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S. 1801—PUBLIC INTEREST DECLASSIFICATION ACT

HEARING

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

JULY 26, 2000

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S. 1801—PUBLIC INTEREST DECLASSIFICATION ACT

WEDNESDAY, JULY 26, 2000

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Fred Thompson, Chairman of the Committee, presiding.

Present: Senators Thompson and Lieberman.

OPENING STATEMENT OF CHAIRMAN THOMPSON

Chairman THOMPSON. Let's come to order, please. I think Senator Lieberman will join us shortly, but since we have votes and Congressman Goss has commitments, I think we should probably get started.

Today, the Governmental Affairs Committee is holding a hearing on S. 1801—the Public Interest Declassification Act of 1999. This bill is only the latest in a series of legislative efforts in this Committee growing out of the 1997 report of the Commission on Protecting and Reducing Government Secrecy, which made very clear that the Federal Government classifies too much information too easily and for too long.

Like so many areas of national security law, information classification is a delicate balancing act. It is vital, of course, that we protect information if its release would threaten our national security. Being too timid about classification or declassifying recklessly can be a terrible mistake. At the same time, however, if the government classifies too much information, the system begins to break down and everyone loses.

Overclassification deprives us of the intellectual synergies and public accountability that can come from sharing information. It can also lead people to stop taking security restrictions as seriously as they deserve to be taken. To borrow a phrase from Supreme Court Justice Potter Stewart's opinion in the *Pentagon Papers* case, if everything is secret then nothing is really secret.

Furthermore, even when information is not appropriate for public disclosure, overclassification within the government can deprive officials of information they need to know by restricting access to an unreasonably small number of persons.

These debates are important because our classification system faces a huge and growing challenge. Today, our security agencies are subject to an executive order to review for declassification everything over 25 years old. This program is only just beginning to

bring our government's overworked declassifiers into the age of ubiquitous photocopiers, computer databases, and desktop word-processing, and the resulting explosion of classified records that these technologies entail. What happens when they reach the age of E-mail, blast faxes, and the Internet? The Commission's report concluded that our classification system has become unreasonably large and complex.

As Senator Moynihan has previously pointed out to this Committee, secrecy is really a form of government regulation. In other words, it has its place, but without careful oversight, it will do what bureaucracies everywhere do if you leave them to their own devices: Expand themselves beyond the bounds of reason.

As a result, Congress has tried twice in recent years to enact reforms of the classification bureaucracy. The first of these was S. 712, the Government Secrecy Reform Act, which was introduced by Senators Moynihan and Helms. That bill, which was modified and reported out of this Committee, was an ambitious effort to codify many of the recommendations of the Commission.

While Congress has long regulated the classification of nuclear weapons-related data through the Atomic Energy Act, the classification of other national security information has been left entirely to Executive Branch discretion. S. 712 aimed to end this monopoly by establishing for the first time a statutory framework for the classification process. Although we had been working closely with the White House in developing our approach to S. 712, this effort collapsed when sweeping administration objections materialized only after the bill had left our Committee. A successor bill, S. 22, also languished.

The bill we are considering today, S. 1801—the Public Interest Declassification Act of 1999, is the latest attempt to help reform our secrecy bureaucracy. It would establish a Public Interest Declassification Board to advise the President on declassification policy and upon the identification and declassification of records of "extraordinary public interest."

As I indicated, our security agencies face a tremendous burden with regard to declassification. Having for years classified information with great abandon, the government is struggling to deal with a huge number of requests for declassification. Today, in addition to the 25-year review, our security agencies must carry a growing burden on the account of the proliferation of so-called "special searches" requested by the President and by Congress.

This search process is time-consuming and expensive, and devours resources that otherwise might be spent on more systematic declassification efforts or on fulfilling basic missions, such as intelligence collection and analysis. So, we seem to be having trouble getting it right. For years, we classified too much for too long. Now we are straining our system to declassify old records as rapidly as possible, even though we still show no sign of slowing the rate at which classified information is created.

Some worry that we are eating into mission functions by devoting increasing resources to mandatory declassification programs. Moreover, in our zeal to move mountains of paper out the door, we may also be releasing information that should properly remain secret. According to Energy Secretary Bill Richardson, for example,

nuclear weapons-related information has been accidentally released as a part of bulk declassification programs during the Clinton Administration.

So, it is a question of striking the right balance, of finding a way to release needlessly classified information without preventing our security agencies from accomplishing their missions or letting sensitive information escape. The question for us today is to what degree will setting up the Public Interest Declassification Board contribute toward achieving that balance?

We have a fine group of witnesses today, beginning with the author of the bill and its most prominent supporter in the House of Representatives. I look forward to hearing their views.

Senator Lieberman.

OPENING STATEMENT OF SENATOR LIEBERMAN

Senator LIEBERMAN. Thanks, Mr. Chairman. Sorry to be a little late. I just ended a markup in another committee, but I am glad I made it here in time to thank you for calling this hearing on a very important, complicated and timely subject, which is, of course, how our government classifies and declassifies information. The question really speaks to the essence of our democracy, the citizens' relationship to the government, the accountability of those in power to the citizenry.

Of course, it is complicated because we are trying to balance the public's right to know with the government's concern about information it has which may genuinely be secret in the sense—at one point, at least—that its disclosure will adversely affect the national interest, particularly the national security interest.

The question before us relates to the expectations, also, that government can reasonably set for itself. What volume and type of information is it possible to keep secret? Let alone the earlier question of what kind of information is it appropriate to keep secret and for how long? What kind of apparatus do we need to maintain to do so, and at what cost? What cost is appropriate or are we willing to assume? Of course, the cost of keeping information secret has got to be measured in more than financial terms.

One of the costs is the loss to our historical record, to our collective knowledge as a people. So, it seems to me that an important goal of declassification is to enable us to revisit our history with the benefit of new information, to throw more light on past events that have been cloaked in secrecy, with the aim of helping us more wisely carry out our present responsibilities and better prepare us for the future.

It seems to me that it is very sensible then, that as we rethink all sorts of government regulation and public access, which is much in the air here in the Capitol today, that we come back to these traditional questions of governmental secrecy and declassification guidelines. Hopefully, those guidelines will be rational and systematic. They will place authority and accountability where appropriate. They will judiciously balance public access with authentic secrecy requirements, and they will be efficient and cost-effective.

The arguments for the least possible secrecy in government, consistent with our security, are, to me, very powerful; not least among them is the enabling effect upon Congress, to help us exe-

cute our rightful role in the oversight of government activities, including national security policy formulation and execution. But no less important, as I mentioned earlier, is the public's right to know and the enrichment of informed public disclosure on issues of vital importance to the health and future of our country. The community of scholars that will sift through appropriately-declassified public records will make a contribution to the public welfare that goes well beyond academia.

Today, our witnesses are extraordinarily able to contribute to this dialogue; and, particularly, they will be discussing the merits of the Public Interest Declassification Act of 1999, which Senator Moynihan has introduced in the Senate and Representative Goss has introduced in the house.

We are truly honored and privileged to have these two colleagues with us. As Senator Moynihan nears the end of his time in the Senate, I find myself suffering from what psychiatrists might call separation anxiety. Since I came to this Senate, if I may be personal for a moment, the Talmud instructs us, when we come to a new place, to find ourselves a mentor, a teacher. And, not by his choice, but mine, he became my teacher. I must say that though I am truly privileged to serve with an extraordinary group of people here in the Senate, that there is no colleague that I have learned more from than Pat Moynihan, and I appreciate that very much, including on this subject.

I hope you will not think that I have gone too far if I say this, but if I do not say it, it will always be in my mind. I was thinking today, coming in, because of the extraordinary range of Senator Moynihan's experience in government over the decades, in various executive and legislative activities—ambassador, Senator—who in American history could I go back to and try to find comparison. Probably it is because I have been reading too much lately in the early part of our history, but I go back to John Quincy Adams and maybe Jefferson. So, I think I could make a reasonable argument for those comparisons. Anyway, I look forward to his testimony on this matter, in which he is uniquely prepared, has served as chair of the Commission on Protecting and Reducing Government Secrecy which, in 1997, unanimously delivered an important set of recommendations on reforming our Nation's system for declassifying and classifying information.

Also, Congressman Goss is a very respected member of the House of Representatives, an authority on intelligence matters, having served for 10 years himself as a clandestine services officer at the CIA, chair of the House Intelligence Committee; and I must add—it may seem parochial here, too, but I am being personal this morning, a native of Waterbury, Connecticut and a graduate of Yale University. How much better prepared could one be to assume the large public responsibilities that he has taken on with such distinction?

So, I look forward to the testimony today and I thank you, Mr. Chairman, for calling this hearing. I hope that we can find a way to move this bill and pass it before this session of Congress ends.

Thank you very much.

Chairman THOMPSON. Thank you very much. I appreciate your comments. I think all of our colleagues share your opinion with re-

gard to Senator Moynihan, and certainly we are delighted to have Representative Goss also here today, with his wide expertise.

Who wants to go first?

Senator MOYNIHAN. Mr. Chairman, as we are going to have a vote, perhaps it could be that our colleague should go first so he can get back to his chores on the other side.

Chairman THOMPSON. That would be fine.

