

Improving Declassification

A Report to the President from the Public Interest Declassification Board—A Review with Commentary¹

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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—Public Interest Declassification Act of 2000 (P.L. 106-567)

It has been a tough eight years for advocates of open access to government information. Transparency, accountability, and declassification have been thwarted at nearly every turn by the executive office, federal agencies, and Congress. Examples of this pattern include: a refusal to allow the public to see pictures of military caskets being returned from Iraq, falsifying scientific data that provides proof of global warming, and the outright refusal of the vice president of the United States to abide by the laws that govern retention of his official records.²

Most readers would agree that there are genuine military and diplomatic reasons why some information, however important to understanding history, must remain classified for a sometimes extended period of time. However, the wholesale approach in official Washington of blocking almost all access has only served to breed mistrust and cynicism rather than foster the open government that our nation and its citizens require if they are to be full participants in our shared governance. Often when these hidden documents are released, they prove to be remarkably mundane and/or occasionally salacious, but rarely have they been shown to contain information that after twenty-five years was critical to national security. An excellent example of this is the extraordinarily rich trove of historical documentation released in 2007 known as the Family Jewels.³ Upon their release this collection of sources served to demonstrate that much of what had been blocked from access was less about protecting intelligence assets and more about failed policies and avoiding

embarrassment to the officials involved.

Excessive secrecy can also have an adverse effect on our nation's ability to engage effectively in foreign relations during the transition between presidential administrations. This challenge is explored across several presidential transitions by Eric Alterman in his book *When Presidents Lie*. One of the most intriguing examples is the lack of accurate knowledge that President Truman possessed about the Yalta agreements even as he was struggling to come to grips with the final days of World War II.⁴

There are many reasons why declassification should be viewed by politicians and policy implementers as an important public good. As most government information librarians already know, an important factor is ensuring accountability of government officials. This is a position shared by no less an unlikely champion, if only in theory, than former Secretary of Defense Donald Rumsfeld. In a letter to the *Wall Street Journal*, Rumsfeld wrote, "I have long believed in the importance of granting the public greater access to information about their government—the good and the bad."⁵

Certainly the work of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) has demonstrated that access to core documentation, when made available, can not only shed light on a historical moment for future researchers, but can also lead to substantive changes that benefit our nation. Declassification can also help unite disparate views around the necessity of some political or military action by our nation's leaders. Former CIA agent and historian William Daugherty made this very point in his writings about covert operations. Daugherty states that, absent clear communication with the public, we are "more likely to hear about the CIA's failures (real or otherwise) than [the public] is of the Agency's success."⁶

The Public Interest Declassification Board (PIDB), created

during the final months of the Clinton administration, was intended to: (1) answer these sorts of challenges, (2) create transparency, (3) develop programs that facilitate declassification, and (4) foster in government the idea that declassification is a public good that serves citizens and policy makers. Despite these well-intentioned goals the board was not put into action until well into the administration of George W. Bush. Even then real action on activating the PIDB came only when it was politically expedient to do so. Consequently the board got off to a very slow start—the initial appointments and funding were held up until 2004. Since then, the board has been working away with little fanfare, little money, and even less support to fulfill its mandate to craft a process for systematic and responsive declassification of intelligence materials.⁷

The PIDB Report

In December of 2007, the PIDB released its first public report outlining a series of detailed recommendations and supporting comments that the members believe will be responsive to the needs of history, the needs of American citizens, and the needs of the intelligence community.

The report, generally overlooked by the mainstream media, coming as it did around the Christmas holiday, is an important contribution to our understanding of what could be done to improve declassification and accountability in the federal government. While there is likely quite a bit for the leadership of the next administration to read, for a new president who many believe has won his position by calling for a change in how the federal government operates, the 2007 report of the PIDB should be near the top of the pile of books on his nightstand.

