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**United States Senate
Committee on Homeland Security & Governmental Affairs
Subcommittee on Federal Financial Management, Government Information,
Federal Services, and International Security**

**"National Archives Oversight:
Protecting Our Nation's History for Future Generations"**

May 14, 2008

Mr. Chairman, members of the subcommittee, thank you for inviting me to testify today about the National Archives and Records Administration (NARA). My non-governmental organization, the National Security Archive, has extensive experience over the past 22 years with most of the National Archives' system, including hundreds of Freedom of Information Act and declassification review requests at every presidential library from Eisenhower to Clinton, thousands of hours of research time in reading rooms from Simi Valley to College Park, and even a few lawsuits – such as the one against Presidents Reagan, Bush I, and Clinton that forced the White House and the National Archives to begin preserving e-mail electronically instead of throwing away these historic digital records. We are also in court against NARA and the current White House, trying to compel them to recover missing e-mail and put a serious archiving system in place before President Bush goes back to Texas.[1]

My staff and I have also worked in scores of other archives around the world, from Guatemala City to Moscow to Jakarta, and based on all this experience, I can tell you that the National Archives is a world-class institution of which we can be very proud as Americans. I especially want to commend the highly professional and responsive staff of the National Archives, who are consistently courteous, helpful and patient with our and others' often onerous research demands. In addition, the National Archives' leadership, starting with Dr. Weinstein, almost always does the right thing when problems arise, especially when – as in the secret reclassification

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[1] *See* National Security Archive, White House E-mail Chronology,
http://www.gwu.edu/~nsarchiv/news/20080417/chron.htm.

of previously open historical documents – they hear about the issue from our exposé that was reported on the front page of *The New York Times*.[2]

That's the good news. The bad news is that the National Archives today faces two overwhelming challenges – the exponential increase in government-held electronic records, and the geometric increase in currently classified and previously declassified records – with which NARA has neither the resources nor the strategy to cope.

In large part because of decisions that were made more than a decade ago, NARA has fallen so far behind the curve on both challenges that radical measures, and serious intervention by Congress, will be required for NARA even to begin to catch up. The crucial decision on electronic records was NARA's choice in the 1980s and 1990s to defend and even to advocate a print-and-file paper-based preservation strategy for federal agencies. NARA's decision was short-sighted and inefficient because it failed to keep pace with the reality of agencies' changing records practices.

The crucial decision leading to today's declassification crisis was the choice by then-Archivist John Carlin not to seek additional staffing in the mid-1990s to handle the massive declassification effort ordered by President Clinton. Senior NARA staff had recommended that Carlin follow the model of the early 1970s, when President Nixon's executive order on classification provided the rationale for adding hundreds of new positions at the National Archives, creating a whole generation of professionals and leaders at NARA. Instead, Archivist Carlin stood pat, and NARA fell permanently behind on staffing and now needs congressional support to regain lost ground.

Let me give you some markers of today's double crisis:

- From 1995 to 2006, under President Clinton's executive order, maintained in revised form by President Bush, federal agencies declassified more than a billion pages of historically valuable records. Yet according to the Public Interest Declassification Board, more than 400 million of those pages – although declassified – are not likely to see the light of day for decades

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[2] *See* National Security Archive, "ISOO Audit Report Exposes Abuse of Classification System," Apr. 26, 2006, http://www.gwu.edu/~nsarchiv/news/20060426/index.htm.

because NARA does not have the staff or resources to process the files onto the shelves.[3]

- The backlog of declassified but unprocessed records is increasing, according to the PIDB, meaning that NARA is only falling further behind, at the very time that an "avalanche" of electronic records is already on its way.

- New original and derivative classification decisions have reached record levels in the last four years, creating a mountain range of new secrets that will have to be reviewed down the road. Federal spending on classification and information security has increased to more than $8 billion, according to the Information Security Oversight Office (the secret CIA budget for this activity would add perhaps 40% more), while the resources devoted to declassification are miniscule in comparison ($44 million in FY 2006, or less than one-half of one percent).[4]

- The Reagan Library has estimated that with their current level of resources it will take 100 years before all the Reagan White House records will be reviewed for release.[5]

- Our own experience at the Reagan Library has been that, just in the last seven years, those delays have lengthened from an estimated 18 months (as of April 26, 2001) to an estimated 87 months (!), according to the letters the Reagan Library sends to requesters on receipt of a Freedom of Information or Mandatory Review request. While 18 months delay is not unusual in our experience when the records at issue are highly classified, seven years of delay (and counting) effectively means denial.[6]

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[3] "[M]ore 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." Public Interest Declassification Board, *Improving Declassification: A Report to the President*, Dec. 2007, at 28.