TESTIMONY OF HON. PORTER J. GOSS,[1] A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. GOSS. Thank you very much, Chairman Thompson and Senator Lieberman. Thank you very much for the welcome invitation. Senator Moynihan, thank you for the courtesy of accommodating our schedule, as well as yours, I hope.

Mr. Chairman and Members of the Committee, I am pleased to testify before the Committee today in strong support of S. 1801, the Public Interest Declassification Act of 1999. That, of course, is why we are here. Chairman Thompson, you have described, I think, very well the problems that we confront, that we are trying to remedy. S. 1801 is a remedy. I think it is a good remedy. It comes out of the cauldron after much heat and much consideration, and I think that we need to get on with it. I, for my side, hope that we are able to move it in the House, as well, and that is my intent.

Speaking to the bill for a moment and the problem a little bit—and I have submitted a full statement, which I would ask be included in the record, and I would try and borrow from it.

Chairman THOMPSON. It will be made a part of the record.

Mr. GOSS. Thank you.

There is obviously a great deal of history on the shelves out at the headquarters of the Central Intelligence Agency. Some of it is valiant history, some of it is work-a-day history, and some of it is just plain embarrassing. All of it is American history, however. Much of what is on the shelves at Langley remains sensitive and properly secured in vaults.

In this bill, we in no way diminish the right and the obligation of the President of the United States and the Director of the Central Intelligence Agency to protect sources and methods. I, obviously, take no issue with the bona fide harm that may befall our country and those who help us overseas if we get it wrong in matters of national security. This is serious business.

But much of what is on the shelves at Langley should be reviewed and considered for declassification, because, as the Chairman has pointed out, we tend to overclassify, and that is another side of the problem we need to address down the road, as well. But the systematic declassification of such documents over 25 years old is, in fact, ongoing, as we know. The type of declassification which is done under the executive order is the most thorough and archivally valid method by which can ensure that, historically, significant documents can be systematically shared with historians and, more importantly, with the American public.

But we can only do that if we get the job done, and the size of the job is depicted somewhat in some of the displays we are going

[1] The prepared statement of Mr. Goss appears in the Appendix on page 29.

to see. The more we are diverted from that job by other demands on the system, obviously, the less well we do it. This bill seeks to create an orderly way to handle those diversions and the very big load that has to be processed.

So, I guess, in a very real sense, the purpose of the bill is to bring some order to some chaos, because it needs to be done. At present, however, we have no system by which Congress, the Executive Branch, and the public can require and expedite the review for declassification, called special searches, which I think we are all familiar with, for records of extraordinary political or public interest. Of course, extraordinary public interest is a term of art in this bill.

The explosion in special-search requests from the Congress, the Executive Branch and the American public since 1993 has not been cost-free. Since becoming Chairman of the House Permanent Select Committee on Intelligence, I have become increasingly concerned about the surge in special declassification requests and the unanticipated costs associated with those requests, because, indeed, based on testimony we have had from the community, they mount up and they are sums that could be used for other things, as well, obviously.

In August 1999, I wrote DCI Tenet, seeking information on the numerous special searches conducted since 1993. In its October 18, 1990 reply to my inquiry, the CIA noted, "Special searches are a growth industry and compete with the mandates of many existing information review-and-release programs." Simply stated, each resource directed to a new special search reduces the resources previously dedicated to an existing program. Some specific efforts have been deferred in their entirety; examples include a number of historical reviews previous directors scheduled for action, other efforts, such as Freedom of Information, FOIA, requests suffer reduced productivity. That, of course, is the public we work for and serve.

In some cases, however, Congress, policymakers, the Executive Branch, and the public cannot and should not wait for the painstaking declassification of 25-year-old records. Congress needs information for its lawmaking. Policymakers need information for their decisionmaking, as we know, and the public needs information to ensure that its government is accountable and staying on course. That is doubly true when we are talking about oversight and intelligence matters, because that is a great special trust that the U.S. Congress has bicamerally, to make sure that our intelligence activities stay entirely lawful and within bounds.

There are several examples in my written testimony which, in the interests of time, I will pass over, of the problems with special requests. I will conclude by saying this, the Public Interest Declassification Act of 1999 before us establishes a structure by which special searches will be done once and done right. Declassification needs to be conducted in an orderly, systematic and appropriately prioritized and funded program. Declassification should not be subject to an arbitrary and chaotic political process.

What this bill does is to provide a means by which we can get important historical information as efficiently as possible to the American people. In a perfect world, we would overhaul the entire classification system, and I think that needs to be done. I believe

that we do classify too much material, because it is the path of least resistance, and I know that from experience. If I get a piece of paper on my table and I am not sure what to do with it, I put a confidential stamp on it and put it in the confidential box, and then it goes in a process all its own. Then I will not have to worry about whether I released something that was classified that I should not have. So, the incentive is to do the wrong thing, and that is something we have got to get at.

But to do this, at this point, is going to be a little bit like trying to have the whole meal in one bite. We have got to do it one digestible bite at a time. We found that out in previous efforts. S. 1801, I think, is a very important bite. The Public Interest Declassification Act of 1999 seeks to provide Congress, policymakers, the Executive Branch, and the American public with more of the history on the shelves at Langley, and, in so doing, the bill would also give us more confidence that what remains on those shelves is the stuff that truly needs to be protected.

I very much appreciate your attention to my remarks, and I look forward to working to bring about the passage of this first step toward a more efficient and more orderly declassification system that will bring about greater accountability and transparency by going to the device of this Public Interest Declassification Board, and the legislation speaks very clearly for itself, I think, as to what is at stake.

Before I finish, I simply want to pay my very deep respects to my colleague from New York, who I have the greatest admiration for. I think we are allowed mentors in the House, too; and I think we are allowed to trespass slightly. I would say that the energy, the experience, the erudition and, of course, the wisdom that I hope some of which has rubbed off on me in the process of this undertaking, coming from Senator Moynihan, is well understood by his colleagues and those of us in the House who have the privilege to work with him, as well. I thank him very much for his courtesies and help.

Mr. Chairman, I would be happy to answer any questions.

Chairman THOMPSON. Thank you very much.

We have, I think, about 10 minutes are left on the votes. If we might, I suggest we just pose a question or two to Congressman Goss, and then we three Senators come back. Is that satisfactory?

Senator MOYNIHAN. Sure.

Chairman THOMPSON. Congressman, just basically and quickly, could you state what you perceive to be the primary benefit of establishing this Declassification Board? Obviously, many people would like to go much further, and give the board much more authority. Some people say that the board might even create additional burdens beyond the ones we have now. How do you see this board operating, to help strike this balance that we have been talking about?

Mr. GOSS. Simply, I think it will bring order by prioritizing requests. I expect that this is going to be a board of people who know what they are about. That is very much the intent—requirements and all of the details that goes in there, how we get this board. I think it is very important. I think once we have done that, we have created, in effect, a filter that is going to work to process these re-

quests. There are, obviously, huge redundancies, and some of the examples I did not mention in my testimony; but it is in my written testimony.

I can give you examples of special access requests that members of Congress have piled on top of each other when a subject of what I will call headline interest has come across the scope on the evening news. I can think of one case where we had nine special requests. Well, obviously, the information is there and everybody may have a different approach to it. But we did ask one board to sort those out and to focus on how important that really is relative to all of the other things that the process is doing in declassification, because we have much more to do than we have capability to do at this time.

Chairman THOMPSON. Is there reason to believe that the Executive Branch or Congress would honor that analysis by the board?

Mr. GOSS. I would believe so. I think we have the ground rules built in here. We have, basically, a scenario worked out in this bill that appears to me to be very practical; and I think that the board will have, certainly, accountability. I think it will have the opportunity, if it feels it has been wronged or its decisions have been wronged, to bring that to the attention of higher authorities and, certainly, to the public. So, I feel the accountability piece is very well answered.

Chairman THOMPSON. Thank you very much. Senator Lieberman.

Senator LIEBERMAN. Thanks, Mr. Chairman. Representative Goss, based on your own work as an intelligence officer and your work as the chair of the House committee—and I know this is a big question—but would you say that we are classifying too many documents today?

Mr. GOSS. Yes.

Senator LIEBERMAN. That was a shockingly direct answer, and I appreciate it.

Mr. GOSS. Well, I thought that was a very simple question. [Laughter.]

Senator LIEBERMAN. It is. The second question, on documents of 25 years or older, do you think just inherently or automatically we ought to be declassifying all of them or almost all of them?

Mr. GOSS. No.

Senator LIEBERMAN. No?

Mr. GOSS. The reason is very simple; 25 years is an arbitrary number. I can tell you right now that, in my experience, people I was working with who were still active more than 25 years ago could be seriously embarrassed or, perhaps, put in danger if certain documents were improperly declassified. It would be possible, perhaps, to publish or put out or make available to the public a heavily-redacted document; but it would be a meaningless document. I think 25 years is an arbitrary number and I think it is a guideline and should not be slavishly adhered to.

Senator LIEBERMAN. But you think that the commission that would be created under the legislative proposal would be capable of creating some guidelines that would allow us more efficiently and cost effectively to sift our way through documents.

Mr. GOSS. I really do. That, as far as I am concerned, is the purpose of this. We could leave the system the way it is, and every-

body will be unhappy with it, because it is a push-and-shove. It is who has the sharper elbows to get in. If somebody has more clout or a chairmanship that is a higher priority, and that is the special request, that is probably the one that will end at the top until maybe the National Security Adviser comes in and says, "I need this now."