The report begins with an introduction that includes a “Brief Historical Perspective on Declassification Activity in the U.S. Government.” What will be most intriguing to government information professionals is the exhaustive listing of previous efforts to review access to government information. Certainly, there has been an extensive and often ineffective effort to improve access from inside the government. This section of the report touches on some important developments, including the public outcry in the research community over the National Archives and Records Administration’s (NARA) decision to let some federal agencies *reclassify* already released material. However, this section of the report lacks any sense of anger or even incredulosity over the magnitude of the reclassification efforts that took place during the administration of President George W. Bush. This is not unexpected given the board’s dependence on the executive office for its very being, but it is still disappointing. The next section provides an

excellent summary of “What the Declassification System Looks like Today.” The section highlights many of the challenges created by an ever-increasing pattern of overclassification, the expansion of the number of individuals with classification authority, and the creation of any number of secret but unclassified (SBU) categories of documentation.

The next section begins with a brief essay on “What the Declassification System Must Look like Tomorrow” as agencies develop their response to both mandatory declassification and special cases/requests for specific declassifications outside the twenty-five-year rule. The section recommends a focus on electronic communication and preservation of both content and systems of presentation and delivery as well as enabling compatibility across agencies and systems. This is then followed by a summary of the fifteen larger declassification issues, each with anywhere from three to five specific recommendations on how to improve declassification. In many ways, the report is similar to earlier efforts such as the 9/11 Commission recommendations and the *Final Report of the Kennedy Assassination Records Review Board* (which, like the PIDB, also came into being during the Clinton years).⁸ In particular, the report of the Kennedy Assassination Records Review Board shares with the PIDB a commitment to improving access to presidential records—a category of documentation that has recently seen particularly egregious efforts to block access and thus accountability.⁹ While there has been some dissatisfaction expressed that the PIDB’s focus on electronic records overemphasizes the containers rather than preserving the content, the introductory portion of the report remains a careful consideration of the overall declassification landscape.¹⁰

This review will briefly consider four of the recommendations from *Improving Declassification: a Report to the President from the Public Interest Declassification Board* as illustrative of the overall report. The sections chosen for consideration out of the fifteen different areas were selected because they represent recurring challenges in the government information community. Access to presidential records has been a challenge across administrations and political leanings and with recent changes to Executive Order 13233 (*Further Implementation of the Presidential Records Act*), it remains an area of considerable concern. The re-review of classified information experienced a significant resurgence during the administration of President George W. Bush. The inability to gain access to the President’s Daily Brief (PDB) for investigators was a challenge during the Iran–Contra investigation and continued to be a challenge right up to the work of the 9/11 Commission. Finally, a greater use of professional historians to assist in identifying classified

records of historical value was urged in the *Moynihan Report*, and, while still viewed as an intrusion by agency professionals charged with classifying records, this approach was used with some success by both the Kennedy Assassination Records Review Board and the Nazi War Criminal Records Interagency Working Group.¹¹

Issue 3: Expediting the Declassification of Presidential Records

This portion begins with an overview, familiar to most readers, of the presidential library system and how records were generally treated before the *Presidential Records Act* (P.L. 95-591).

The board next moves to a larger discussion of how NARA reviews and declassifies presidential materials. The issuance of Executive Order 13233 has put presidential records at the front of the library and historical community's advocacy agenda in a way that these materials have not been since perhaps the end of the Nixon administration. Amazingly, the introductory portion of this section completely ignores the dissension sowed by that particular order. The absence of any mention of this may simply be a decision to avoid becoming too political, particularly as the report was delivered to the same president who revised the executive order. This portion of the report concludes by pointing out correctly that the presidential libraries and NARA are constrained and understaffed, making a wholesale revision of the process for review and declassification of this material appropriate.