[4] *See* OpenTheGovernment.org, *Secrecy Report Card 2007*, Sept. 1, 2007, http://www.openthegovernment.org/otg/SRC2007.pdf.

[5] "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." PIDB, *Improving Declassification*, at 18.

[6] For the Archive's prior testimony on Presidential records, see National Security Archive, "The Presidential Records Act in Crisis: Six Years Since White House Intervened, Five Years of 'Pure Delay,'" March 1, 2007, http://www.gwu.edu/~nsarchiv/news/20070301/index.htm.

- The Remote Archives Capture (RAC) program initiated by the CIA and the presidential libraries in 1997 did assist the process of declassification but added to the unprocessed backlog – at the Ford Library, for example, 97,000 pages have come back electronically from RAC but in the past two years only 19,000 have been processed into the Library's collections, in part because CIA is resisting putting the documents online.[7]

- The Government Accountability Office has found that print-and-file record keeping systems at major federal agencies were not appropriately preserving e-mail for as many as half of the agencies' senior officials. Yet e-mail has become the norm for government business, producing by one estimate as long ago as 1999 some 36 billion messages a year.[8]

- The White House Executive Office of the President got rid of its e-mail archiving system during a technology changeover in 2002, and now has provided multiple, conflicting, and alarming answers to judicial, Congressional and NARA's own inquiries as to how many e-mail are missing from the backup tapes and when even the internal damage assessment will be completed.

- A recent survey of federal agencies by Citizens for Responsibility and Ethics in Washington and OpenTheGovernment.org found not a single agency policy that mandates an electronic record keeping system agency-wide, along with widespread confusion and serious lack of oversight on record keeping obligations.[9]

- New forms of electronic media in addition to e-mail are proliferating within government, such as the secure videoconferencing that hosted almost every significant Bush administration decision process around the war in Iraq – the

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[7] Specific page numbers from NARA email to author, May 5, 2008.

[8] "[F]or about half of the senior officials, e-mail records were not being appropriately identified and preserved in [print-and-file paper-based recordkeeping] systems." Government Accountability Office, *Federal Records: Agencies Face Challenges in Managing E-mail*, GAO-08-699T, Apr. 16, 2006.

[9] "We have not found a single federal agency policy that mandates an electronic record keeping system agency-wide. . . . [There is] widespread confusion and lack of understanding of record keeping obligations [and a] systemic lack of meaningful oversight." Citizens for Responsibility and Ethics in Washington, *Record Chaos: The Deplorable State of Electronic Record Keeping in the Federal Government*, Apr. 16, 2008, http://www.citizensforethics.org/recordchaos.

video equivalent of the Nixon tapes – which will swamp NARA unless agencies take on the burden of creating records that are archive-ready.[10]

- NARA's Electronic Records Archives initiative, while commendable for its vision, is still not a deployed or operable system today; and the $67 million proposed for ERA in the President's latest budget amounts to less than one-tenth of one percent of the total information technology spending by federal agencies ($68 billion in FY 2007 according to the Office of Management and Budget).[11]

The bottom line is that the National Archives and Records Administration is a tiny agency with an enormous mission and overwhelming challenges. Just in budget terms, NARA's entire operation is about equal ($404 million proposed in President Bush's latest budget) to the cost of a single Marine One helicopter ($400 million) in the planned fleet of 28 rotary-wing air-ferries intended to serve the President and senior officials.[12]

But marginal increases in NARA's budget, while helpful, will not be enough to take care of either the electronic records crisis or the classification and declassification backlogs. In testimony last month, for example, senior NARA officials cautioned the House Oversight and Government Reform Committee that the cost of requiring agencies to move to electronic records management "would likely be in the billions of dollars."[13] Yet agencies are already spending billions of dollars on their information security and classification systems, and tens of billions

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[10] Admiral William O. Studeman, retired former director of the National Security Agency and deputy director of CIA, remarked at a March 17, 2008, PIDB hearing that the government ingests tens of gigabytes of digital data every day, that the electronic records challenge was the real-time problem today, that most government national security decisions today are made during secure videoconferences, raising the immediate question of how to preserve, how to use, ultimately how to declassify, and how to make public these essential records. A print-and-file strategy in this context already is bankrupt.

