the public electronically.



ISSUE NO. 8: RE-REVIEWS OF PREVIOUSLY DISCLOSED INFORMATION.

In recent years, there have been several instances where agencies have discovered that records created by other agencies (but containing their classified information) have been declassified and made available to the public at the National Archives without their having had an opportunity to review the records for declassification. When this has occurred, the agency concerned has typically requested that the documents be withdrawn from public access at the National Archives until the agency can perform a declassification review. After this review, some of the records reviewed might be returned to the open shelves, but others presumably would not be. Not only does this kind of activity pull the personnel resources of the agencies involved from other priorities, it creates a dilemma for any member of the public who might earlier have obtained a copy of such documents or used information contained in them.

BACKGROUND

According to an April 2006 ISOO audit report, 10 separate re-review projects occurred between 1999 and 2006. In all, more than 25,000 records that had been declassified pursuant to the Order and made available to the public at the National Archives (including a small amount of materials in the Presidential libraries) were removed from the open shelves during this period for agencies to conduct re-reviews. In the audit report, ISOO concluded that about half the documents withdrawn continued to meet the minimal standard for continued classification beyond 25 years.

All of these re-reviews are resource-intensive and duplicate other declassification review efforts, taking reviewers away from other work. Nevertheless, the agencies that have undertaken the re-reviews told the Board that they had little choice. If they have reason to believe that their classified information has been improperly put in the public domain, they have to do something about it. If, after reviewing the records, they decide to remove them from public access, they defend their actions by saying that these records should never have been made available to the public in the first place. Although agencies recognize that damage may already have been done, given the public availability of these records, they contend that by withdrawing the records, it is reasonable to expect that the extent of further damage might be mitigated. This will obviously depend on how widely (and in what form) the records at issue were disseminated. Moreover, the agencies do not dispute the fact that withdrawing particular records from the National Archives inevitably calls attention to them, encouraging some in the public (who might hold copies of the records) to further disseminate them. On balance, however, the agencies believe that withdrawal better protects their national security interests than leaving the records on the open shelves of the National Archives.



What the agencies do not appear to be adequately taking into account, however, is the effect these actions have on the public. From the public's perception, the Government is pulling declassified records off the open shelf and reclassifying them. As one *Washington Post* editorial described the recent effort, the Federal Government was trying to "put toothpaste back in the tube." Beyond the cynicism for the classification system engendered by such efforts, they also create practical dilemmas for any members of the public who may possess, have used, or may want to use the records that have been withdrawn. What are researchers, academics, and historians who have copies of the records expected to do with them? Are they to be considered classified? If so, can they legally be disseminated to others? Can they be quoted from or cited as authority? Does the researcher or historian risk possible criminal liability under the espionage laws if he or she republishes them or cites them? What about uses of the information that have already been made? Suppose the records have been excerpted or cited in previously published historical works. How are others in the same academic field going to be able to have the same information or check the accuracy of their colleagues' work?

RECOMMENDATIONS

1. Given the dilemmas created for the public by the withdrawal of records previously declassified and made available to the public, such action should be taken only when the potential harm to the national security from continued public disclosure is clear and convincing (after all, these records are most often far more than 25 years old), and the potential for future harm can be significantly ameliorated by withdrawing the records. In considering such removal actions, agencies should be required to address the following factors:

- a. the length of time the record has been available to the public,
- b. the form in which it has been available to the public, and
- c. the extent to which the record is known to have been disclosed to and used by the public.

Agencies need to ascertain this information, to the extent possible, and make a convincing assessment of “significant harm” before they decide to withdraw a record from public access.

2. Since the Archivist of the United States is the custodian of the records at issue (although the agencies retain

classification authority), any withdrawal of records that were previously available to the public at the National Archives should require the approval of the Archivist. While this concept is currently captured in interim guidelines issued by ISOO and NARA and generally agreed to by the agencies involved in past re-review and record removal efforts, the concept should be codified in the Executive order.

3. The Order or pertinent statutes should be amended to provide that no member of the public shall be criminally prosecuted or suffer any other adverse consequences for maintaining, using, or disseminating a record or information contained in a document that was lawfully obtained from the National Archives or any other agency of the Federal Government.
4. Given that recent experience demonstrates that re-reviews of large collections of records already made publicly available have the potential for pulling significant resources away from other declassification review priorities, such as reviewing records for still-sensitive classified national security information prior to public release, these reviews should be undertaken only where there is a clear indication (and subsequent showing) that the national security benefits are worth the cost.



ISSUE No. 9:

DEALING WITH OTHER EXEMPTED INFORMATION AND THE DELAYS ENTAILED IN ARCHIVAL PROCESSING.

A record that has been declassified may not necessarily be made available to the public any time soon.

BACKGROUND

There are nine exemptions in the Freedom of Information Act (FOIA) that allow departments and agencies to withhold information — even information they have declassified — from the public. The exemptions most commonly cited include information compiled for law enforcement purposes, “predecisional” information, information that (if released to the public) would violate the privacy of a living person, and information specifically exempted from disclosure by statute, (e.g., individual tax returns). In years past, many agencies marked this information “For Official Use Only.” More recently, it has become known as Controlled Unclassified Information (CUI), a term that serves as an umbrella for a host of agency-unique caveats to be applied during an FOIA review.

The FOIA does not say how long agencies may withhold information in these exempted categories, nor does any executive branch policy set a limit. There is, moreover, no requirement to review this information at a certain point to determine whether (like classified information) it can be released to the public. Agencies are basically left to their own devices. Apart from the statutory requirement to turn over their permanently valuable records (including records containing exempted material) to NARA for archival processing, no law or executive branch policy governs the disposition of such records.

Some agencies establish, in conjunction with NARA, records retention schedules that assign a date when their permanently valuable records will be accessioned into the National Archives, based on when they believe the sensitivity of the records (from the standpoint of personal privacy, predecisional advice, investigative information, etc.) will have passed. The FBI, CIA, and National Security Agency (NSA) have approved records retention schedules that call for their permanently valuable records to be accessioned into the Archives after 50 years. The Office of the Secretary of Defense, the Board was told, retains its records for 40 years before turning them over to the National Archives. Even at these extended periods, agencies often do not want exemptible information released by the National Archives without their concurrence.

Once in the custody of the National Archives, records (including records that have been declassified) must undergo archival processing before they can be made available to the public. Archival processing entails gaining intellectual control over the records by arranging and describing them, evaluating and conducting any preservation needs, and reviewing them for information that is not appropriate for release. For Federal records and Presidential records covered by the Presidential Records Act, this essentially entails reviewing the records for possible exemption under the terms of the FOIA or restriction under the Presidential Records Act. For pre-Reagan-era

Presidential materials, this means reviewing them for Deed of Gift restrictions or under the restrictions of the Presidential Recording and Materials Preservation Act. Records requiring restriction, whether for national security or other reasons, are withdrawn from the broader collection and are replaced with forms noting the withdrawal and the reasons for the withdrawal. This allows for transparency for the public and also serves as the means by which the public can lodge an access demand through FOIA or MDR.

Needless to say, archival processing requires significant additional time, and NARA has nowhere near the number of personnel needed to keep pace with the large volume of records being declassified pursuant to the 25-year review process mandated by the Order. The Board was told that more than 400 million pages have been declassified by the agencies since 1995 and are awaiting archival processing and that the backlog grows larger every day. Unless changes are made, it will be decades before all these records appear on the open shelves (or electronic databases) of the National Archives.

RECOMMENDATIONS

1. If the concept presented in Issue No. 2, *supra* (identifying and giving priority to the declassification of records of historical significance) were adopted, agencies would be required to make such records available to the public without waiting for them to be accessioned into the National Archives or appear on the open shelves. The agencies would, presumably, also determine in the course of the declassification review of such records whether there were other reasons that might preclude them from being made public. This might involve conducting a review for release of Controlled Unclassified Information (CUI) at the same time as the declassification review.
2. Regardless of whether the concept presented in Issue No. 2 is ultimately adopted, the decontrol and release of CUI that may be contained in classified documents needs to be conducted at the same time as the declassification review itself to maximize the release of information to the public. Additionally, standardization is required for how executive branch agencies handle CUI at the end of its lifecycle. Uniform standards should be established for how long and under what circumstances agencies may continue to protect CUI, and how its release to the public will be effected. To the extent possible, these procedures ought to be linked to the declassification review process to take advantage of the efficiencies that would be generated.
3. The Archivist should develop a personnel plan, to be funded as part of NARA’s annual budget submission to the administration (and later presentation to Congress), that would address the current archival processing backlog and enable the National Archives in the future to fully process all declassified records within five years of their declassification so that they can be released to the public.