It is not a good system. Now, nobody is taking away prerogatives, but everybody is trying to organize them in a more sensible way. The other option is to throw millions more dollars at this thing and hire a whole bunch more people and try and declassify. We have already done that. We are spending a large part of our resources on this. It seems foolish that we are out there spending money on paper trails when there are so many other needs going unmet. But history is an important part of this, and we need to spend money on that to a reasonable degree.

Senator LIEBERMAN. Thank you. That is very helpful testimony. Thank you for coming over.

Chairman THOMPSON. Thank you very much, Congressmen Goss. We will be in recess to give us an opportunity to vote, and we will hurry right back.

Mr. GOSS. Thank you, Mr. Chairman.

[Recess.]

Chairman THOMPSON. Senator Moynihan, perhaps we should get started again.

Senator MOYNIHAN. Well, thank you, Mr. Chairman. As you know, there is a second panel that awaits you, and I do not think I should delay them.

Chairman THOMPSON. All right. If you would then proceed, please.

TESTIMONY OF HON. DANIEL PATRICK MOYNIHAN,[1] A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Sir, I have only a few things to add to the excellent statement from Chairman Goss, who is determined to see this legislation through. To give an example of what bedevils the system, one at the trivial end and the other at the very serious end, about 3 or 4 years ago, I received a letter from a professor at a midwestern university who was writing a history of the Librarian of Congress.

She said she had reason to think that President Ford had once offered me this position, but that the matter was classified in the Ford Library. They had some material, but they needed my permission. Well, yes, and what was classified, sir, I was an ambassador to India. On my way back, I was going to stop in what was then Peking and stay with our representative, George Bush, and Mrs. Bush. Then I was going to stop at Pearl Harbor and work out some things, make my way back to the United States.

So I cabled the White House, the Director of Personnel, and said, "These are my travel plans, and I will be in the States on such-and-such a date, and I will call you." Well, that was stamped secret. I can see that it is perfectly sensible to keep people's movements in strange parts of the world secret while they are moving.

[1] The prepared statement of Senator Moynihan appears in the Appendix on page 34.

But, 20 years later, it is not a secret. It is well-known that I made it back, and we had to have a classified cable system, which this matter was put on the cable. In the Ford Library, this cable was sent to the Department of State, a classified officer received it, looked at it, checked it out and declassified it.

Now, please, that is what, of those 612 million pages, about 600 million are of that kind of information. Most of these were sensibly classified, but they have a very short time-life, half-life. In truth, about 12 million should still be classified. I mean, there are people you know who have been working with you for years in other countries, and they live longer than you might think.

In our original proposal from the commission, which was incorporated in S. 712—you were very generous in that regard—we had an idea that seemed to us central, which was that the person who classified a document would put his or her name on it, and, at that point, say how long it was to remain classified, a judgment that could be changed later on, but you would know.

Now, it is completely anonymous and it never stops. On the other end of the serious spectrum, you know about our work on the Venona decryptions. Incidentally, sir, this is the largest revelation we have ever had about the Soviet espionage during and after World War II. I mean, it is just extraordinary to see it. It was requested by the Director of the National Security Agency and by the Director of Central Intelligence. The whole declassification took 19 days. When you want to do it, you do it. When it does not happen, it has got somebody that does not want it to happen—19 days for this.

In the aftermath of—and this was done at the request of John Deutch and was very profoundly influential on our commission study—in the aftermath of that, I found myself wondering how could it be that President Truman seemed not to know of this? By 1946, the Army security agent broke the first of the Venona decryptions. They had different code names. Bride was an earlier one. It was just, I mean, knuckle-whitening work. You did it with pencil and paper. You were working on one-time pads.

I was in the Navy half-a-century or more ago, and had the one-time pads for our ship. You cannot break them. But the Soviets got overconfident or overworked, and they began using some of them twice, and an absolutely extraordinary man named Meredith Gardner, who lives out on Connecticut Avenue—his mind is as clear as Easter bells—he was over in Arlington Hall. On December 10, 1946, he broke the first cable. They are the names of all the physicists at Los Alamos.

Now, standing over him, sir, providing him with sharpened pencils and cups of coffee and so forth was a ciphers clerk and Army corporal, a KGB spy. From the instant we broke the first cable, the KGB knew. Then came the time when, Kim Philby knew of this material. We shared it with the British; and, of course, he shared it with the KGB, then he defected. So, then we seriously knew that the Soviets knew.

So, we were in a situation where we know that they know, and they know that we know they know. The only person who did not know, sir, was the President of the United States. As best we can tell—you cannot prove beyond a doubt—but we have documents in

which the orders come from the newly-created Chairman of the Joint Chiefs of Staff, Omar Bradley, that only he would tell the White House about this matter, and nobody else was to. The FBI was not to. CIA was not. He would.

This was not political. It was just organizational. He was friends with Truman. They were both boys from Missouri, in the Army. After all, Roosevelt was always ordering up new battleships, and Truman was OK, but, this was Army property. I mean, that is just the structural mode that produces this morass, and it can have huge consequences.

Some years later, I was an aide to Averell Harriman, who had been very much involved in all of those things, and I know for—I mean, I cannot say I know for a fact—but he had no idea we knew any of these things. If that is the case then, what is the case now? You want to make it a more open system so that the people in government get the information they need, not just the public. That would be my point.

As you know, we had a much stronger bill last time. You reported it out, and suddenly the administration, which had been part of our commission's work, turned against it. That is to be predicted. It will not change unless we change it. Your point was very well made. Apart from atomic energy information, all of the declassification system is based on executive order. I have talked to some of the people in the early days, and the secretaries just had different stamps in their drawer. They would look at something and they would say, "Well, it sounds secret to me," or "It is top secret." There was never much real thoughtful statement of how you decide which and so forth. There is not today.

I think the commission that we are proposing, qualified persons, cleared, will be the first effort by Congress to say, "Get yourselves together and stop adding too much to the system, and somehow work at declassification." Realistically, you have a 50-year problem here, and I do not know whether we ought to do anything about it; but, certainly, we can start slowing down the accumulation.

That, sir, would be my judgment, and I would be happy to answer any questions.

Chairman THOMPSON. Well, thank you very much.

I wish we could take a good part of the rest of the day and just listen to your rendition of history with regard to these matters. I found it very interesting and enlightening. In listening to your accounting of the situation with regard to the Chairman of the Joint Chiefs of Staff and the President, I am wondering the extent to which we have a problem that is based on regulation and official practice, on the one hand, or whether it is one just based on human nature, or perhaps bureaucratic human nature.

Surely there was some other reason why President Truman was not given this information, I would think. Surely there are reasons other than just bureaucratic quagmire as to why these things are treated the way they are. Of course, I know you do not claim that this legislation is the cure-all for such problems—but you do feel that it is a step in the right direction, as I do.

But I am wondering whether or not you agree with the assessment that a lot of these problems just have to do with the way people are in government, perhaps, and the need for better leadership.

Until we have someone from the top really cracking the whip on these things, are we going to do much good? How you envision this legislation will begin to push us in the right direction? Could you elaborate on that?

Senator MOYNIHAN. Well, nothing very cheerful. We do have some social science, if you do not mind, on the subject. Max Weber, who was one of the founders of sociology, German, turn-of-the-century, his study was bureaucracy, which was something new. They did not have that in the old days. You had uncles and cousins and friends. They did not have examinations, and so forth. He said right away that secrecy is the primary weapon of the bureaucracy.

They keep information from the parliament and they will keep it from the executive. That is their strength. The pattern goes on. The fact is that the Truman Library, sir, has no trace of any of this information, and they had all the White House papers. People like David McCullough, who wrote that fine biography, never heard of Venona. I called him up—Venona—huh? That should not be decisive, because that name came along a little bit later. But Bride was one of the other names, and they have none of that, either.

With the Soviet situation, we did wrap up that whole Soviet apparatus by about 1948, but it was the nature of the activities that you could not go to court with it because you would have to tell how you knew. But Mr. Weisband was convicted of traffic violations or something; I mean, never really—got him out of the Army, as it were. But the government had reason to be satisfied that they were OK; that the Soviet system really dates from the 1930's, and it was disappearing fast, as, indeed, it did in Britain, too. France, I am not so sure.

So, the general may not have felt that there was any need to give it to the White House, because it was all done. And he would be pretty sure, if he gave it to the White House, that somebody in the White House would give it to Drew Pearson, and that is part of our life, too. But I would have to say sir, and I will close, do not expect a President to get interested in this. Presidents live day-to-day. They have a short tenure. Structural issues of government just do not absorb them. They give that to the Vice President, and the Vice President does not have much luck getting it done.

That is not very helpful, but I think a group of informed persons, working with ISOO, our Information Security Oversight Office, has done a good job. We have the wherewithal. I think this legislation would very much help, and I thank you for the opportunity and your courtesy.

Chairman THOMPSON. Well, thank you very much. I mean, you obviously set forth a problem, and I am sure that there are very few members of Congress that really fully appreciate the problem, much less the American public. Thank goodness we have some people that pay attention to these kinds of details and follow those things that are happening which, as you point out, have consequences. One of the consequences, by the way, is that all of these searches are eating into mission function for some of these agencies. They are spending time doing this instead of doing something else.