[11] *See* Office of Management and Budget, *Report on Information Technology (IT) Spending for the Federal Government* (2008), http://www.whitehouse.gov/omb/budget/fy2008/sheets/itspending.xls.

[12] Peter Baker, "Cost Nearly Doubles for Marine One Fleet," *Washington Post*, Mar. 17, 2008.

[13] "[T]he costs of managing all Federal electronic communications in electronic records management applications (RMAs) . . . would likely be in the billions of dollars." Testimony Paul M. Wester, Jr. and Gary M. Stern, *Hearing on H.R. 5811, the "Electronic Communications Preservation Act" Before the House Oversight and Government Reform Comm.* (Apr. 23, 2008).

of dollars on their information technology procurement and operations[14] – unfortunately their systems to date offer primarily a kick-the-can-down-the-road approach.

Congress needs to mandate that these two multi-billion-dollar pots of funding specifically address the crises in declassification and in electronic records, in effect making the agencies share NARA's burdens and take on the resulting financial obligations. Unless Congress tells the agencies and NARA to build systems and hire personnel to meet the crises we already see in electronic records and declassification, the taxpayer will simply incur more costs down the road, both from paying for the pound of cure rather than the ounce of prevention, and from the loss to agencies now and in the future in terms of more efficient information flows and better records management for internal business practices as well as long-term preservation and access.

Specifically on electronic records, Congress should order NARA and the agencies to re-engineer agency relationships so they create archive-ready records, not just records that NARA has to re-process down the line. The proposed bill H.R. 5811 would make a good start on this challenge, but we need to go further, changing procurement practices and adding much more oversight and compliance measures. The National Research Council in its 2005 report on the Electronic Records Archives' long-term strategy recommended requiring "all newly acquired agency systems that produce permanent records to do the following: create those records in formats acceptable to NARA, include explicit metadata in their output, and use standardized mechanisms for transferring records to NARA." Archiving considerations have to be a core part of the IT procurement and development process. The Council's report even suggested that NARA should plan for the ERA to become the "off-site backup of agency records" in order to build in archival ingest of records as close as possible to their creation.[15]

This would mean a whole new role for NARA. The National Archives will have to go beyond guidance and regulations to leadership and oversight, and resume its necessary (but lapsed) role as the auditor of agency record systems. The audit

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[14] *See* Office of Management and Budget, *Report on Information Technology (IT) Spending for the Federal Government* (2008), http://www.whitehouse.gov/omb/budget/fy2008/sheets/itspending.xls.

[15] National Research Council *Building an Electronic Records Archive at the National Archives and Records Administration: Recommendations for a Long-Term Strategy* (Robert F. Sproull and Jon Eisenberg, eds.), Committee on Digital Archiving and the National Archives and Records Administration (Washington D.C.: National Academies Press, 2005), pp. 7-8.

NARA performed of CIA record systems back in 2000 has proven extraordinarily useful both for external oversight and for internal reform at that agency. But the CIA audit apparently was the last one actually performed by NARA.