ISSUE No. 10:

EXERCISING DISCRETION FOR DISCLOSURE IN EXCEPTIONAL CASES.

The latitude given departments and agencies by the Order to declassify information when the public interest in disclosure outweighs the risk of damage is not being seriously exercised. While it is used on occasion — such as the declassification of information contained in recent National Intelligence Estimates (NIEs) and even the President’s Daily Brief (PDB) — it is not used with regularity, and agencies are not provided with guidelines or clarification for how they ought to make such decisions.

BACKGROUND

The Order provides that in exceptional cases, the head of the agency or the “senior agency official” in charge of the classification program may decide “as an exercise of discretion” that “the public interest in disclosure of the information outweighs the damage to the national security that might reasonably be expected from the disclosure.” The Order also makes clear that this language does not establish any procedural right to such review on the part of any requestor.

When this language was adopted in 1995, it was seen as a major step forward in terms of promoting the public’s access to previously classified information. While in practice departments and agencies are usually able to postulate in the abstract damage to the national security that might reasonably be expected from public disclosure of a particular record, when that record is considered in light of information already disclosed to the public about the subject matter involved, the damage that could reasonably be expected from its disclosure might seem minor. Assuming that the record also involves an issue of keen interest to the public, the public’s interest in disclosure might be seen as outweighing the concern for damage. This provision of the Order was seen as allowing agencies to make this judgment in appropriate cases.

In fact, this discretion has rarely been exercised. Moreover, when it has been exercised, it has more often been because the department or agency wants to get its own position out, rather than because the agency head or senior agency official has found the public’s interest compelling. In short, this discretionary authority has not resulted in the level of increased public access that was originally expected.

It is understandable why the executive branch wanted to limit the use of this authority to exceptional cases. If this weighing of interests were required for every decision to keep classified information secret, it would bring the declassification review process to a virtual halt. If the authority to weigh the public interest were delegated to those performing classification reviews, frequent and unsupportable inconsistencies would undoubtedly arise. Having said this, there would appear to be certain occasions when a senior agency official ought to routinely weigh the public’s interest.

RECOMMENDATION

The Order should be amended to provide that where the original request for a declassification review comes from a Government entity (including a Presidential library, the office that prepares the Foreign Relations of the United States (FRUS) series, a congressional committee, or a court) seeking disclosure of the record for a public purpose, and where that entity objects to the continued classification of the record on the grounds that the public interest outweighs the risk of damage caused by disclosure, the request ought to trigger a referral to the senior agency official for a “weighing of the interests” under this provision of the Order.



ISSUE NO. 11:

REMOVING AN IMPEDIMENT TO COMPREHENSIVE REVIEW.

Not infrequently, requests to agencies from individual members of the public actually hamper the agency's ability to make historically significant records available to the public in general.

BACKGROUND

The Board has been told by representatives of several agencies, as well as by the directors of several Presidential libraries, that not infrequently they receive FOIA requests or requests for mandatory reviews under the Order from a member of the public for records that are part of a larger, historically significant collection that is currently being archivally processed (including a declassification review) for release to the public.

However, in responding to the request, the agency must identify the specific records within the larger collection, pull them out, and start them down a separate review path in the agency (which may be the province of other reviewers and other offices). When that review has been completed, the records must be replaced within the broader collection. In the end, responding to an individual request actually delays the process that would make the broader collection of historically significant documents public.

Thus, when agencies receive such requests, most will ask the individual requestor to withdraw or hold in abeyance his or her request until the broader review of the collection is accomplished. Some agree to do so; others do not.

RECOMMENDATION

In the view of the Board, when an agency receives a request from an individual for a particular document or documents that are part of a larger collection of historically significant documents currently undergoing review for declassification, the agency receiving the request should be permitted to hold such request in abeyance for up to one year, provided it advises the individual requestor that the document or documents at issue are part of a larger collection undergoing declassification review and advises the requestor when the results of the larger declassification review are expected to be made available. Not only will the interests of the general public be better served, but the individual making the request is also apt to benefit by waiting for the release of the broader collection.



ISSUE NO. 12:

EXPANDING THE USES AND ROLES OF HISTORIANS AND HISTORICAL ADVISORY BOARDS.

Relatively few agencies with responsibilities in the national security currently employ historians or maintain historical advisory boards. As a result, the public, as well as the agencies themselves, is losing a potentially valuable source of historical data and analysis.

BACKGROUND

As far as the Board has been able to determine, among the national security agencies, only the State Department and the CIA maintain historical advisory boards. The board at the State Department is created by statute and the board at the CIA by agency directive. The Office of the Secretary of Defense recently abolished its historical advisory board, and none of the military departments or defense agencies has established one, despite having voluminous classified holdings.

Typically composed of historians and academics, the board's principal function is to advise their respective agencies on what their declassification priorities should be; that is, what classified information held by the agency would be of greatest interest to the public. They might advise with respect to prioritizing what the agency itself should initiate as well as prioritizing within requirements imposed from the outside.

More agencies hire historians for their staffs, but the number hired at any given agency is usually quite small. As full-time employees, they will have various responsibilities. At some agencies, they are used to select historically significant classified documents for declassification review. At the State Department, for example, historians are used to compile and publish the FRUS series. They select the classified records at the State Department and other agencies (including the Presidential libraries) that are seen as having the greatest pertinence for the FRUS volume at issue. Requests are then made to the agencies to declassify the documents selected. Records proposed by the historians for inclusion in a FRUS volume that are withheld by another agency for reasons of national security may then be referred to the department's Historical Review Board for consideration before further steps are taken.

Some agencies, such as the CIA, put their historians to a somewhat different use. They are used primarily to write classified historical accounts based on their agency's classified records. For the most part, these accounts are intended for agency management and employees, to illuminate the lessons learned from the agency's past. But in time, some of these accounts are declassified and made public. Putting these historical accounts together often entails analyzing and synthesizing mountains of classified information — something that would take researchers and academics on the outside years to do themselves if and when the information ever became declassified. Indeed, it is doubtful that researchers and academics on the outside would ever be able to arrive at the insights and conclusions reached in many of these internal

accounts. In fact, these accounts, once declassified, often provide the most comprehensive, authoritative accounts of the agency's activities available anywhere in the public domain.

Most agencies still do not employ historians; among those that do, their numbers are small. To make matters worse, the historical studies they produce are typically classified; many sit in safes or security vaults, unread, for decades on end. Since the automatic declassification deadline was established, these studies are required to be reviewed for declassification 25 years after they were created, although the historical events they document and analyze may be far older. The Board notes with approval the recent action by the Director of National Intelligence to require elements of the U.S. intelligence community to hire historians for their respective staffs. But the impact of this action is limited to intelligence agencies.

RECOMMENDATION

1. Amend the Order to require that all departments and agencies with significant classification activity establish historical advisory boards that report to the head of the agency. These boards should be composed of experts from the inside and outside who understand how the agency's classified information might benefit the public; the board would advise the agency with respect to the priority to be assigned declassification reviews of its classified holdings.
2. By appropriate executive branch issuance, require all departments and agencies with responsibilities in the national security area to hire an appropriate number of historians, either to select classified records of historical significance for declassification review and publication (as part of the department or agency's ongoing declassification initiatives), or to write historical accounts based on the department or agency's classified holdings. Alternatively, consideration should be given to centralizing and consolidating the work of historians who are part of larger organizations. For example, the Director of National Intelligence (DNI) might employ historians to serve the intelligence community as a whole by making the CIA's Center for the Study of Intelligence into an Intelligence-Community-wide center under the auspices of the DNI, or the Secretary of Defense might employ a cadre of historians whose work encompasses all DOD components.
3. The declassification review of historical accounts written by agency historians ought to take place 25 years after the most recent event considered in the account, rather than 25 years after the historical account is written.

ISSUE NO. 13:

CLARIFYING THE STATUS AND TREATMENT OF FORMERLY RESTRICTED DATA.