This last statement leads to the board's first recommendation, that the archivist of the United States, in order to maximize staff and minimize costs, establish a centralized National Declassification Center near Washington where all presidential records that are still-classified and require review would be housed. Once declassified either by the archivist or by virtue of the twenty-five-year rule, the records would then be released to the individual presidential libraries. The same recommendation also proposes that all still-classified presidential records be held at this new location indefinitely. This is not unlike the approach taken by the JFK Assassination Records Review Board through its creation of the *JFK Collection* intended to bring together the disparate resources at one location for review and declassification.¹² Given the pace at which records are produced in the modern presidency, and the multiplicity of formats in which these records appear, bringing these records together in one location seems less like a viable solution than a knot in an otherwise functional (although admittedly not optimally efficient) network of archives, presidential librarians, and professional archivists. Perhaps in response to this proposal

Figure 1. The Fifteen Issues as defined by the PIDB

Issue 1	Understanding What the Declassification System is Accomplishing
Issue 2	Prioritizing the Declassification Review of Historically Significant Information
Issue 3	Expediting the Declassification of Presidential Records
Issue 4	Preserving a Capability Within Agencies to Review Records Less Than 25 Years of Age
Issue 5	Bringing Greater Uniformity, Consistency, and Efficiency to the Declassification Process
Issue 6	Expediting the Declassification Reviews of Multiple Equity Documents
Issue 7	Performing Declassification Reviews Involving Special Media and Electronic Records
Issue 8	Re-Reviews of Previously Disclosed Information
Issue 9	Dealing with Other Exempted Information and the Delays Entailed in Archival Processing
Issue 10	Exercising Discretion for Disclosure in Exceptional Cases
Issue 11	Removing an Impediment to Comprehensive Review
Issue 12	Expanding the Uses and Roles of Historians and Historical Advisory Boards
Issue 13	Clarifying the Status and Treatment of Formerly Restricted Data
Issue 14	The Handling of the President's Daily Brief
Issue 15	Declassification Reviews of Certain Congressional Records

NARA issued a call on March 24, 2009, for ideas on how they might redesign the work of the presidential library system, seeking community input on "alternative models for presidential libraries" that might include expediting declassification.

Realizing that the first recommendation is not likely to bear fruit (after all a similar center was proposed by the Moynihan Commission on reducing government secrecy in 1997) the board follows up with a "if not that, why not this" approach. Thus their third recommendation is that presidential records should be processed in a similar way as are the documents made available for the *Foreign Relations of the United States* volumes. This is a process that makes review and declassification of historically significant material for reproduction in that series a priority for review by all affected agencies. Moving on to their final recommendation, the board suggests that NARA look to augment the staffing in the presidential libraries system in order to move along the processing of classified information. This is certainly something that the library and archival community would like to see. But after years of advocating on behalf of increased funding for NARA, this proposal seems no more likely to happen than Congress appropriating money for NARA to create a new facility with adequate staff to centralize the declassification as proposed in recommendation one.

Issue 8: Re-Reviews of Previously Disclosed Information

An equity issue arises when one agency's document includes classified information from another agency. The question of whom or what agency should have the ability to declassify and make publicly available information that comes from another agency is difficult to balance. The board clearly recognizes the importance of this issue to individual government entities but also realistically questions the value and the message that the federal government sends when it tries to reclassify already released information that is twenty-five years old or older. The board members also wisely point out that, given current staffing and funding challenges at NARA, to require their staff to participate in a review and reclassification project across collections and agencies only delays progress on new declassification efforts. The recommendations in this section of the report recognize the importance of some level of review in order to ensure that other agencies' needs are considered. Still, there is the conundrum of having the lead agency review and recommend on domestic secrecy issues regarding the documents that directly affect that agency's activities. This creates an obvious conflict that a better-staffed, better-funded NARA, with a commitment to declassification as a core function, could avoid.