So, you have the overclassification to start with, which means that you have more documents to deal with than you should have.

Then you have the regular 25-year process, with a lot of resources devoted to that, and then you have the special orders on top of that. Basically, there is no one person or no one entity with any oversight or any ideas as to how to coordinate all of that. Now we are becoming immersed in paper, and this is just the tip of the iceberg, I suppose. Because of modern technology, it is going to get worse, instead of a lot better.

Senator MOYNIHAN. Yes.

Chairman THOMPSON. One of the criticisms that has been raised is that perhaps, under this bill, the proposed board would be able to make recommendations to the President to declassify records in response to the interest of the public in a national security matter. Does this mean that the board itself could end up becoming the source of additional special search requests?

Senator MOYNIHAN. Well, I would hope that legislative history would make it clear that we do not intend that. That is one of the problems we are trying to deal with, and this board has no power of its own to declassify anything. When you say they will recommend it to the President, what you mean is they will recommend it to the National Security Adviser. Every so often, some things may come along which should be opened up. Sir, put it this way, more is at issue here than the efficiency of our bureaus and agencies.

A majority of American people, the American public, think that the CIA was involved in the assassination of John F. Kennedy, and that was before that movie which showed it happening. I was in the White House in that Southwest Room, just down the hall from the Oval Office, with about eight people when the word came the President was dead. Pretty dicey moment. Half the Cabinet was in a plane crossing the Pacific on the way to a Cabinet meeting with the Japanese; the President and Vice President in Dallas.

In the afternoon, we picked up on the news that the Dallas police had arrested a man who was known to be involved with Fair Play for Cuba. I met the Cabinet plane that arrived. They just turned around and came back to Andrews that evening, and I stood there at the bottom of the ramp, saying, "We have got to get hold of this man. He will not get out of that jailhouse alive. The FBI has to go in there or the Secret Service and get him; and if we do not get him, what will we have? A conspiracy theory we will live with forever—I mean, for ages."

Then he was shot—Oswald. Then the President appointed the Warren Commission. I went around, seeing people on the Warren Commission. I had with me a just-republished volume, about 5 years earlier, of the 1880's, which demonstrated that the Jesuits had been behind the assassination of Lincoln. A century gone by, it was still in circulation. I said, "Do you want more of this?"

We do not. But the Warren Commission kept its papers classified. You could start weeping at this. It matters that people do not trust government. I do not have to tell that to you, sir. Sorry. I do not want to get carried away. We have some important witnesses to hear.

Chairman THOMPSON. Well, what you are saying, though, is very, very important. Thank goodness you have other outlets and forums other than this to speak about this. I know you will continue to,

and I hope that you will, because what you have to say on this subject, as well as many others, is something the American people need to hear. So, thank you so much for your service. Thank you for this, and thank you for being here today with us.

Senator MOYNIHAN. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

I would like to recognize our second panel of expert witnesses. Steven Garfinkel heads the Information Security Oversight Office at the National Archives. Steven Aftergood is the Director of the Project on Government Secrecy at the Federation of American Scientists. Dr. Warren Kimball is the Robert Treat Professor of American History at Rutgers University and the Former Chairman of the Foreign Relations of the United States document series. James Woolsey—and I do not believe Mr. Woolsey is here yet—is the Former Director of the CIA.

Gentlemen, thank you very much for joining us here today. Please proceed to make any opening comments that you would care to make.

Mr. Garfinkel.

TESTIMONY OF STEVEN GARFINKEL,[1] DIRECTOR, INFORMATION SECURITY OVERSIGHT OFFICE, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Mr. GARFINKEL. Thank you, Mr. Chairman. I am very pleased to appear before you today to express strong support for the enactment of the Public Interest Declassification Act of 1999, as that legislation has been modified to meet the concerns of the administration. I speak on behalf of the administration, and from my perspective as Director of the Information Security Oversight Office.

My support arises from my belief that the establishment of the Public Interest Declassification Board could not come at a more propitious time. Under the policies of Executive Order 12958, issued in 1995, the agencies of the Executive Branch, to their great credit, have declassified many hundreds of millions of pages of classified information.

I call to your attention the chart that is attached to my statement,[2] and now posted as an exhibit, which illustrates the enormous progress we have made to date and the challenges that remain. To many interested observers, this progress in classification, while laudatory, is only the beginning of what needs to be done to make available to the American people those heretofore-secret archives of governmental activity.

To other observers, declassification has proceeded at too rapid a pace, outstripping our ability to be certain that we are not opening up information that needs to remain classified in order to protect our national interests, and at a cost that is too expensive to maintain on an annual basis. The establishment of the board offers the opportunity, at a modest cost, for a panel of experts to provide its immediate and continuing evaluation of these policies and their implementation.

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[1] The prepared statement of Mr. Garfinkel appears in the Appendix on page 60.

[2] The chart referred to submitted by Mr. Garfinkel appears in the Appendix on page 66

The timing could not be more critical. In January 2001, a new President will take office. Because the security classification system has historically been based upon executive order, the new President will very quickly receive conflicting advice about what should be done with respect to the policies of Executive Order 12958. The existence of this board of experts suggests that any action that the President ultimately takes will benefit from a reasoned and reasonable analysis of the myriad options that will be urged upon our new President.

The creation of the board portends another positive development, a more objective analysis of special declassification projects before they are enacted. While each of these programs may be argued to be in the public interest, each also has a negative impact. Most significantly, the diversion of tremendous resources away from programs like systematic declassification and Freedom of Information actions.

I am not suggesting that all special declassification programs should be avoided. What we should try to avoid, however, are situations in which the interests of the few take precedence over the interests of the many. The board will be particularly well-suited to provide its expertise on these matters.

The board should also contribute significantly to classification management and policy. We remain in a transitional period between the Cold War era and the post-Cold War era as far as our national security policies go. Moreover, we are in the midst of a technological revolution whose product is greatly enhanced public access to information. The policies and decisions that we are making with respect to security classification are now more difficult and problematical. The board's insights will bring a welcome perspective to this complex environment.

Mr. Chairman, as I stated above, the establishment of the Public Interest Declassification Board could not come at a better time for providing expert advice on the controversies inherent in government secrecy and classification-and-declassification policy. Over the past several years, the board's input would, in my view, have been most welcome and helpful; for example, when the Congress considered the impact of our declassification program on the protection of information classified under the Atomic Energy Act; or when the Congress and the administration have considered the establishment of new special declassification projects; or as the Congress now considers legislation that would establish a new criminal provision for the unauthorized disclosures of classified information. As a new Presidential administration assumes office, such examples will surely multiply. Therefore, on behalf of the administration, I most strongly recommend your positive action on S. 1801.

Chairman THOMPSON. Thank you very much. Mr. Aftergood.

TESTIMONY OF STEVEN AFTERGOOD,[1] DIRECTOR, PROJECT ON GOVERNMENT SECRECY, FEDERATION OF AMERICAN SCIENTISTS

Mr. AFTERGOOD. Thank you very much, Mr. Chairman. Thank you for holding this hearing. In the 2 years since this Committee

[1] The prepared statement of Mr. Aftergood appears in the Appendix on page 67.

last dealt with government secrecy, government secrecy policy has not been standing still. Unfortunately, in some important respects, government secrecy has actually been increasing. For example, 2 years ago, in fiscal year 1998, the total intelligence budget was unclassified. This year, it is a classified national security secret.

Why should that be so? I am sure there is an explanation. I doubt, however, that it has anything to do with national security. At the same time that secrecy has been increasing in some respects, it has also been growing less effective in other respects. One important example, I think, is the history of the Central Intelligence Agency's 1953 covert action in Iran. That is a 200-page document that was ordered declassified, I believe, by DCI Woolsey back in 1993.

Last year, the CIA testified in a Freedom of Information proceeding that the entire history had to remain classified, with the exception of one single sentence. Fortunately, in my view, the entire document was then leaked to the *New York Times,* which published it on the *Times* website. I think just about any independent observer would agree that the CIA's classification judgment—and it was a judgment, it was not a matter of failure to deal with it or lack of resources—the CIA's classification judgment was in error.

At any rate, what we are seeing is a growing number of leaks, more voluminous, more substantial. So, there is certainly a role for congressional action on this front; and although I personally have been a little bit disappointed by the diminishing scope of the successive versions of this legislation, I still believe that it could potentially play a very important role.

I would say that, unlike some of the other panelists, I do not consider the prioritization of special searches to be a very important function at all, particularly given the fact that the board will not be able to enforce its recommendations. I just do not think that is a very important function.

I think, however there are at least a couple of other functions that are very important and that this bill would, as written, help to advance. The first is that the proposed board could serve as an independent, internal Executive Branch advocate for the kind of secrecy reform that I think everybody agrees is necessary. The board could advance the proposals of the Moynihan Commission. It could monitor the implementation of the executive order. It could point out problem areas. It could develop bold new ideas of its own and float them within the Executive Branch. It could advocate funding for declassification in the budget-development process.