In practice, what is identified pursuant to statute, directive, and regulation as Formerly Restricted Data (FRD) generally remains outside the scope of information that can be requested by the public. Is it not subject to the declassification review requirements of the Order. It is unclear whether the statute necessarily dictates this result, or whether it continues to be necessary or desirable.

BACKGROUND

Two categories of classified data relating to nuclear weapons — Restricted Data (RD) and Formerly Restricted Data (FRD) — are established pursuant to law (i.e., the Atomic Energy Act of 1954, as amended) and related regulations and directives rather than pursuant to the Order. The law itself speaks only to the control of RD but permits information that “relates primarily to the military utilization of atomic weapons” to be “carved out” of the RD category by joint agreement of the Defense Department and (now) the Department of Energy (DOE) on the basis of a joint determination that it can be “adequately protected as defense information”; that is, that it can be adequately protected within the classification system. In fact, FRD was carved out of the RD category a few years after the statute was enacted primarily to allow DOD — which had custody and control of such weapons and was responsible for their movement, storage, and maintenance — to clear personnel for information needed for their official duties without at the same time giving them access to nuclear weapon design information. When FRD was carved out of the RD category, however, it continued to be excluded from the normal classification system — even though, presumably, under the law, DOE and DOD had to jointly determine that it could be adequately protected within that system. As a practical matter, information considered FRD has remained off-limits to the public — it is exemptible under the FOIA and not subject to review as part of MDR requests or other declassification reviews — unless and until it is taken out of the FRD category by joint agreement of DOE and DOD.

Today FRD covers such things as the numbers and location of nuclear weapons, including the locations where nuclear weapons have been stored over time, both in the United States and abroad. This kind of information has spurred the greatest interest among historians and academics. In 2002, a group of prominent academics and historians proposed to the Director of ISOO that the location of nuclear weapons sites that had long since been nonoperational be taken out of the FRD category. Despite efforts by ISOO to clarify the situation, nothing changed. However, it should be noted that the release of FRD — particularly the types and numbers of nuclear weapons in the U.S. arsenal — has been authorized from time to time to meet the needs of the Government, such as arms control treaties.



Representatives of DOE told the Board that while the public may not be able to obtain access to FRD in the same way as other classified information, the public is not shy about making its interests known to them and that, in fact, DOE and DOD take into account the public interest in their decisions. For example, DOE decided to make public the location of certain nuclear weapons in the United States after local Governments in the surrounding communities asked them to do so, to allow the local communities to decide what actions might be taken in the event of a natural disaster or civil disturbance. Without any involvement by a person representing the public interest in the departmental deliberations, however, it is impossible to know the extent to which the public’s interests are being considered or accommodated by this process.

The Board also notes that a large amount of the effort that has gone into re-reviews of previously disclosed information (see Issue No. 8, *supra*) pursuant to the Kyl-Lott amendment has been necessitated because departments and agencies did not understand or appreciate what fell into the category of FRD. They unintentionally created documents containing FRD without marking it as such. When the documents were reviewed for declassification as they became 25 years old, again, the originating agency did not recognize FRD.

While the Board recognizes that much of the information that currently falls into the FRD category is extremely sensitive, and indeed may retain its sensitivity (both for foreign policy and military reasons) long into the future, treating it outside the normal classification system has its costs in terms of accommodating the interests of the public in such information and providing appropriate and consistent handling within the executive branch.

RECOMMENDATION

1. Preferably, the President should make clear by an amendment to the Order that FRD should be treated as “defense information,” as the Atomic Energy Act of 1954 appears to contemplate. Once so designated, this information should be safeguarded and declassified in accordance with the Order. This would provide the public with the same rights of access that it has to other information classified pursuant to the Order.
2. If, on the other hand, the President believes that because of its particular sensitivity, the information currently designated as FRD should continue to remain outside the classification system, consideration should be given to transitioning FRD

to the normal classification system as it reaches 25 years of age (and presumably has become less sensitive). This would mean that when permanently valuable records of the Government are being reviewed under the automatic declassification provisions, information designated as FRD would be reviewed for declassification and release to the public as other kinds of classified information are (rather than excluded, ipso facto, from release, as is now the case).

3. If the President determines that the current system should remain as it is, the Board recommends that an appropriately cleared representative of the public who is familiar with the issues should participate in the Government’s periodic deliberations with respect to what should remain in FRD; that is, excluded from the normal classification or release to the public. In addition, DOD, DOE, and State should promulgate clear and consistent guidance to the larger declassification community with respect to what constitutes FRD (e.g., former storage locations of nuclear weapons that may be identified in permanent historical records more than 25 years old).



ISSUE NO. 14: HANDLING THE PRESIDENT'S DAILY BRIEF.

The President's Daily Brief (PDB), which is prepared each day by the CIA, has not been retained as part of the records of the White House since the beginning of the Reagan administration. In the past, PDBs were included as part of the Presidential library collection and were sent to the Presidential libraries (Truman through Carter). The lack of PDBs maintained as a series among the records of the President deprives historians and researchers (and ultimately the public) of an ability to learn what a particular President was being told by the Intelligence Community regarding the world situation.

BACKGROUND

As a matter of policy, the CIA does not review or release PDBs. Nonetheless, the Board was told that excerpts from at least 30 PDBs have been declassified in the past and made available for the purpose of significant investigations (e.g., the 9/11 Commission). In fact, some of the PDBs were declassified inadvertently, as personnel did not recognize the information as coming from a PDB and made review decisions based only on the merits of the information. Although PDBs at the older Presidential libraries have been scanned as part of the RAC project, and the CIA asserts that it does not use pass/fail reviews but rather redacts all such materials it reviews, the PDBs that have been processed to date have not been returned in redacted form but rather denied in their entirety.

The CIA asserts that the PDB is covered by the doctrine of executive privilege, because it constitutes confidential advice to the President. (It is, in fact, litigating this issue in the context of a lawsuit filed by a group of historians. The CIA's position was upheld at the district court level. However the Ninth Circuit Court of Appeals rejected this argument while, at the same time, supporting the continued classification of the two specific Johnson administration PDBs in question in this lawsuit on the basis that declassification would reveal intelligence sources and methods.) It should be noted that President George W. Bush declassified portions of the August 6, 2001, PDB and the December 4, 1998, PDB for use by the 9/11 Commission.

The directors of the Presidential libraries who do not have PDBs in their collections (from Reagan forward) were unanimously of the view that these omissions constitute a serious gap in the record. They were especially concerned with PDBs that had been annotated by the President. While they recognized that the PDB was a sensitive record from the standpoint of sources and methods, and may contain personal information regarding the foreign leaders the President was meeting with, they believed the sensitive information could be redacted, particularly as the PDBs age and become obsolete, to allow for the public release of information no longer considered sensitive. A key issue for the Board is whether the public's understanding of the country's history is limited by having the PDB categorically withheld.

RECOMMENDATION

1. The President should clarify as a matter of policy that he or she will not foreclose declassification review of the PDB by claiming executive privilege for it. He or she may reserve the right as a former President to assert executive privilege with respect to particular documents that are being considered for release by his or her Presidential library.
2. The President should direct that the PDB be retained by the White House as a Presidential record under the Presidential Records Act. It can be reviewed later for declassification at the request of the Presidential library concerned. This process also allows the former President or his or her representative to object to the disclosure on other grounds (e.g., personal privacy, confidential advice from a subordinate).
3. The President should direct that the PDBs that were not allowed to remain in the Presidential materials of past Presidents be provided to each Presidential library. Before they are sent to the Presidential library, they should undergo a declassification review. The Presidential library should maintain the PDBs as a distinct series.



ISSUE No. 15:

DECLASSIFICATION REVIEWS OF CERTAIN CONGRESSIONAL RECORDS.

The declassification procedures for classified records created by committees of Congress, particularly classified reports and closed hearing transcripts, are irregular and limited.

BACKGROUND

Congressional committees with responsibilities in the national security area maintain classified records received from the executive branch. They also create classified records based on the classified information provided by the executive branch in both written and oral form; that is, reports and testimony. The Order on security classification does not apply to Congress, but Congress protects the classified information shared with it by the executive branch as a matter of comity.