Another challenge with any re-review is what to do about the content already released and what sanctions, if any, there should be? The PIDB recommendations do address the "criminality" issue. The report strongly recommends that any decisions to re-review and remove from access already declassified and released material include a statement that would absolve researchers of any criminal liability for use of the material. While this is a welcome addition to the discussion it really doesn't change the fact that once information has been properly reviewed and released, trying to pull it back in and control it is next to impossible; attempting to do so is a waste of time, effort and money while doing little to improve national security.¹³ These sorts of re-reviews should be taken only when, as the PIDB writes in the section summary, "there is a clear indication (and subsequent showing) that the benefits to our national security are worth the costs."¹⁴

Issue 12: Expanding the Uses and Roles of Historians and Historical Advisory Boards

This particular section looks at how the few agencies that do employ trained historians to facilitate declassification make use of their staff. The board looks to the U.S. Department of State's use of historians to produce the *Foreign Relations of the*

United States (FRUS) series as a successful model to consider for other agencies holding classified information. In fact, FRUS staff members were invited speakers at the September 9, 2006, public meeting of the board. At that time Edward Keefer, general editor of the FRUS series, expressed his belief that the dire consequences that are often claimed will result from the release of classified information rarely happened. When such a release did generate any interest, at its worst "it created a few days of news."¹⁵ If the model of the FRUS were employed across agencies it would likely be an asset to NARA, which has said repeatedly that it lacks the staffing for such review and publication. One has to wonder why it is then that an effort to create additional historical advisory boards, as proposed by the PIDB, is not more aggressively supported. The specific recommendations that the board offers to put this into action include:

- a call to amend Executive Order 12958 to require the creation of historical advisory boards within departments that have significant classification activities;
- that the executive office require affected agencies to hire the appropriate number of historians to prepare records for release or to create histories of the agency based on records of the agency; and
- that these histories, if that is the approach pursued, should be reviewed like other classified content for release to the public twenty-five years after the last date of the documents included and not twenty-five years from the publication date of the history.

One challenge with this type of approach is determining what will be of historical value to future scholars. While it is not possible to answer this question fully, having professional historians who understand both the content and the trends in historical research could make a real difference in preserving and releasing important documentation.

Issue 14: The Handling of the President's Daily Brief

The PDB or President's Daily Brief is prepared by the intelligence community, delivered by a briefer usually associated with the CIA, and is one of the most protected and highly classified documents in Washington. In fact, for many years most of official Washington, including members of Congress, did not even know that the PDBs existed. While individual, and arguably historically, important PDBs have been released over the years—most recently the infamous August 6, 2001, PDB that described potential terrorist attacks within the United States—

they remain, for the most part, a closely guarded secret.¹⁶ Their absence from the overall historical record prevents journalists, historians, and policy experts from a complete understanding of what a president (and his advisors) knew and when.¹⁷

To deal with this the board offers three simple recommendations:

- the president should clarify if he/she will continue to make a policy statement that all PDBs, past and future, are protected under the broad concept of *executive privilege*;
- the president should direct that all PDBs be retained by the executive office (they are not currently) as presidential records subject to the *Presidential Records Act*; and
- the president should direct that PDBs that were not part of the presidential materials sent to individual presidential libraries be forwarded for review and possible declassification.

While each of these recommendations is well-founded, they are, of all the recommendations put forth by the board, the least likely to be put into place. The PDB remains an important executive prerogative. Declassifying PDBs on any type of regularized schedule would mean, to some extent, giving up a considerable amount of control over foreign policy decision making. Additionally, there may be some truth to the charge that regular declassification of this material could over time change the nature of the content. The compiling agency (CIA) might choose to present the best possible face for the president (or the agency) and his advisors, rather than outline the actual cold and perhaps frightening choices that the president faces. The CIA is so committed to retaining the secure nature of this information that former CIA director George Tenet continued to block access to all PDBs—even those more than twenty-five years old.¹⁸

Concluding Thoughts

In a June 2008 online commentary in the *Chronicle of Higher Education*, historians Martin Sherwin and Lee White responded to the changes wrought by Executive Order 13233:

It is in the nature of the political process of governments that much of what we believe about contemporary decisions will be revealed by historical research to have been incorrect, or at best, partially correct. And I submit that our democracy cannot remain robust without the constant historical auditing of our government's behavior.¹⁹

While responding to a different, although related issue, Sherwin and White's comments accurately reflect the situation overall. Access to information from all branches of the federal government, including judicial information and records, has never been more constricted and the efforts to block access have never been more purposeful than they have these past eight years.