A second sort of parallel mission area for the board would be to monitor the development of secrecy policy within Congress. There has been lots and lots of secrecy policy development in the form of legislation just in the last 2 years. More often than not, it is never subject to public hearings. Nobody gets a chance to comment on it. This board, I think, could play a useful role in monitoring the development of secrecy-related legislation in offering an independent judgment on what is wise and what, perhaps, is less wise.

Those are very useful functions, and they do not currently exist to the extent that they might; and, for those reasons, I think there is sufficient justification to proceed with this legislation. I would respectfully recommend that it be adopted.

Thank you.

Chairman THOMPSON. Thank you very much. Dr. Kimball.

TESTIMONY OF WARREN F. KIMBALL,[1] Ph.D., ROBERT TREAT PROFESSOR OF HISTORY, RUTGERS UNIVERSITY

Mr. KIMBALL. Thank you, Mr. Chairman. I appreciate the opportunity to speak to the Public Interest Declassification Act of 1999. I first do want to assure you that the decoration on my nose did not come about as a result of hand-to-hand combat on a declassification issue.

At any rate, I really do believe that this legislation would be in the national and public interest. It is my firm conviction that this act, and the board it would create, will improve our ability to protect important national security information. At the same time, it will promote public confidence in government by maintaining an expanding knowledge of the history of how national security policy was developed and implemented.

Moreover, the legislation takes a significant step toward cutting the excessive costs of maintaining the security of classified information. How does the bill accomplish all of that? I mean, is it nothing more than a piece of innocuous legislation that just follows the Hippocratic Oath: Do no harm? If it is just like chicken soup, you know, might help, cannot hurt, then why create another government board that may live long after everyone has forgotten why or even that it exists?

Were that the case, I would oppose creation of the board as a piece of smoke-and-mirrors that only distracts from effective reform of our government's declassification programs. But that is not the case. The Public Interest Declassification Board will inform and improve the healthy debate over what should and what should not be kept secret. The board would also help to limit the plethora of special searches, those boutique declassification efforts that devour resources that should go to systematic declassification review.

Some of those special searches have been legitimate. Some have been trivial. Many have been repetitive and unrewarding, as illustrated in some of the exhibits before you. All have been exorbitantly expensive in both money and work hours. All were or should have been unnecessary. If effective, routine, comprehensive systematic declassification review were in place for all agencies, and if the public believed in the integrity and thoroughness of those review processes, then important documentation, such as what was uncovered by the Nazi gold search, would be routinely reviewed and declassified without an expensive special search.

The board established by this legislation will be able to foster the development of effective, comprehensive systematic declassification review programs for historical documentation by gathering information on best practices and by reporting on progress made. At the same time, the board would assess the effectiveness and reasonableness of an agency's declassification review program and recommend remedies for shortcomings, thus building public confidence in the process.

[1] The prepared statement of Mr. Kimball appears in the Appendix on page 73.

But until that effective government-wide systematic declassification review exists, special searches will and should continue to be proposed, so long as there are legitimate and important reasons. But how can Congress and the White House best decide which specials will be legitimate and which will release important new information in which will not? How can the public—media, researchers, pressure groups, individuals—be assured that their government is not hiding the truth for the wrong reasons? The answer is provided by this bill.

The Public Interest Declassification Board could and should study any proposed special search, evaluate the results of similar previous declassification efforts, examine the still-classified documentary record, and then report to the President and Congress. Mr. Chairman, you asked earlier why we should think that this board would be listened to, and I think that kind of a process that I outlined would give the board such credibility that, I think, Congress and the Executive Branch would heed it.

In any event, that would provide Congress and the Executive Branch with a validation from an independent public board of the legitimacy of the request, and provide expert advice on establishing priorities for those specials that should be implemented. I spent 23 years in the Naval Intelligence Reserve and have been a member of the State Department Historical Advisory Committee for 9 years, 8 years as chair. I have come to appreciate the complexity of declassification issues, even for historical information that is 25 years old or older.

So, before going any further, let me emphasize two points. First, this legislation does not change the current approach to systematic declassification review, which is aimed at historical records that 25- and 30-years-old. It is not aimed at current plans, operations, and current intelligent activities. Second, declassification review is not the same as declassification. Nothing in this bill changes the current practice that puts declassification decisions in the hands of the agency that has ownership or equity in the information. Nothing in this legislation threatens to change current information security procedures. Special compartmentalized intelligence, SCI, is, quite appropriately, given special attention; nor can the board declassify anything. It can only examine, assess, advise and report.

Sensible, practical standards and guidelines for declassification review can be and have been established. Since the early 1990's, systematic declassification review by the State Department has opened up 95 percent of its historical records. Using the most-important-first, rather than an easiest-first approach, State Department reviewers have opened highly sensitive records of our diplomacy, as well as intelligence records, all without a single reported breach of national security.

As an aside, to dispel rumors of security breaches caused by the systematic declassification review program currently in effect, the head of the Department of Energy's Information Security Program has stated that he has not uncovered any inadvertent disclosures of classified information due to the systematic declassification reviews conducted under the current executive order.

Yet, with only one exception—the Air Force has put a successful program in place—the State Department is the only major agency

or department that has reviewed and declassified, where appropriate, its historical records and made them available to the American public. During the now-ended Cold War, foreign and national security policy became the responsibility of a great many agencies and departments outside of the State Department, yet those agencies have not implemented similarly successful declassification review programs. That means that Americans and the representatives in Congress do not have comprehensive access to the record of national security policy from 25-and-more years ago, at the time when Gerry Ford was President.

Perfection is the enemy of progress. No declassification review system can be perfect. To try to do so would be neither possible, nor desirable. The cost alone would be staggering, the effect on our democratic society even greater. Democracy is not a suicide pact. No one wants properly-classified information to be inadvertently released. But there is little risk of that happening when declassification review programs are applied, with the rigor of that implemented by the State Department.

This bill would not create instant public accountability for intelligence agencies, the Department of Defense or even the State Department. Individuals will instinctively try to cover embarrassment, unethical conduct and foolishness by classifying the information that exposes their conduct. But if we can move a step closer to opening the historical records to the scrutiny of the American public, we will have won a battle in what is an ongoing struggle.

At some point, the door must swing open wide enough or the very democracy that government officials and intelligence operatives are protecting is no longer a democracy. These are serious issues for the republic that are worth an informed, responsible debate, something the Public Interest Declassification Board can facilitate. I have lots of guesses, I think reasonably-educated guesses, as to why there are not fully-implemented, systematic declassification review programs in all the agencies. But that is something that this Public Interest Declassification Board could help to create and could study the issue and provide careful, well-researched answers and recommendations for remedies.

I have proposed three small amendments to the bill, Mr. Chairman that I will not go over here; but, fundamentally, they are specifically designed to improve the credibility of the board, because it seems to me that if the board is to function effectively, it must have the confidence of the public that it is independent. I should say that the American Historical Association and the Society for Historians of American Foreign Relations have both gone on record very strongly as favoring systematic declassification review. I strongly endorse this legislation as a meaningful step in the further development of a rational, responsible, cost-effective, government-wide program for the declassification review of that mountain of historical documentation that threatens to bury us.

To quote you, in your opening statement, "If everything is classified, there are no secrets."

Thank you.

Chairman THOMPSON. Thank you very much. Mr. Woolsey.

TESTIMONY OF HON. R. JAMES WOOLSEY,[1] SHEA AND GARDNER, AND FORMER DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

Mr. WOOLSEY. Thank you. Mr. Chairman, with your permission, I would submit my testimony and summarize just briefly from it in these oral remarks.

Chairman THOMPSON. It will be made a part of the record.

Mr. WOOLSEY. It is an honor to have been asked to testify before you on S. 1801. Let me say that, first of all, although the tools that are proposed by this bill are relatively modest, it seems to me to be a positive attempt to begin to come to terms with one of the most vexing problems in this important field of government secrecy, the issue of special searches. In time, it seems to me that it might be considered by this Congress that this board should undertake other duties and responsibilities. But this is, at least, a useful and important beginning, it seems to me.

I also believe that it is the beginning of wisdom in this area, to recognize that there is a need both for reform, on the one hand, and for caution and experimentation on the other. This bill seems to me to be crafted in that spirit. Reform is important because, in many ways, I think the system is broken and soon will be even more so, as the digital age adds reams of new records, E-mails to mention only one.

It is obvious that much of this classified material would be useful to historians and other citizens for a range of important purposes, but it is also equally obvious that some of it was improperly classified in the first place. I have had two recent examples; one, I ordered the declassification, as Mr. Aftergood said, of a number of files on covert actions during the Cold War, when I was DCI in 1993 and 1994. Some of that material has been released. Some of it, it was said subsequently, did not exist any longer in the government's files. Some, I had remembered, regarding with Iran, had been lost inside the government. But Mr. Aftergood, I am sure, is correct in saying that it was intentionally withheld.

In any case, once it was released through a leak, after reading it, I can see no good reason why that fascinating history of the 1954 coup in Iran had not been released. I am sorry it had to be released through a leak, but I think substantively it was a good thing for history, for people to understand what actually happened.

Also, I have recently represented several Iraqis in an immigration case in which the men were imprisoned because secret, classified evidence was introduced unilaterally by the government. After several influential Senators wrote to the Attorney General about this matter a couple of years ago, the government, in effect, said "whoops" and released about 90 percent of the evidence that it had previously classified, saying that it had been improperly classified; yet six men spent 2 years in prison and two men are still there, in no small measure because of this improper classification. So, I am personally acquainted with a number of cases in which I think classification has been excessive.