The classified records created by the Congress often provide unique and significant insights into national security policy, decisionmaking, and the budget and oversight process at a given point in time. Frequently, closed sessions of congressional committees are the only occasion when executive branch policy in the national security area is explained, challenged (by members), and defended by administration representatives. The exchanges at these hearings, as well as the views of Congress (elaborated in classified committee reports), often affect the policy choices of the executive branch. Yet, because the records of the committees involved are classified and never subjected to declassification review, the public and historians are largely unaware of their existence.

The conditions for the release of congressional records to the public is specified in House Rule VII and Senate Rule 474 (96th Congress), which allow for some records to be withheld for up to 50 years. There are no provisions for the declassification of classified records. To the extent that Congress discloses classified records, it does so on its own initiative.

Disclosure has happened occasionally in several ways. Committees of Congress have decided to publish declassified versions of records they have created, normally committee reports and transcripts of closed hearings. When this occurs, the committee typically requests the relevant departments or agencies to conduct a declassification review of the records and redact any information that might be classified before the records are published by the Government Printing Office and made available to the public.

Some committees transfer custody of their records to NARA within a few months or years after they are created, and even classified committee records may reach NARA before they are 25 years old. Although the committees involved retain control of these records, they permit the National Archives to seek declassification review of records for which an MDR has been filed with NARA. The Archives sends the records to the appropriate department or agency for review, prior to review by the committee concerned.

Classified records are sometimes discovered in the private papers of legislators after they retire but before the records are donated to private libraries. When this happens, the papers are usually sent to the department or agency concerned for security review.

In 1997, the Secretary of the Senate expressed to NARA his interest in having NARA conduct a declassification review of all the classified records in NARA's custody, including those at least 25 years old that could otherwise be released to the public. Now, 10 years later, this proposal is only beginning to be implemented by NARA. It does not cover records of the House in NARA's custody or the records of the Senate Select Committee on Intelligence.

Thus, despite their historical significance, classified records created by the Congress are reviewed for declassification only on a hit-or-miss and relatively limited basis. As a result, the public is denied a valuable source of historically significant information.

RECOMMENDATION

1. Formal procedures should be established for the declassification review of classified committee reports and hearing transcripts created by committees within their respective bodies. These procedures should require the chief clerks of the affected committees to transfer to NARA copies of the classified reports and hearing transcripts created by the committee as they become 25 years old. NARA, in turn, would ensure that declassification reviews were conducted by the affected agencies.
2. If a new National Declassification Center is established (see Issue No. 1, *supra*), it should have responsibility for reviewing congressional records.



APPENDIX A

BIOGRAPHICAL INFORMATION FOR CURRENT BOARD MEMBERS

MARTIN FAGA

Martin Faga was appointed to the PIDB for a 4-year term by the President in October 2004. In 2005, he was appointed to the President's Foreign Intelligence Advisory Board. He was President and chief executive officer of the MITRE Corporation from 2000 to 2006 and is currently a member of its board of trustees. Before joining MITRE, Mr. Faga served from 1989 until 1993 as Assistant Secretary of the Air Force for Space with primary emphasis on policy, strategy, and planning. At the same time, he served as Director of the National Reconnaissance Office (NRO). Mr. Faga's career included service as a staff member of the House Permanent Select Committee on Intelligence, where he headed the program and budget staff; as an engineer at the Central Intelligence Agency; and as a research and development officer in the Air Force. Mr. Faga received bachelor's and master's degrees in electrical engineering from Lehigh University in 1963 and 1964.

STEVEN GARFINKEL

Steven Garfinkel was appointed to the PIDB for a 4-year term by the President in October 2004. He currently teaches Government, law, and sociology at Albert Einstein High School in Kensington, MD. He chaired the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG) from 2000 to 2006. He previously served as Director of the Information Security Oversight Office from May 1980 through December 2001. In that position, he was responsible to the President for policy oversight of the governmentwide security classification system and the National Industrial Security Program. Mr. Garfinkel also served for almost 10 years in the Office of General Counsel of the General Services Administration. His positions in that office included chief counsel for the National Archives and Records Service, chief counsel for information and privacy, and chief counsel for civil rights. Mr. Garfinkel attended both George Washington University and its Law School as a Trustee Scholar. He received his J.D. (with honors, Law Review) in 1970, three years after receiving his B.A. (with distinction, PBK). In 2004, he received a master's degree in teaching from Towson University.

JOAN VAIL GRIMSON

Joan Vail Grimson was appointed to the PIDB for a 3-year term by the Senate Majority Leader in March 2005. She served as general counsel and deputy staff director for the Senate Select Committee on Intelligence. She also served as counsel to the Armed Services Committee and was responsible for oversight of Departments of Defense and Energy programs for nonproliferation and arms control. In addition, Mrs. Grimson was the Committee's lead staff person for the Comprehensive Test Ban Treaty debate in the Senate. She also served as counsel to the Commission on Protecting and Reducing

Government Secrecy. Mrs. Grimson was in private practice and was a judicial clerk to U.S. District Court Chief Judge Frank W. Bullock in Greensboro, NC. She also worked in the national security office of the Office of National Drug Control Policy and was an analyst for the National Security Council in the Reagan administration. Mrs. Grimson received her law degree from American University and an undergraduate degree in political science from UCLA.

ELIZABETH RINDSKOPF PARKER

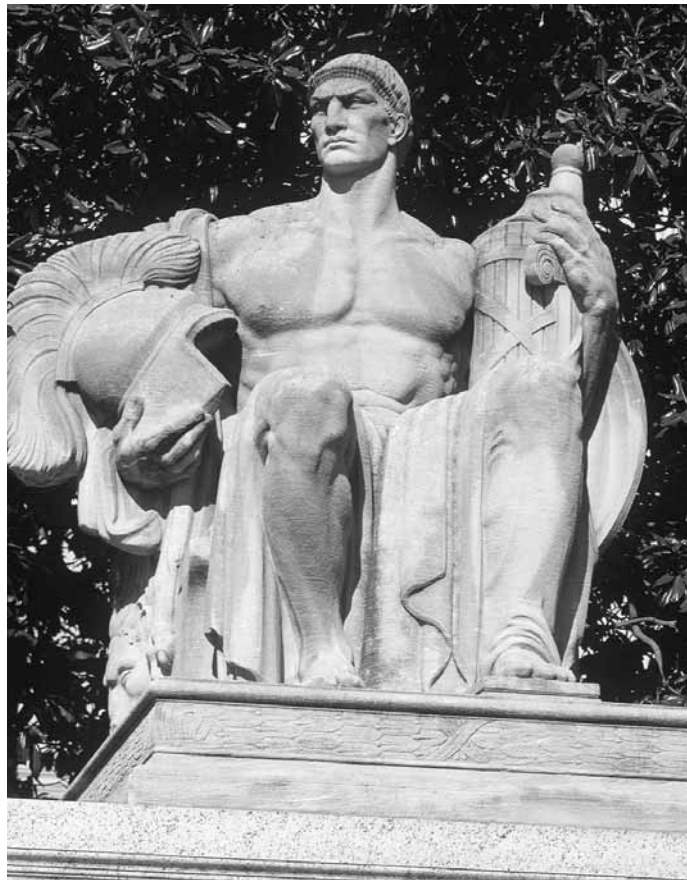
Elizabeth Rindskopf Parker was appointed to the PIDB for a 3-year term by the President in October 2004. She joined Pacific McGeorge University as its eighth dean in 2002 from her position as general counsel for the University of Wisconsin system. Previously, she served as general counsel for the CIA; Principal Deputy Legal Adviser, U.S. Department of State; general counsel, National Security Agency; and as Acting Assistant Director (Mergers and Acquisitions) at the Federal Trade Commission. In addition to her experience managing Government legal offices, Ms. Parker also served as the director of the New Haven Legal Assistance Association, Inc. Early in her career, she gained significant personal experience with a wide variety of complex Federal litigation, raising discrimination and civil liberties issues at all levels of the Federal court system, including two successful arguments before the U.S. Supreme Court and numerous arguments before various Federal Circuit Courts of Appeal. She received her law degree from the University of Michigan in 1968. She is a 1965 cum laude graduate of the University of Michigan.