Tom Blanton, director of the National Security Archive at George Washington University, in commenting on the report of the PIDB, cited inadequate funding and lack of political support for NARA as an important factor in limiting access.²⁰ That NARA is in a difficult position politically is an understatement. The lack of support for NARA to perform a critical task that its funding source does not value results—intentionally or otherwise—in fulfilling the goals of an executive office that is more interested in limiting access than ensuring informed oversight or historical accuracy. As has been pointed out by several different authorities in the past eight years, NARA simply lacks the political power to successfully stand up to the executive office.²¹ Stronger laws and better funding as suggested by the PIDB and others would help ensure improved access to declassified documents.²²

Equally telling will be the long-term result of President Bush's memorandum issued January 29, 2008, directing the heads of the relevant agencies to review the December 2007 report of the PIDB and indicate how to proceed in response to the recommendations. These recommendations, due back to President Bush by April 15, 2008, have not yet been disclosed to the research community.²³

One shortcoming of the report is the lack of attention to twenty-first-century alternatives for accessing declassified content. The PIDB *Report* laments at several points in the document that the volume of declassification may still result in the content not being available to the public due to archival processing needs and lack of staff to do this work. However, the board fails to explore already proven alternatives such as mass digitization and the use of social web methodologies for providing subject or topical access. It is hoped that future work by the board will include a more detailed analysis of the implications and possibilities for these types of solutions.

There is little immediate chance of NARA receiving additional monies to provide the necessary support for and access to declassified materials. It is therefore more important than ever to urge that recommendations like those made by the PIDB that call on the affected agencies to perform an initial review and to recommend an enforceable oversight by disinterested professionals in instances where the agencies have failed to perform such a review be embraced and supported by the

library, archival, and historical communities.

The report of the PIDB is comprehensive and, in coming as it did, in an administration that has not valued public access to information, its very publication is a testament to the commitment of the board's members. Overall though, there is little here that is new. Perhaps that might be seen as a good thing and indicative that, after eight years of stifled access, the message from the academic and library community may finally be getting through. On the downside, many of the recommendations echo similar statements from earlier reports that were never implemented. There is so much that remains to be accomplished if we are to secure and to systematize access to the historical record held in classified documents by federal agencies. Still, the recommendations and their justifications are well thought out and clearly presented. If only half of the recommendations made are adopted and implemented then the board can be rightly proud of their effort and the American public will have greater access to the documentation necessary for understanding our history and government policy processes.

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The 2009 GODORT Reception and Awards Ceremony will be held on **Friday** evening, July 10, at the Rooftop Garden at McCormick Place Convention Center. Please join us as we recognize this year's award winners:

- Andrea Severson, LexisNexis (James Bennett Childs Award)
- Daniel Cornwall, Alaska State Library (LexisNexis/Documents to the People Award)
- Eleanor Chase, University of Washington (Bernadine Abbott Hoduski Founders Award)
- Aimee Quinn, University of New Mexico (Catharine J. Reynolds Research Grant)
- Justin Joque, University of Michigan (W. David Rozkuszka Scholarship)

GODORT Program

Gov Docs Kids Group: Learn and Have Fun with Government Resources

Monday, July 13, 2009

10:30 a.m. to 12:30 p.m.

This program will help participants promote government information while engaging K-12 students in learning about history, culture, science, and government. Games, interactive activities, teaching aids, and lesson plans will be highlighted, along with exciting tools to enhance student learning. We will provide librarians with a collection of free government resources to advance their reference skills and aid in collection development decisions. We will focus on resources available at the Gov Doc Kids Group website, which includes primary source materials and links to U.S. government websites for kids.

Speakers: Nan Myers, Wichita State University; Antoinette Satterfield, Kansas State University; Carmen Orth-Alfie, University of Kansas; Tom Adamich, head of metadata services, Muskingum College Library.

A complete listing of GODORT activities at the annual conference is available on the GODORT wiki at tinyurl.com/annual2009.