On the other hand, there is good reason for the government to be cautious with the release of some types of information, and it

[1] The prepared statement of Mr. Woolsey appears in the Appendix on page 79.

is not only the operational files of the Deputy Directorate of Operations or Special Compartmented Information. Frequently, material, not only direct operational material, but other intelligence, must be protected for many decades, not only 25 or 30 years, because often the substance of what is known about a foreign government or the time at which it was known can indirectly lead to the betrayal of, for example, an agent's identity or a broken code; and these sorts of things have to be assessed carefully by experts.

Most importantly, much of what the U.S. obtains in intelligence is obtained through liaison relationships, essentially trading intelligence with foreign countries; and those valuable relationships will dry up if we release material, even 25 or 30 years or more after the fact, without the permission of that Foreign Intelligence Service from which it was obtained. I dare say that any American who was a tourist in Jordan at the beginning of this year and whose life might well have been saved by the very professional and cooperative Jordanian intelligence actions that thwarted terrorist actions against American targets at the beginning of the year, would probably not be an advocate of releasing material received from Jordan without Jordanian consent, thereby undermining U.S.-Jordanian intelligence cooperation in the future.

Because of the complexity of these judgments and issues, it seems to me that reforms need to be very carefully considered. In my judgment, they should not be based generally, at least in the intelligence area, on broad and automatic rules, such as a certain number of years since a document was created. They need to be tailored carefully to protect what has to be protected for sound reasons, and also to release whatever else can be released as promptly as possible.

In this overall context, it seems to me that the Public Interest Declassification Board established by the bill is a positive step. As I said, its role may change over time, and it needs to accustom itself, it seems to me, to experimentation, trial and error. Special searches have certainly been overdone, but they can, from time-to-time, be valuable tools. The board will not be able to achieve an appropriate balance, even on this issue, on its own, because it can only make recommendations. But even some cutting down of duplicative searches will be a step in the right direction for the very hard-pressed professionals in the agencies who are trying to deal with this problem.

I finally would say, Mr. Chairman, that I believe it would be useful, as Professor Kimball suggested in his written remarks, for the board to meet at least two or three times a year and to consist of persons other than current officers or employees of the U.S. Government. I would also suggest that it be selected with an eye toward diversity of experience. There should be both historians, for example, and former intelligence and military officers; for it is only out of debate about this type of very difficult subject—debate between people of goodwill who both have something to teach and the humility to realize that they also have something to learn—that we are likely to get any useful recommendations for improving the current, very unsatisfactory system.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much, Mr. Woolsey. Thank you all.

Mr. Aftergood, I know that you are a strong advocate of more government openness. I wonder how you view this discussion concerning special searches. Many people, including some of our witnesses, have argued that special searches actually cause harm by draining resources from other declassification budgets and occupying manpower and so forth. Do you agree with this critique of the special search process? To what extent do you oppose or support what is happening now—especially Congress' actopms—with regard to special searches?

Mr. AFTERGOOD. A couple of points. I generally favor a systematic approach to declassification. I think that is the most efficient and most equitable means to meet the needs of the largest number of people. On the other hand, there are cases, as Mr. Woolsey pointed out, where special searches can be the most appropriate means to address particular, urgent information needs. So, the answer is balance; a balance has to be struck. There is a need for discipline, not simply in the Executive Branch, but also in the Congress.

Congress should not be asking for things that it is not prepared to fund. The current proposal is not entirely satisfactory to me, because it basically is limited to recommendations; and if people have a powerful constituency behind them that are pushing for a special search, then the recommendation of a board, no matter how distinguished, is not going to be enough, I think, to neutralize that political pressure. So, balance is the answer. I think, with or without the board, a balance will be found.

Chairman THOMPSON. Well, obviously, a board is not going to solve all of our problems.

Mr. Woolsey, I wonder what you think of that. Clearly, you have mentioned some instances here where special searches are in order and the only way to get to the bottom of some of these matters that need to become public. On the other hand, of course, we seem to be inundated by a bunch of maybe less-than-meritorious special searches. How should we be dealing with this?

Mr. WOOLSEY. I would hope that the board's recommendations would help the Congress and other sources of special searches to limit those searches to circumstances where they really are necessary and to stop the redundancy. There have been a number of these areas that have been searched many times. I realize the board does not have the power to do that, but if it is sufficiently prestigious and is listened to, it may have some influence.

Chairman THOMPSON. Excuse me. Senator Moynihan had some charts,[1] I believe it is his charts, where showing that with regard to certain issues in El Salvador, there were 9 special searches; for Guatemala, 12; and for Honduras, 7—all under the category of "repetitive." Is that what you are talking about?

Mr. WOOLSEY. That is it exactly. The problem is these issues become politically salient, and a number of different people, basically, want to say, "I have ordered a search," So, we get a lot of redun-

[1] The charts referred to submitted by Senator Moynihan appear in the Appendix on pages 43–59.

dancy, and that is not a good use of the time of the professionals who have to do this. As I said, in the intelligence area, I think a rule-of-thumb is dangerous, especially if that rule-of-thumb is one that is measured in years.

Now, the operational files of the Deputy Directorate for Operations and some in Compartmented Intelligence have been exempted from the automaticity, but that is not all, I think, that should be exempted from the automaticity of being released after a certain number of years. But it does seem to me to be incumbent upon the government, if there is intelligence information—whether it is from the Cold War, covert actions, or older estimates of the Soviet Union, when the Soviet Union does not exist anymore—that can be released, it has to be gone through very carefully. The professionals ought to be spending their time working on releasing as much of historical intelligence as can be released without endangering current sources and methods and making the difficult judgments that are often entailed there, instead of doing one of these special searches for the fourteenth time.

Chairman THOMPSON. Perhaps more subject-matter oriented than just a broad chronological——

Mr. WOOLSEY. I think so. There probably are some areas, Mr. Chairman, where the chronological rule is a perfectly decent rule-of-thumb, but I do not think intelligence is one of them. But I think that it is incumbent on the intelligence community and, I think, on the Congress that funds it—in order to be doing a decent job for the historians who need to understand what happened in Iran in 1954 and the rest—to use the government's resources in this area wisely and in a balanced way.

It seems to me that something that inclines toward, even if it does not absolutely require, a reduction in the redundancy of some of these special searches, thereby freeing up resources to focus on making the difficult and important judgments that are required in the releasing of other intelligence information without automaticity, would be a reasonable thing for this board to encourage and for the government as a whole to do.

Chairman THOMPSON. Mr. Garfinkel, you have been Director of the Information Security Oversight Office for many years, including the period in the 1990's when the administration was undertaking bulk declassification projects. It is my understanding that bulk declassifications at the Energy Department resulted in the inadvertent disclosure of classified information relating to nuclear weapons, and that accidental disclosures of national security information from other agencies, as a result of declassification programs under executive order, have also occurred in several instances.

To the extent that you can discuss these matters in open session, can you describe how the most serious of these incidents occurred, and how you think we can properly safeguard against such problems in the future as we try to declassify the mountains of classified information that our government has produced?

Mr. GARFINKEL. Mr. Chairman, I believe that we need to use reasoned judgment, and as we have taken very radical new steps in our declassification program, we have learned a great deal over the course of the past several years. I think what we are doing now, which is to identify those particular files that are most susceptible

to the inclusion of mismarked atomic energy information, should suffice to prevent any release of information that could cause damage to our national security. I have also been very much aware that there are occasions when bulk declassification makes a great deal of sense. I have used the example that came very early in my own career when I was asked to participate in the systematic review of a number of procurements of uniforms and boots and what-have-you during World War II. I was escorted to a room—not a room—I was escorted to a three-football-field-length area at the Suitland Federal Records Center full of classified records dealing with classified procurements of clothing during World War II and all kinds of material that clearly no longer had any sensitivity. Were it not for the opportunity to bulk declassify those documents, I suspect I would have spent my entire career in that room, reviewing those records, and would not be before you today.

Chairman THOMPSON. Mr. Woolsey, to what extent is inadvertent declassification a problem? We know that it has happened in times past, but how should we view that? Is it a major risk, do you believe? Factor that into the overall assessment.

Mr. WOOLSEY. We have a case, I think the one you asked Mr. Garfinkel about. I believe that in the aftermath of President Clinton's first executive order on this, the declassification process in the Department of Energy resulted in the release of some 10 or 12 documents that had Restricted Data that was still important in them, and that caused, I believe, some changes in the process. So, it does happen.

Normally, in intelligence areas what has happened is that the intelligence community has fought hard against having its records included in automatic declassification areas. As I said, it has succeeded to some extent. So, I cannot think of—immediately—any major problems that have arisen from automaticity, with respect to things like the Directorate of Operations' files.

Chairman THOMPSON. I take it that the particular inadvertent releases we are talking about for the Energy Department of Information was not under one of those exclusions that cover intelligence——

Mr. WOOLSEY. I think that is correct. I think it was pursuant to the President's executive order, whatever that is—one-two?

Mr. KIMBALL. The one before the current one.

Mr. WOOLSEY. The one before the current one, the one back in 1993, 1994. I do not recall the number of it right now.