RONALD RADOSH

Ronald Radosh was appointed to the PIDB for a 3-year term by the President in April 2007. He is an adjunct senior fellow at the Hudson Institute in Washington, DC. Mr. Radosh is the author, coauthor, or editor of 14 books, including *Commies: A Journey Through the Old Left, the New Left, and the Leftover Left* (Encounter Books, 2001); *Spain Betrayed: The Soviet Union in the Spanish Civil War* (with Mary Habeck) (Yale University Press, 2001); *The Rosenberg File* (with Joyce Milton) (Yale University Press, 1997); *Divided They Fell: The Demise of the Democratic Party, 1964–1996* (The Free Press, 1996.); and *The Amerasia Spy Case: Prelude to McCarthyism* (with Harvey Klehr) (University of North Carolina Press, 1996). His articles have appeared in such publications as *Partisan Review*, *The New Republic*, *The New Criterion*, *The New York Times*, *Times Literary Supplement*, *The Journal of American History*, *The Wall Street Journal*, and *The Weekly Standard*. Mr. Radosh has served as a senior research associate for the Center for Communitarian Studies at George Washington University; professor of history in the Graduate Faculty, City University of New York; research director for the United States Information Agency; and associate director of the Office of the President, American Federation of Teachers.

DAVID E. SKAGGS

David Skaggs was appointed to the PIDB for a 2-year term by the Minority Leader of the U.S. House of Representatives in January 2005, and reappointed for two years in July 2007. He is the executive director of the Colorado Department of Higher Education. This position follows eight years as executive director of the Center for Democracy and Citizenship at the Council for Excellence in Government, counsel to a Washington, DC-based law firm, and three years as an adjunct professor at the University of Colorado. He served 12 years in Congress (1987–1999) as the Representative from the 2nd Congressional District in Colorado, including eight years on the House Appropriations Committee and six years on the House Permanent Select Committee on Intelligence, where he devoted particular attention to classification and information security issues. Mr. Skaggs was a Colorado State Representative (1981–1987), including two terms as Minority Leader, and was chief of staff for Congressman Timothy E. Wirth of Colorado from 1974 to 1977. Before serving in elected office, Mr. Skaggs practiced law in Boulder, CO; as a judge advocate in the United States Marine Corps; and briefly in New York City. He has a B.A. in philosophy from Wesleyan University (1964) and an LL.B from Yale Law School (1967).



"Guardianship," on the Constitution Avenue side of the National Archives Building, uses martial symbols, such as the helmet, sword, and lion skin to convey the need to protect the historical record for future generations. This sculpture is inscribed "Eternal Vigilance is the Price of Liberty."

L. BRITT SNIDER

L. Britt Snider was appointed to the PIDB for a 4-year term by the President in October 2004. At the same time, the President appointed him to a 2-year term as Chairman of the PIDB. He is currently an adjunct professor in the Security Studies Program, School of Foreign Service, Georgetown University. Mr. Snider has more than 30 years of Federal Government service, split evenly between the executive and legislative branches. In 1995, Mr. Snider became staff director of the Presidential commission (Aspin/Brown) that assessed the roles and capabilities of U.S. intelligence agencies at the end of the Cold War. In 1997, he continued Government service as special counsel to Director of the Central Intelligence George J. Tenet. A year later, he was appointed by President Clinton as the second statutory Inspector General of the Central Intelligence Agency, in which capacity he served for three years until his retirement in 2001. Mr. Snider is a graduate of Davidson College and University of Virginia School of Law.

ADMIRAL WILLIAM O. STUDEMAN, USN (RET.)

Bill Studeman was appointed to the PIDB for a 3-year term by the Speaker of the House in June 2006. He recently retired from Northrop Grumman Corporation as vice president and deputy general manager of Mission Systems. He holds a B.A. in history from the University of the South in Sewanee, TN; an M.A. in public and international affairs from George Washington University; and several honorary doctorates. He is a distinguished graduate of both the Naval and National War Colleges. As a restricted line naval intelligence officer, Admiral Studeman's flag tours included OPNAV Director of Long Range Navy Planning; Director of Naval Intelligence; Director, National Security Agency; and Deputy Director of Central Intelligence (DDCI) with two extended periods as Acting Director of Central Intelligence (DCI). As DDCI, he served in both the George H. W. Bush and Clinton administrations under DCIs Bob Gates, Jim Woolsey, and John Deutch. Admiral Studeman retired from the Navy in 1995 after almost 35 years of service. He was recently a commissioner on the Presidential Commission on Weapons of Mass Destruction, and is currently serving on the National Advisory Board on Bio-Security. He is a member of the Defense Science Board, as well as DIA JMIC, NRO, national labs, and other advisory boards.

APPENDIX B

WITNESSES APPEARING BEFORE THE BOARD

THE BOARD RECEIVED SUMMARY BRIEFINGS ON THE STATUS OF THE DECLASSIFICATION PROGRAMS OF THE FOLLOWING:

CENTRAL INTELLIGENCE AGENCY

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Joint Chiefs of Staff

Department of the Air Force

Department of the Army

Department of the Navy

Defense Intelligence Agency

National Security Agency

National Geospatial Intelligence Agency

National Reconnaissance Office

DEPARTMENT OF ENERGY

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

DEPARTMENT OF STATE

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

THE BOARD HEARD FROM HISTORIANS OF THE FOLLOWING:

DEPARTMENT OF STATE

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

DEFENSE INTELLIGENCE AGENCY

NATIONAL RECONNAISSANCE OFFICE

NATIONAL SECURITY AGENCY

CIA'S HISTORICAL REVIEW PANEL

STATE DEPARTMENT HISTORICAL ADVISORY COMMITTEE

GENERAL EDITOR OF THE FOREIGN RELATIONS OF THE UNITED STATES

THE BOARD HEARD FROM REPRESENTATIVES OF THE FOLLOWING PUBLIC INTEREST GROUPS:

NATIONAL SECURITY ARCHIVE AT GEORGE WASHINGTON UNIVERSITY

REPRESENTATIVES OF THE AMERICAN BAR ASSOCIATION'S STANDING COMMITTEE ON LAW AND NATIONAL SECURITY

PUBLIC CITIZEN LITIGATION GROUP

NATIONAL COALITION FOR HISTORY

THE BOARD HEARD FROM THE FOLLOWING MEMBERS OF THE PUBLIC:

MR. MARK S. ZAID, ESQ.

MR. SCOTT ARMSTRONG

MR. BRUCE BERKOWITZ

MR. STEVEN AFTERGOOD

MS. MEREDITH FUCHS

GLOSSARY

Automatic Declassification: The declassification of information based solely upon (1) the occurrence of a specific date or event as determined by the original classification authority, or (2) the expiration of a maximum time frame for duration of classification established under this order. Source: E.O. 12958, as amended, section 6.1(d).

Classified National Security Information: Information that has been determined (pursuant to E.O. 12958, as amended, or any predecessor order) to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form. Source: E.O. 12958, as amended, section 6.1(h).

Declassification: The authorized change in the status of information from classified information to unclassified information. Source: E.O. 12958, as amended, section 6.1(k).

Executive Order (E.O.) 12958, as amended: E.O. 12958, “Classified National Security Information,” signed by President William J. Clinton in 1995, was amended by E.O. 13292, signed by President George W. Bush in 2003. This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism. This order also established the concept of automatic declassification, in which all classified records shall be automatically declassified on December 31 of the year that is 25 years from the date of their original creation, unless properly exempted from declassification. Source: E.O. 12958, as amended, introduction and section 3.3(a).

Foreign Relations of the United States (FRUS): The official documentary historical record of major U.S. foreign policy decisions and significant diplomatic activity. The series, which is produced by the State Department’s Office of the Historian, began in 1861 and now comprises more than 350 individual volumes. The volumes published since 1980 increasingly contain declassified records from all the foreign affairs agencies. Source: The U.S. Department of State, Office of the Historian (www.state.gov/r/pa/ho/frus/).

Freedom of Information Act (FOIA), 5 U.S.C. § 552: The FOIA requires Federal agencies — but not Congress or Federal courts — to make records available to any person making a request for them. Nine categories of information are exempted from FOIA requests, such as information properly classified by Executive order, information contained in personnel and medical files, and similar files the disclosure of which would constitute a clearly unwarranted

invasion of personal privacy. FOIA decisions may be appealed in Federal court. Source: 5 U.S.C. § 552, as amended in 2002.

