M E M O R A N D U M

To: David G. Marwell
From: T. Jeremy Gunn
Date: June 3, 1995
Re: Requirements for Holding Closed Meetings in Conformity with the Sunshine Act
File: 3.3.1

The Sunshine Act, 5 U.S.C. 552b, explicitly requires the ARRB to comply with each of the following procedural requirements whenever it wishes to hold a closed meeting:

First, a majority of the Board must be on record as having voted to close the meeting or any portion thereof. The vote of each member must be reported and no proxies are permitted. 552b(d)(1).

Second, within one working day of the vote to close a meeting, the Board must make publicly available a full written explanation of its decision to close the meeting, the vote of each member on the question of closing the meeting, and a list of all persons expected to attend the meeting (or portion thereof) that will be closed. 552b(d)(3).

Third, a notice of all meetings (both closed and open) must be published at least one week prior to the meeting. The notice of a meeting must include the date, time, place, and subject matter of the meeting as well as whether the meeting is to be open or closed. The notice also must include the name and telephone number of the person designated to respond to questions about the meeting. 552b(e)(1).

Fourth, at the conclusion of the closed meeting, the presiding member of the Board must sign a statement setting forth the time, place, and persons present at the closed meeting. 552b(f)(1).

Fifth, at the conclusion of the closed meeting, the General Counsel (or Acting General Counsel) must publicly certify that the meeting may be closed to the public and identify each relevant provision of the Sunshine Act that authorizes closure. 552b(f)(1).

Sixth, there must be a verbatim recording (audio or stenographic) of all closed meetings. (These recordings will become part of the JFK Collection.) 552b(f)(1).

Seventh, the record of the vote to close the meeting, notice of meeting, statement of the presiding Board member, and the certification by the General Counsel (or Acting General Counsel) must be made publicly available. 552b(f)(2).

1. In 1976, Congress enacted the Sunshine Act. It establishes requirements for openess at meetings of "collegial" bodies whose members have been appointed by the President. There are three reasons for our complying:

   -- it is the law
   -- the ARRB, which is in the business of openness, should be above reproach
   -- there are penalties if the law is disregarded

2. The Sunshine Act is not popular with agencies that are bound to its provisions. It is frequently felt that open meetings inhibit free discussion. Nevertheless, it is the law.

3. Under the Sunshine Act, meetings are presumed to be open unless there is a particular exemption. (see 4) "Open" means that the public can attend. The public does not have the right to speak at open meetings. Open meetings are not the same thing as hearings.

4. Meetings can be closed only if the subject matter falls within one of the enumerated exemptions.

   (1) national security
   (6) unwarrented invasion of privacy
   (7) investigatory records compiled for law enforcement purposes
   (9)(B) "be likely to significantly frustrate implementation of a proposed agency action"
   (10) issuance of subpoena or agency's participation in civil action

5. Board cannot conduct "deliberations" while in a quorum. This is the most difficult part of the Act to apply.

6. There must be a rollcall vote to close a meeting (or portion thereof).

7. Verbatim transcript must be made of closed meetings.

8. Regulations must be published.

9. The court may assess againt any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance

10. There must be an annual report.

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