Chairman THOMPSON. There are, obviously, some very sensitive documents that are not, perhaps, within the intelligence exclusion, per se. Is that what you are saying?

Mr. WOOLSEY. Absolutely, and they can get caught up in the automatic release, as apparently these 10 or so did. But there certainly are cases, such as the one Mr. Garfinkel mentioned, where any reasonable common sense would say we could save a lot of time by having an automatic rule. The problem is this is not an area where generalizations hold for long. A lot of people believe that as long as what you are declassifying in the intelligence arena is estimates or assessments, rather than operational data, it can be done rather freely and easily; and, indeed, people leak intelligence assessments, in part, because they think there is no real harm to

it. Whereas, in fact, depending on how it is written, it can be extremely damaging to intelligence sources and methods because of the combination of the substance of what is in the assessment and the timing, the time at which one knows it or is known to have known it.

So, even things like the estimates dealing with the Soviet Union that my predecessor, Bob Gates, ordered released, or the covert action files that I ordered released, those cannot be done by a rule-of-thumb, either. They really need professionals going through. Now, professionals make misjudgments. I think whoever looked at this Iranian 1954 file and decided it had to all be withheld made a bad judgment. So, you really do need to have smart people who know the business and have general guidance, and who have both the respect for the public's need to know and a professional concern about not damaging intelligence sources and methods. You have to have them go through these documents carefully if they have anything to do with intelligence, and also in some other areas as well. That takes time, and it is not easy.

Often, these are retirees who are brought back on contract, but one has to pay them. If you want people of that caliber, when you have to have people who know what they are doing going through these documents, it is expensive.

Chairman THOMPSON. Dr. Kimball, first I will thank you for your suggestions on improving this legislation. In your testimony, you argued that, with the exception of the State Department, most government agencies holding classified information have not developed a very good systematic review program. Do not quite a few specific committees, boards and panels already exist to give the principal agencies advice on this sort of thing? Is this not what your own State Department Historical Advisory Committee did for the State Department? If panels, such as your committee at the State Department, can do such good work in helping their agencies develop proper, systematic review efforts, should we not be trying to get the other bodies that already exist to offer better advice, rather than, perhaps, just creating another organization?

Mr. KIMBALL. There is a difference in nature of these bodies. The State Department Historical Advisory Committee and this board that would be created exist because Congress has passed a law creating them. As far as I know, there is no other historical advisory board to any government agency related to classified material that exists, except the State Department committee. That makes it a bit more bulletproof. Not too many years ago, one of the intelligence agencies was unhappy with the advice it was getting from its—well, it does not call it an advisory board, but its historical study group, whatever it was called—and suddenly that agency decided that there were term limits for the members of that advisory group. Three of them left almost immediately.

Now, maybe that was a coincidence, maybe not. All I know is that I think that group has got the message. So, therefore, they were not able to act in the public interest the way I think they should. The Foreign Relations Act of 1991 created a special situation, whereby Congress went a small, but significant, step in the direction of saying what should be declassified. It was very general, but what it said was, in doing the history, the foreign policy, for-

eign relations of the United States for the foreign relations series, that series, that record, should be comprehensive and accurate. That word, comprehensive, covers a lot of territory. It did not say exactly what to declassify, but it did say that those things had to be reviewed and what was published had to be comprehensive.

That has been an enormous success. To be quite honest, the CIA, I think, was quite unwilling to cooperate in the beginning, and I must say right now has become quite willing to cooperate. It has been a process of 9 years of negotiating, arguing, disagreeing, agreeing, and it is my opinion now that there is a sense of cooperation between the CIA and the State Department on this declassification issue. That agreement, by the way, follows pretty much the general guidelines that Mr. Woolsey outlined as to what can and cannot be declassified. To me, the key difference here is that our committee, the Historical Advisory Committee, would not go away, and that meant it had to be dealt with in a straightforward, honest, responsible manner; and the result has been positive.

Chairman THOMPSON. Mr. Woolsey, you, perhaps, are the only one here that has been on the receiving end of declassification advice from organizations that might be analogous to the proposed board. What was your experience as Director of CIA with bodies such as the CIA's Historical Review Panel, the Interagency Classification Appeals Panel and Security Policy Advisory Board? How useful did you find the advice from such organizations? Did they make recommendations to you or others about these matters? Did they ever offer their opinions on any special search or other similar undertaking? Did they ever talk you out of a search or help you do so?

Mr. WOOLSEY. I did not get too involved in decisions about individual searches, Mr. Chairman. As a general rule, I took over the DCI job in early 1993, just a little more than a year after, essentially, the demise of the Soviet Union and the end of the Cold War. So, it was fairly early in the transitional period and, to be, I think, fair to the people who were involved in this, they understandably still had, in many ways, a kind of a Cold War mentality about this issue, especially with respect to releasing material about Russia, China, Eastern Europe and the like.

But my predecessor, Bob Gates, had made a very good beginning by ordering the release of a number of estimates of the Soviet Union on the very excellent theory that since the Soviet Union did not exist anymore, one could have a considerably more liberal attitude toward releasing estimates than, say, with respect to China, which very much still existed with the same government that it had during the Cold War and for which release of some types of estimates could create political and diplomatic problems. But the Soviet Union was gone. They were just starting to come to terms with that, and I think there was some enthusiasm among some of the top people for following on Bob's initiative, and that is what led us to take, first, an initial look at these Cold War covert actions, and for me to order the release of a number of those.

I was disappointed later to find, within the last few years, that some of that material did not exist or was not released for one reason or another. Some of it was released. But that was, frankly, my major involvement, not individual searches or individual material.

What would happen is you would continually get, at budget time, the poor people who had to do this coming up and saying, "Look we have reduced our backlog on FOIA requests by such-and-such, our backlog on this by so-and-so much, but we are losing ground because we are getting all of these special searches and so forth."

It is a continual struggle, largely over money, because you can do a lot of these documents and do them intelligently if you are willing to pay for it. There are a number of retirees around Washington area who have expertise and are quite bright and able people who are willing, on a part-time basis, to come in and read through materials, some of which they were familiar with when they were on the inside, and to make these kinds of judgments. But they have to be paid. That is what it really almost always comes down to: Are the intelligence committees and the appropriations committees willing to fund things like substantial increases in payments for retirees, to come back and read through records? That is what it really kind of comes down to.

Chairman THOMPSON. Gentlemen, thank you very much. It is past noon now, and I think we ought to adjourn. But this has been extremely helpful. Under Senator Moynihan's leadership, perhaps we can move the ball down the field a little bit further with regard to this complex, difficult issue.

Thank you very much for your cooperation and your testimony today. The record will remain open for 2 weeks following the close of this hearing.

[Whereupon, at 12.11 a.m., the Committee was adjourned.]

APPENDIX

STATEMENT OF CHAIRMAN PORTER GOSS
BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

July 26, 2000

Mr. Chairman and Members of the Committee:

I am pleased to testify before the Committee today in strong support of S. 1801, the Public Interest Declassification Act of 1999.

There is a lot of history on the shelves out at the headquarters of the Central Intelligence Agency. Some of it is valiant – some of it is work-a-day – and some of it is embarrassing. All of it is American history.

Much of what is on the shelves out at Langley remains sensitive and properly secured in vaults. In this bill, we in no way diminish the right and the obligation of the President and the Director of Central Intelligence to protect sources and methods. I obviously take no issue with the *bona fide* harm that may befall our country, and those who help us overseas, in matters of national security.

Much of what is on the shelves at Langley, however, should be reviewed and considered for declassification.

The systematic declassification of such documents over 25 years old is ongoing. This type of declassification, which is done under Executive Order, is the most thorough and archivally valid method by which we can ensure that historically significant documents can be systematically shared with historians and, more importantly, with the American public.

At present, however, we have no system by which Congress, the executive branch, and the public can require and expedite the review for declassification, called "special searches," for records of extraordinary political or public interest. The explosion in special search requests from the Congress, the executive branch, and the American public since 1993 has not been cost-free. Since becoming Chairman of the House Intelligence Committee, I have become increasingly concerned about the surge in special declassification requests and the unanticipated costs associated with such requests. In August 1999, I wrote DCI Tenet seeking information on the numerous special searches conducted since 1993. In its October 18, 1999 reply to my inquiry, the CIA noted:

> "Special searches are a growth industry and compete with the mandates of the many existing information review and release programs; simply stated, each resource directed to a new special search reduces the resources previously dedicated to an existing program. Some specific efforts have been deferred in their entirety; examples included a number of historical reviews previous Directors scheduled for action. Other efforts, such as Freedom of Information Act (FOIA) suffer reduced productivity."

In some cases, however, Congress, policymakers in the executive branch, and the public cannot and should not wait for the painstaking declassification of 25-year records. Congress needs information for its lawmaking; policymakers need information for their decisionmaking; and the public needs information to ensure that its government is accountable and is staying on course.

A few recent examples will help illustrate my point:

- During 1999, senior officials at the National Security Council ordered that CIA review and declassify records on allegations of U.S. involvement with human rights abuses in Chile under General Pinochet from 1973 to 1990.

- Members of Congress, executive branch policymakers, and interest groups have asked the Intelligence Community to conduct and complete no fewer than nine separate searches since 1993 for records on the churchwomen murdered in El Salvador. Similar public pressure forced 12 separate special searches since 1995 relating to allegations of human rights violations in Guatemala.