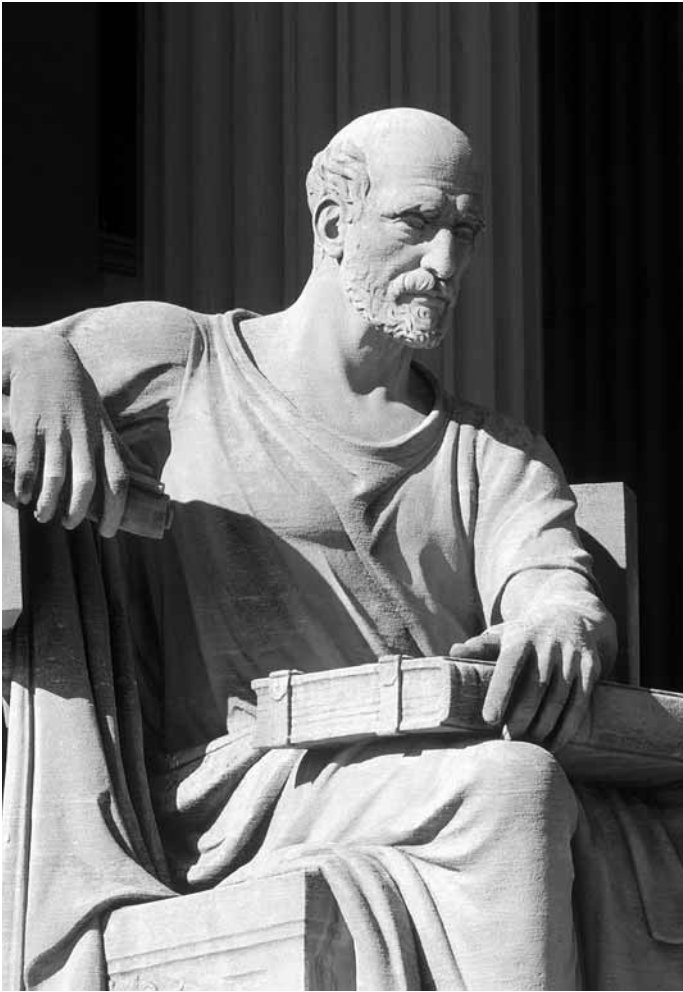
Information Security Oversight Office (ISOO): A component of the National Archives and Records Administration that receives program and policy guidance from the National Security Council. ISOO oversees the security classification programs in both Government and industry and reports annually to the President on their status. Source: ISOO Report to the President, 2006.

Kyl-Lott Amendment: The name applied to the requirement established in section 3161, “Protection against Inadvertent Release of Restricted Data and Formerly Restricted Data,” of the National Defense Authorization Act of 1999. The requirement orders the Department of Energy to develop a plan to prevent the release of nuclear weapons design and employment information. Among its provisions is the requirement that records subject to the declassification provisions of E.O. 12958 be reviewed on a page-by-page basis for Restricted Data and Formerly Restricted Data unless they have been determined to be highly unlikely to contain those types of information. The provision is named after its two proponents, Senators Trent Lott and John Kyl. Source: Public Law 105-261, section 3161.

Mandatory Declassification Review: The review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of E.O. 12958, as amended. All classified information, with some exceptions (such as the records of an incumbent President), is subject to a review for declassification by the originating agency if requested. An administrative appeal of an agency decision may be ultimately appealed to the Interagency Security Classification Appeals Panel. Source: E.O. 12958, as amended, section 6.1(w) and section 3.5(a-d).

Multiple Equity Records: Records containing information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies. Source: E.O. 12958, as amended, section 3.3(h).

National Security: The national defense or foreign relations of the United States. Source: E.O. 12958, as amended, section 6.1(y).



"The Past," on the Pennsylvania Avenue side of the National Archives Building. An aged figure with a scroll and closed book imparting the knowledge of past generations "stares down the corridors of time." The words on the base enjoin, "Study the Past."

Special Media Information: Information contained in microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemptions more difficult or costly. Source: E.O. 12958, as amended, section 3.3(e)(2).

Records: The records of an agency and Presidential papers or Presidential records, as those terms are defined in title 44, United States Code, including those created or maintained by a Government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the contract, license, certificate, or grant. Source: E.O. 12958, as amended, section 6.1(dd). E.O. 12958, as amended, defines "document" as, "any recorded information, regardless of the nature of the medium or the method or circumstances of recording" (Section 6.1(o)). The two terms are used interchangeably in this paper.

Records Having Permanent Historical Value:

Presidential papers or Presidential records and the records of an agency that the Archivist has determined should be maintained permanently in accordance with title 44, United States Code. Source: E.O. 12958, as amended, section 6.1(ee).

Historically Significant Records, or Records or Materials of Extraordinary Public Interest:

Records or materials that demonstrate and record the national security policies, actions, and decisions of the United States, including (1) policies, events, actions, and decisions that led to significant national security outcomes; and (2) the development and evolution of significant United States national security policies, actions, and decisions. These records will provide a significantly different perspective in general from records and materials publicly available in other historical sources and would need to be addressed through ad hoc record searches outside any systematic declassification program established under Executive order. Source: Public Interest Declassification Board enabling legislation: Public Law 106-657, section 709.

Remote Archives Capture (RAC): A joint program, administered by the Office of Presidential Libraries of the National Archives and Records Administration and the Central Intelligence Agency, in which classified Presidential records at the Presidential libraries are scanned into an electronic document review system for centralized review in the Washington area by agency reviewers. Source: National Archives and Records Administration Performance and Accountability Report, FY 2007, p. 21.

BOARD'S AUTHORIZING STATUTE

See: Public Law 106-567 (December 27, 2000), as amended by section 1102 of P.L. 108-458 (Intelligence Reform and Terrorism Prevention Act of 2004) (December 17, 2004), and as further amended by section 602 of P.L. 110-53 (Implementing Recommendations of the 9/11 Commission Act of 2007) (August 3, 2007).

TITLE VII — DECLASSIFICATION OF INFORMATION

SEC. 701. SHORT TITLE.

This title may be cited as the “Public Interest Declassification Act of 2000”.

SEC. 702. FINDINGS.

Congress makes the following findings:

- (1) It is in the national interest to establish an effective, coordinated, and cost-effective means by which records on specific subjects of extraordinary public interest that do not undermine the national security interests of the United States may be collected, retained, reviewed, and disseminated to Congress, policymakers in the executive branch, and the public.
- (2) Ensuring, through such measures, public access to information that does not require continued protection to maintain the national security interests of the United States is a key to striking the balance between secrecy essential to national security and the openness that is central to the proper functioning of the political institutions of the United States.

SEC. 703. PUBLIC INTEREST DECLASSIFICATION BOARD.

(a) ESTABLISHMENT. —

- (1) There is established within the executive branch of the United States a board to be known as the “Public Interest Declassification Board” (in this title referred to as the “Board”).
- (2) The Board shall report directly to the President or, upon designation by the President, the Vice President, the Attorney General, or other designee of the President. The other designee of the President under this paragraph may not be an agency head or official authorized to classify information under Executive Order 12958, or any successor order.

(b) PURPOSES. — The purposes of the Board are as follows:

- (1) To advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and such other executive branch officials as the Board considers appropriate on the systematic, thorough, coordinated, and comprehensive

identification, collection, review for declassification, and release to Congress, interested agencies, and the public of declassified records and materials (including donated historical materials) that are of archival value, including records and materials of extraordinary public interest.

(2) To promote the fullest possible public access to a thorough, accurate, and reliable documentary record of significant United States national security decisions and significant United States national security activities in order to —

- (A) support the oversight and legislative functions of Congress;
- (B) support the policymaking role of the executive branch;
- (C) respond to the interest of the public in national security matters; and
- (D) promote reliable historical analysis and new avenues of historical study in national security matters.

(3) To provide recommendations to the President for the identification, collection, and review for declassification of information of extraordinary public interest that does not undermine the national security of the United States, to be undertaken in accordance with a declassification program that has been established or may be established by the President by Executive order.

(4) To advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and such other executive branch officials as the Board considers appropriate on policies deriving from the issuance by the President of Executive orders regarding the classification and declassification of national security information.

(5) To review and make recommendations to the President in a timely manner with respect to any congressional request, made by the committee of jurisdiction, to declassify certain records or to reconsider a declination to declassify specific records.