The White House e-mail case shows that the audit role is not one with which NARA is really comfortable. Part of the problem is that NARA reads the Presidential Records Act as precluding any such role for NARA in overseeing the records of an incumbent President, and at the same time NARA has failed to exercise such a role regarding federal records at the White House. Yet any notion of government efficiency would require the White House to follow the same standards on record-keeping that the agencies are required to meet. In the White House e-mail case, NARA did engage with the Office of Administration in trying to develop an e-mail archiving system to replace the ARMS system used by the Clinton administration. NARA warned the White House as early as January 6, 2004, that the Executive Office of the President "was operating at risk by not capturing and storing messages outside the email system."[16] Yet NARA only found out that the White House remained "at risk" from press coverage in January 2006 of findings by the Independent Counsel in the Valerie Plame matter that e-mail from the Vice-President's office was missing. NARA found out the White House had decided against deploying the planned archival system months after the decision was made in fall 2006, and learned the ostensible reasons why a full year later (October 11, 2007).[17]

The day my own organization filed our lawsuit against the EOP over the failure to archive e-mail, NARA's internal memorandum remarked on "almost zero progress" with the White House on the issue, and stated "it is vital that any needed backup restoration project begin as soon as possible, in order that it be completed before the end of the Administration." [18] Such a backup restoration still has not begun. Moreover, backups will not contain e-mail that was written and then deleted in the period between backups, and the latest White House statements

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[16] *See* "Summary of Jan 6, 2004, meeting with EOP re ECRMS at Archives II," *available at* http://www.gwu.edu/~nsarchiv/news/20080417/Summary%20of%20Jan%206,%202004%20meeting%20 with%20EOP.pdf (document released to the Archive under FOIA).

[17] *See* Committee on Oversight and Government Reform, Democratic Committee Staff, *Supplemental Information for Full Committee Hearing on White House E-mail*s, Feb. 26, 2008, at 10-16, *available at* http://oversight.house.gov/documents/20080226103313.pdf.

[18] Memorandum from Gary Stern to Allen Weinstein, "Bush 43 Transition," et. al., Sept. 5, 2007, quoted in Committee on Oversight and Government Reform, Democratic Committee Staff, *Supplemental Information for Full Committee Hearing on White House E-mail*s, at 12.

indicate that no e-mail backup exist with data written during March, April and most of May 2003, at the time of the invasion of Iraq.[19]

To address the massive backlog and the rising mountain range of classified documents, Congress will need to establish what I call a "classification tax" – a designated percentage of what agencies spend on classification and information security ($8.2 billion in FY 2006 plus another presumably 40% or so in classified programs) that has to be invested in declassification. Right now, the percentage is infinitesimal – some $44 million on declassification as against the billions for new and current secrets. If Congress ordered just a 5% allocation, it would produce a ten-fold increase in declassification funding that could make serious progress in addressing the current crisis. Similar to the way that CIA and intelligence community funding (on the rise after 9/11) supported the Remote Archives Capture program as well as the Document Declassification Support System (for handling referrals of documents with multiple agency "equities"), serious declassification funding from the agencies would be sufficient to underwrite the National Declassification Center recommended by the Public Interest Declassification Board, as well as additional reviewing staff at each agency and each Presidential library. Such funding would also allow serious planning for dealing with the current avalanche of classified electronic records, and modifications to the design of the ERA to encompass declassification goals.

Money will not be enough, however, if we just add new "Global War on Terror" rationales to the old Cold War classification standards, and maintain the current situation of too much classified and for too long. In Congressional testimony in 2004, for example, the Defense Department admitted that as much of 50% of classified information was overclassified; and other expert estimates go up to 75% and even 90%.[20] As recommended by the original Moynihan commission in 1997, Congress needs to develop a statutory basis for the classification system. The statute needs to start with the PIDB recommendations described above, but go beyond those declassification-focused actions to the decision to classify in the first place. Secrecy is a two-edged sword, as the retired director of the Information

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[19] *See* National Security Archive, "White House Backups are Incomplete, May Not Contain Some Missing E-mails," May 6, 2008, http://www.gwu.edu/~nsarchiv/news/20080506/index.htm.

[20] *See* National Security Archive, "Archive Director Testifies Before Congressional Hearing on "Overclassification and Pseudo-classification," March 2, 2005, http://www.gwu.edu/~nsarchiv/news/20050302/index.htm.

Security Oversight Office has often remarked. When we keep information out of enemy hands, our controls also keep our allies and our people in the dark. Information asymmetries distort markets, and excessive secrecy distorts government decision-making. Classifiers throughout government have to be required to assess the costs of the secrecy, not just the costs of possible release of the information, before stamping the record. Making that decision far more rigorous, with disincentives for excessive secrecy, is the only hope of ever getting ahead of the curve on classified records and getting out of gridlock.[21] Thus, this committee should consider another hearing on the specific problem of overclassification and classification policy.