(c) MEMBERSHIP. —

- (1) The Board shall be composed of nine individuals appointed from among citizens of the United States who are preeminent in the fields of history, national security, foreign policy, intelligence policy, social science, law, or

archives, including individuals who have served in Congress or otherwise in the Federal Government or have otherwise engaged in research, scholarship, or publication in such fields on matters relating to the national security of the United States, of whom —

- (A) five shall be appointed by the President;
 - (B) one shall be appointed by the Speaker of the House of Representatives;
 - (C) one shall be appointed by the majority leader of the Senate;
 - (D) one shall be appointed by the minority leader of the Senate; and
 - (E) one shall be appointed by the minority leader of the House of Representatives.
- (2) (A) Of the members initially appointed to the Board by the President —
- (i) three shall be appointed for a term of 4 years;
 - (ii) one shall be appointed for a term of 3 years; and
 - (iii) one shall be appointed for a term of 2 years.
- (B) The members initially appointed to the Board by the Speaker of the House of Representatives or by the majority leader of the Senate shall be appointed for a term of 3 years.
- (C) The members initially appointed to the Board by the minority leader of the House of Representatives or the Senate shall be appointed for a term of 2 years.
- (D) Any subsequent appointment to the Board shall be for a term of 3 years.
- (3) A vacancy in the Board shall be filled in the same manner as the original appointment. A member of the Board appointed to fill a vacancy before the expiration of a term shall serve for the remainder of the term.
- (4) A member of the Board may be appointed to a new term on the Board upon the expiration of the member's term on the Board, except that no member may serve more than three full terms on the Board.

(d) CHAIRPERSON; EXECUTIVE SECRETARY. —

- (1) (A) The President shall designate one of the members of the Board as the chairperson of the Board.
- (B) The term of service as Chairperson of the Board shall be 2 years.
- (C) A member serving as Chairperson of the Board may be redesignated as Chairperson of the Board upon the expiration of the member's term as Chairperson of the Board, except that no member shall serve as Chairperson of the Board for more than 6 years.
- (2) The Director of the Information Security Oversight Office shall serve as the Executive Secretary of the Board.

(e) MEETINGS. — The Board shall meet as needed to accomplish its mission, consistent with the availability of funds. A majority of the members of the Board shall constitute a quorum.

(f) STAFF. — Any employee of the Federal Government may be detailed to the Board, with the agreement of and without reimbursement to the detailing agency, and such detail shall be without interruption or loss of civil, military, or foreign service status or privilege.

(g) SECURITY. —

- (1) The members and staff of the Board shall, as a condition of appointment to or employment with the Board, hold appropriate security clearances for access to the classified records and materials to be reviewed by the Board or its staff, and shall follow the guidance and practices on security under applicable Executive orders and Presidential or agency directives.
- (2) The head of an agency shall, as a condition of granting access to a member of the Board, the Executive Secretary of the Board, or a member of the staff of the Board to classified records or materials of the agency under this title, require the member, the Executive Secretary, or the member of the staff, as the case may be, to —
- (A) execute an agreement regarding the security of such records or materials that is approved by the head of the agency; and
 - (B) hold an appropriate security clearance granted or recognized under the standard procedures and eligibility criteria of the agency, including any special access approval required for access to such records or materials.
- (3) The members of the Board, the Executive Secretary of the Board, and the members of the staff of the Board may not use any information acquired in the course of their official activities on the Board for nonofficial purposes.
- (4) For purposes of any law or regulation governing access to classified information that pertains to the national security of the United States, and subject to any limitations on access arising under section 706(b), and to facilitate the advisory functions of the Board under this title, a member of the Board seeking access to a record or material under this title shall be deemed for purposes of this subsection to have a need to know the contents of the record or material.

(h) COMPENSATION. —

- (1) Each member of the Board shall receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay payable for positions at ES-1 of the Senior Executive Service under section 5382 of title 5, United States Code, for each day such member is engaged in the actual performance of duties of the Board.

(2) Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of the duties of the Board.

(i) GUIDANCE; ANNUAL BUDGET. —

(1) On behalf of the President, the Assistant to the President for National Security Affairs shall provide guidance on policy to the Board.

(2) The Executive Secretary of the Board, under the direction of the Chairperson of the Board and the Board, and acting in consultation with the Archivist of the United States, the Assistant to the President for National Security Affairs, and the Director of the Office of Management and Budget, shall prepare the annual budget of the Board.

(j) SUPPORT. — The Information Security Oversight Office may support the activities of the Board under this title. Such support shall be provided on a reimbursable basis.

(k) PUBLIC AVAILABILITY OF RECORDS AND REPORTS. —

(1) The Board shall make available for public inspection records of its proceedings and reports prepared in the course of its activities under this title to the extent such records and reports are not classified and would not be exempt from release under the provisions of section 552 of title 5, United States Code.

(2) In making records and reports available under paragraph (1), the Board shall coordinate the release of such records and reports with appropriate officials from agencies with expertise in classified information in order to ensure that such records and reports do not inadvertently contain classified information.

(l) APPLICABILITY OF CERTAIN ADMINISTRATIVE LAWS. — The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Board under this title. However, the records of the Board shall be governed by the provisions of the Federal Records Act of 1950.

SEC. 704. IDENTIFICATION, COLLECTION, AND REVIEW FOR DECLASSIFICATION OF INFORMATION OF ARCHIVAL VALUE OR EXTRAORDINARY PUBLIC INTEREST.

(a) BRIEFINGS ON AGENCY DECLASSIFICATION PROGRAMS. —

(1) As requested by the Board, or by the Select Committee on Intelligence of the Senate or the Permanent Select Committee on Intelligence of the House of Representatives, the head of any agency with the authority under an Executive order to classify information shall provide to the Board, the Select Committee on Intelligence of the Senate, or the Permanent Select Committee on Intelligence of the

House of Representatives, on an annual basis, a summary briefing and report on such agency's progress and plans in the declassification of national security information. Such briefing shall cover the declassification goals set by statute, regulation, or policy, the agency's progress with respect to such goals, and the agency's planned goals and priorities for its declassification activities over the next 2 fiscal years. Agency briefings and reports shall give particular attention to progress on the declassification of records and materials that are of archival value or extraordinary public interest to the people of the United States.

(2)(A) The annual briefing and report under paragraph (1) for agencies within the Department of Defense, including the military departments and the elements of the intelligence community, shall be provided on a consolidated basis.

(B) In this paragraph, the term "elements of the intelligence community" means the elements of the intelligence community specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(b) RECOMMENDATIONS ON AGENCY DECLASSIFICATION PROGRAMS. —

(1) Upon reviewing and discussing declassification plans and progress with an agency, the Board shall provide to the head of the agency the written recommendations of the Board as to how the agency's declassification program could be improved. A copy of each recommendation shall also be submitted to the Assistant to the President for National Security Affairs and the Director of the Office of Management and Budget.

(2) Consistent with the provisions of section 703(k), the Board's recommendations to the head of an agency under paragraph (1) shall become public 60 days after such recommendations are sent to the head of the agency under that paragraph.

(c) RECOMMENDATIONS ON SPECIAL SEARCHES FOR RECORDS OF EXTRAORDINARY PUBLIC INTEREST. —

(1) The Board shall also make recommendations to the President regarding proposed initiatives to identify, collect, and review for declassification classified records and materials of extraordinary public interest.

(2) In making recommendations under paragraph (1), the Board shall consider the following:

(A) The opinions and requests of Members of Congress, including opinions and requests expressed or embodied in letters or legislative proposals, and also including specific requests for the declassification of certain records or for the reconsideration of declinations to declassify specific records.

(B) The opinions and requests of the National Security Council, the Director of Central Intelligence, and the heads of other agencies.

- (C) The opinions of United States citizens.
- (D) The opinions of members of the Board.
- (E) The impact of special searches on systematic and all other on-going declassification programs.
- (F) The costs (including budgetary costs) and the impact that complying with the recommendations would have on agency budgets, programs, and operations.
- (G) The benefits of the recommendations.
- (H) The impact of compliance with the recommendations on the national security of the United States.

(d) PRESIDENT’S DECLASSIFICATION PRIORITIES. —

(1) Concurrent with the submission to Congress of the budget of the President each fiscal year under section 1105 of title 31, United States Code, the Director of the Office of Management and Budget shall publish a description of the President’s declassification program and priorities, together with a listing of the funds requested to implement that program.

(2) Nothing in this title shall be construed to substitute or supersede, or establish a funding process for, any declassification program that has been established or may be established by the President by Executive order.

(e) DECLASSIFICATION REVIEWS. —

(1) **IN GENERAL** – If requested by the President, the Board shall review in a timely manner certain records or declinations to declassify specific records, the declassification of which has been the subject of specific congressional request described in section 703(b)(5).

(2) **AUTHORITY OF THE BOARD** – Upon receiving a congressional request described in section 703(b)(5), the Board may conduct the review and make the recommendations described in that section, regardless of whether such a review is requested by the President.

(3) **REPORTING** – Any recommendations submitted to the President by the Board under section 703(b)(5), shall be submitted to the chairman and ranking member of the committee of Congress that made the request relating to such recommendations.

SEC. 705. PROTECTION OF NATIONAL SECURITY INFORMATION AND OTHER INFORMATION.

(a) IN GENERAL. — Nothing in this title shall be construed to limit the authority of the head of an agency to classify information or to continue the classification of information previously classified by that agency.

(b) SPECIAL ACCESS PROGRAMS. — Nothing in this title shall be construed to limit the authority of the head of an agency to grant or deny access to a special access program.

(c) AUTHORITIES OF DIRECTOR OF CENTRAL INTELLIGENCE. — Nothing in this title shall be construed to limit the authorities of the Director of Central Intelligence as the head of the intelligence community, including the Director’s responsibility to protect intelligence sources and methods from unauthorized disclosure as required by section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6)).

(d) EXEMPTIONS TO RELEASE OF INFORMATION. — Nothing in this title shall be construed to limit any exemption or exception to the release to the public under this title of information that is protected under subsection (b) of section 552 of title 5, United States Code (commonly referred to as the “Freedom of Information Act”), or section 552a of title 5, United States Code (commonly referred to as the “Privacy Act”).

(e) WITHHOLDING INFORMATION FROM CONGRESS. — Nothing in this title shall be construed to authorize the withholding of information from Congress.

SEC. 706. STANDARDS AND PROCEDURES.

(a) LIAISON. —

(1) The head of each agency with the authority under an Executive order to classify information and the head of each Federal Presidential library shall designate an employee of such agency or library to act as liaison to the Board for purposes of this title.

(2) The Board may establish liaison and otherwise consult with such other historical and advisory committees as the Board considers appropriate for purposes of this title.

(b) LIMITATIONS ON ACCESS. —

(1) (A) Except as provided in paragraph (2), if the head of an agency or the head of a Federal Presidential library determines it necessary to deny or restrict access of the Board, or of the agency or library liaison to the Board, to information contained in a record or material, in whole or in part, the head of the agency or the head of the library shall promptly notify the Board in writing of such determination.

(B) Each notice to the Board under subparagraph (A) shall include a description of the nature of the records or materials, and a justification for the determination, covered by such notice.

(2) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of Central Intelligence, or the head of any other agency, the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

(c) DISCRETION TO DISCLOSE. — At the conclusion of a declassification review, the head of an agency may, in the discretion of the head of the agency, determine that the public's interest in the disclosure of records or materials of the agency covered by such review, and still properly classified, outweighs the Government's need to protect such records or materials, and may release such records or materials in accordance with the provisions of Executive Order No. 12958 or any successor order to such Executive order.

(d) DISCRETION TO PROTECT. — At the conclusion of a declassification review, the head of an agency may, in the discretion of the head of the agency, determine that the interest of the agency in the protection of records or materials of the agency covered by such review, and still properly classified, outweighs the public's need for access to such records or materials, and may deny release of such records or materials in accordance with the provisions of Executive Order No. 12958 or any successor order to such Executive order.

(e) REPORTS. —

(1) (A) Except as provided in paragraph (2), the Board shall annually submit to the appropriate congressional committees a report on the activities of the Board under this title, including summary information regarding any denials to the Board by the head of an agency or the head of a Federal Presidential library of access to records or materials under this title.

(B) In this paragraph, the term "appropriate congressional committees" means the Select Committee on Intelligence and the Committee on Governmental Affairs of the Senate and the Permanent Select Committee on Intelligence and the Committee on Government Reform of the House of Representatives.

(2) Notwithstanding paragraph (1), notice that the Board has been denied access to records and materials, and a justification for the determination in support of the denial, shall be submitted by the agency denying the access as follows:

(A) In the case of the denial of access to a special access program created by the Secretary of Defense, to the Committees on Armed Services and Appropriations of the Senate and to the Committees on Armed Services and Appropriations of the House of Representatives.

(B) In the case of the denial of access to a special access program created by the Director of Central Intelligence, or by the head of any other agency (including the

Department of Defense) if the special access program pertains to intelligence activities, or of access to any information and materials relating to intelligence sources and methods, to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(C) In the case of the denial of access to a special access program created by the Secretary of Energy or the Administrator for Nuclear Security, to the Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate and to the Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

(f) NOTIFICATION OF REVIEW. — In response to a specific congressional request for declassification review described in section 703(b)(5), the Board shall advise the originators of the request in a timely manner whether the Board intends to conduct such review.

SEC. 707. JUDICIAL REVIEW.

Nothing in this title limits the protection afforded to any information under any other provision of law. This title is not intended and may not be construed to create any right or benefit, substantive or procedural, enforceable against the United States, its agencies, its officers, or its employees. This title does not modify in any way the substantive criteria or procedures for the classification of information, nor does this title create any right or benefit subject to judicial review.

SEC. 708. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS. — There is hereby authorized to be appropriated to carry out the provisions of this title amounts as follows:

(1) For fiscal year 2001, \$650,000.

(2) For each fiscal year after fiscal year 2001, such sums as may be necessary for such fiscal year.

(b) FUNDING REQUESTS. — The President shall include in the budget submitted to Congress for each fiscal year under section 1105 of title 31, United States Code, a request for amounts for the activities of the Board under this title during such fiscal year.

SEC. 709. DEFINITIONS.

In this title:

(1) AGENCY. —

(A) Except as provided in subparagraph (B), the term "agency" means the following:

(i) An Executive agency, as that term is defined in section 105 of title 5, United States Code.

(ii) A military department, as that term is defined in section 102 of such title.

(iii) Any other entity in the executive branch that comes into the possession of classified information.

(B) The term does not include the Board.

(2) **CLASSIFIED MATERIAL OR RECORD.** — The terms “classified material” and “classified record” include any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable records, and other documentary material, regardless of physical form or characteristics, that has been determined pursuant to Executive order to require protection against unauthorized disclosure in the interests of the national security of the United States.

(3) **DECLASSIFICATION.** — The term “declassification” means the process by which records or materials that have been classified are determined no longer to require protection from unauthorized disclosure to protect the national security of the United States.

(4) **DONATED HISTORICAL MATERIAL.** — The term “donated historical material” means collections of personal papers donated or given to a Federal Presidential library or other archival repository under a deed of gift or otherwise.

(5) **FEDERAL PRESIDENTIAL LIBRARY.** — The term “Federal Presidential library” means a library operated and maintained by the United States Government through the National Archives and Records Administration under the applicable provisions of the Federal Records Act of 1950.

(6) **NATIONAL SECURITY.** — The term “national security” means the national defense or foreign relations of the United States.

(7) **RECORDS OR MATERIALS OF EXTRAORDINARY PUBLIC INTEREST.** — The term “records or materials of extraordinary public interest” means records or materials that —

(A) demonstrate and record the national security policies, actions, and decisions of the United States, including —

(i) policies, events, actions, and decisions which led to significant national security outcomes; and

(ii) the development and evolution of significant United States national security policies, actions, and decisions;

(B) will provide a significantly different perspective in general from records and materials publicly available in other historical sources; and

(C) would need to be addressed through ad hoc record searches outside any systematic declassification program established under Executive order.

(8) **RECORDS OF ARCHIVAL VALUE.** — The term “records of archival value” means records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government.

SEC. 710. EFFECTIVE DATE; SUNSET.

(a) **EFFECTIVE DATE.** — This title shall take effect on the date that is 120 days after the date of the enactment of this Act.

(b) **SUNSET.** — The provisions of this title shall expire on December 31, 2012, unless reauthorized by statute.



**PUBLIC INTEREST
DECLASSIFICATION BOARD**

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