For historical records, we also need a statutory approach. Congress has enacted three spectacularly successful special declassification projects in the last 15 years, first the Kennedy Assassination Records Act, then the Nazi War Crimes and the Japanese Imperial War Crimes acts, each of which has brought about the release of millions of records that would otherwise still be secret today at continuing cost to the taxpayer and loss to history and accountability. Key to the success of these efforts were the new and far more rigorous standards Congress adopted in favor of the presumption of release; and given the lack of any damage to national security from the release of these millions of pages, these standards should be applied to all historic records 25 years old and older.

Also key to the process were the review boards that oversaw each of the declassification efforts. A new Historical Records Act should establish such review boards not only for the National Declassification Center, but also for each agency handling classified records, to press for greater openness, to engage internal and external stakeholders such as agency and outside historians, and to set priorities for the review process. The statute should also address the ongoing problem of agencies retaining their historic records beyond the 25 year period, and ensure that the most important record groups – such as presidential records and documentation of high-level agency decision-making – take precedence in the review process. For example, the classified Top Secret files of defense secretaries

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[21] J. William Leonard, "A New Balancing Test: How Excessive Classification Undermines National Security," speech at National FOI Day, March 14, 2008, Washington, D.C., http://www.firstamendmentcenter.org/about.aspx?id=19796.

as far back as Louis Johnson and George Marshall in 1949 and 1951 still have not been declassified.[22]

In conclusion, we should also note two recent and very positive votes of confidence in NARA, one from the President and one from the Congress. Regrettably, only the President's vote seems likely to result in any positive outcome. The White House announced last week that NARA would be the Executive Agent and host of the policy council for the new process of standardizing Controlled Unclassified Information (CUI). NARA's supporters should be pleased with this new role, which could bring much-needed reforms to the current out-of-control CUI environment.

In contrast, however, NARA as well as the White House declined to accept Congress's vote of confidence, embodied in the Freedom of Information Act amendments passed unanimously last year and signed into law by President Bush on December 31, 2007. In that legislation, Congress set up a FOIA "ombuds" office, called the Office of Government Information Services, to serve as a mediator and alternative to litigation between requesters and agencies, and after looking around the government, chose NARA as the agency with the necessary credibility and independence to make the ombuds office work. Not only did President Bush promptly seek to undermine the law by moving the function over to the Justice Department (a direct conflict of interest, since Justice represents the agencies in litigation against requesters), but NARA itself went along with the move. Apparently NARA does not see mediation of FOIA disputes as anything close to its core mission; yet it misses a remarkable opportunity to gain favor and stature both with the public and with Congress by ducking this statutory responsibility.

Thank you again for the opportunity to present this testimony today, and thank you for your attention to these vitally important issues of our national heritage and the future of open government. I welcome your questions.

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[22] For an excellent review of retention and priority-setting issues, among others, see James David, "Two Steps Forward, One Step Back: Mixed Progress Under the Automatic/Systematic Declassification Review Program," *The American Archivist*, Vol. 70 (Fall/Winter 2007), pp. 219-251.

Biography of Thomas Blanton

Thomas Blanton has directed the Archive since 1992 and previously served as the organization's first director of planning and research starting in 1986. He is series editor of the Archive's Web, CD-ROM, print and microform documentary publications totaling more than 500,000 pages; his books include *White House E-Mail: The Top Secret Computer Messages the Reagan-Bush White House Tried to Destroy* (New Press, 1995) and, as co-author, *The Chronology* (Warner Books, 1987) on the Iran-contra affair, *Litigation Under the Federal Open Government Laws* (ACLU, 1993), and *Atomic Audit: The Costs and Consequences of U.S. Nuclear Weapons Since 1940* (Brookings, 1998). His articles have appeared in *The International Herald-Tribune, The New York Times*, *The Washington Post*, *Los Angeles Times*, *The Wall Street Journal*, *The Boston Globe*, and many other publications. He is a founding editorial board member of *freedominfo.org*, the virtual network of international freedom of information advocates, among many other professional activities. He is a graduate of Harvard College.