- Other searches have been based on treaty obligations, such as the Treaty with Spain on Mutual Legal Assistance in Criminal Matters, whereby a foreign prosecutor sought access to U.S. records on human rights violations of several Latin American governments in 1970s and 1980s.

- During the past several years, Congress and the public have pushed for the mandatory declassification of records concerning unaccounted-for POWs and MIAs from the Vietnam War.

- Finally, and most fundamentally, Congress responded to a national imperative for information about the assassination of President Kennedy by passing a special purpose disclosure law requiring the declassification of all relevant records.

The Public Interest Declassification Act establishes a structure by which such special searches will be done once, and done right. Declassification needs to be conducted in an orderly, systematic and appropriately prioritized and funded program. Declassification should not be subject to an arbitrary and chaotic political process. What this bill does is to provide a means by which we can get important historical information as efficiently as possible to the American people. In a perfect world, we would overhaul the entire classification system, as I believe that we too readily classify too much material. But to do so at this point would be like trying to swallow a whole meal at once. Instead, we must take this issue in digestible slices. S.1801 is only a first step, but a very important one.

The Public Interest Declassification Act seeks to provide Congress, policymakers in the executive branch, and the American public with more of the history on the shelves

at Langley. In so doing, the bill will also give us more confidence that what remains on those shelves truly needs to be protected.

Again, I appreciate your attention to my remarks and look forward to working with you to bring about passage of this first step toward a more efficient and more orderly declassification system that will bring about greater accountability and transparency.

STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

July 26, 2000

Mr. Chairman and Members of the Committee:

Between 1994 and 1997, I had the honor of presiding as the Chairman of the bipartisan Commission on Protecting and Reducing Government Secrecy. The Commission was created under Title IX of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995 (P.L. 103-236) to conduct "an investigation into all matters in any way related to any legislation, executive order, regulation, practice, or procedure relating to classified information or granting security clearances" and to submit a final report containing recommendations covering these areas. The Commission's investigation was the first authorized by statute to examine government secrecy in 40 years, and only the second ever.

The Commission's final report, issued on March 3, 1997, was unanimous. Among its key findings were that secrecy is a form of government regulation, and that excessive secrecy has significant consequences for the national interest when policy makers are not fully informed, the government is not held accountable for its actions, and the public cannot engage fully in informed debate.

On the other hand, this remains a dangerous world. Some secrecy is vital to save lives, protect national security, and engage in effective diplomacy. Yet, as Justice Potter Stewart noted

in his opinion in the Pentagon Papers case, when everything is secret, nothing is secret.

When the Secrecy Commission began its work in 1994, it estimated that the United States government had over 1.5 billion pages of classified material that was 25 years old and older. Today, we still have enough classified material to stack up as high as 441 Washington Monuments. Approximately 18 million of the most sensitive and interesting of these are found in our 11 Presidential libraries. The cost of protecting this historically valuable information is enormous.

The first serious attempt to address this mounting problem – a security as well as an access problem – began in 1995, when President Clinton signed Executive Order 12958 regulating national security classification and declassification, the fifth in a series of Executive Orders dating back to 1951 and President Truman. It was much more than the tuning of a system. The orders by Presidents Nixon and Reagan had made declassification more onerous, occurring possibly only after a citizen made a particular request.

This changed when the Clinton administration established a system to declassify automatically information more than 25 years old unless the Government took discrete, affirmative steps to continue classification of a particular document or group of documents. This mandated program to review historically important documents amounted to over 40 million pages at the CIA alone.

Although considerable progress has been made under Executive Order 12958, problems in its execution have emerged. One of the most acute is Congress' continuous slashing of the declassification budgets. The House of Representatives voted to cut the Department of Defense's FY 2000 declassification budget from $200 million to $20 million. The Senate eventually was able to raise it to $50 million, just enough for it to limp along. (The CIA's

declassification budget is classified.)

Ironically, dwindling dollars have not meant dwindling demands for declassification. In addition to the routine systematic work required by Executive Order 12958, the CIA and the Department of Defense – this includes the Armed Services, the National Security Agency, the Defense Intelligence Agency, and the National Imagery and Mapping Agency – are also required to process Freedom of Information Act requests, Privacy Act requests, requests stemming from litigation, and special searches levied primarily by members of Congress and the administration. FOIA and PA requests are from our constituents; the CIA estimates that the average FOIA request takes 280 days to process from start to finish.

In FY 1998, the CIA alone received 6,121 FOIA and PA requests. This is more than a 100% increase from those sought in the 1980s. During the first nine months of 1997, the CIA was enmeshed in eight new FOIA and PA litigations (involving 20 separate requests), in addition to 33 on-going civil actions (involving 105 separate requests).

The CIA's capital and personnel resources are stretched to the limit. Since 1975, the CIA estimates that it has spent over $50.7 million in personnel costs for processing FOIA requests alone. The CIA estimated in 1999 that declassification costs ran, on average, $2.87 per page. The CIA has between 230 and 300 cleared people employed at its declassification factory, where most of its declassification work occurs. This small workforce is stretched to its limit as it tries to comply with all the competing demands placed on it.

One of the most vexing and time-consuming demands placed on our government's declassification efforts are those exerted by so-called special searches. A special search is defined by archivists as the "comprehensive collection, review, redaction, and release of classified information in response to a mandate or request made, for example, by a member of Congress or

a Congressional Committee, a Presidential advisory board, the Director of Central Intelligence, the head of another Federal agency, or an agency's inspector general." Since 1993, the CIA has been the target of 87 special searches.

In an October 18, 1999 letter to Chairman Porter Goss declassified last Friday (July 21), the CIA's director of Congressional Affairs, John Moseman, laid out the focus of these searches and the disruption they have caused. Specifically, he highlights that "each resource directed to a new special search reduces the resources previously dedicated to an existing program," including FOIA requests. "In sum," he concluded, "special searches are a growth industry and compete with the mandates of the many existing information and release programs."

Attached to my testimony are Mr. Moseman's letter and a comprehensive list of what these special searches have involved. For example, murdered churchwomen in El Salvador have been the subject of nine separate special searches. Yet we still have unanswered questions about what happened.

Guatemala has been the subject of 12 special searches. Several of these are noteworthy because of the large amount of personnel hours spent on finding relatively few documents. For example, in 1996 and 1997, the CIA spent over 900 hours in searching tens of thousands of records in response to a request made by the President's Intelligence Oversight Board. In the end, the Agency found 73 documents and released 63 in redacted form. Similarly, an NSC mandated search cost over 500 personnel hours and yielded just 22 documents in redacted form.

There are many more examples of the repetitive nature of these types of searches. Honduras has been the subject of seven special searches and Pinochet of four, by the CIA alone.

Other topics have included UFOs and Roswell, MIAs in Southeast Asia, Operation Tailwind, Nazi war crimes, the Bay of Pigs, campaign finance contributions, human radiation

and LSD experiments, Mena, Arkansas, and Contra drug involvement in Los Angeles. Several of these have also consumed the Department of Defense's resources.

What is clear, however, is the need to bring some order to this increasingly chaotic process. The primary function of the board that S.1801 establishes is to advise the President and the heads of Executive branch agencies on how to prioritize declassification efforts. This board of nationally recognized experts will provide the necessary guidance and will help determine how our finite declassification resources can best be allocated among all these competing demands.

Although this board cannot stop a special search from being proposed, it can act as a filtering mechanism and can advise the President on whether a search needs to be undertaken–perhaps it has already been done in one form or another–or how it needs to be done. The board can also insure that the special searches undertaken are done in an archivally and historically correct way, meaning that they only be done once. The two traits that have characterized most special searches up to now have been that they have been poorly done and have cost a lot of money.

It will also force us to impose some much needed discipline on ourselves by making us consider if our special search requests can survive the scrutiny of a board of experts before we spend potentially millions of taxpayers' dollars.

Thomas Jefferson said it best over 200 years ago: "An informed citizenry is vital to the functioning of a democratic society." S.1801 can help do this by seeing that our limited resources are put to their best use.

PORTER J. GOSS, FLORIDA, CHAIRMAN
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August 16, 1999

The Honorable George Tenet
Director of Central Intelligence
Central Intelligence Agency
Washington, D.C. 20505

Dear Director Tenet:

I write to communicate my concern over the escalating costs associated with the proliferation of "special searches" conducted by CIA staff in response to urgent declassification requests from the National Security Council and other executive branch agencies, Members of Congress, and the media.

The Committee has been advised that CIA's Office of Information Management (OIM) conducted 33 "special searches" during 1998-99 to find, review and, to the extent possible, release classified information in response to numerous requests from Members of Congress and Presidential advisory bodies. These 33 special searches were conducted by OIM as follows:

- Human Rights Issues (19 completed or ongoing searches);
- Historically Significant Issues (7 completed or ongoing searches);
- National Security Issues (3 completed or ongoing searches); and,
- Private, Humanitarian Issues (4 completed or ongoing searches).

I would therefore like to request a comprehensive and unclassified list of all such special searches conducted by OIM since 1993 listing the following data: (1) title/case of special search; (2) identification of executive branch official(s), Congressional Member(s), or other organization requesting a special search; (3) status of the search; (4) description of the purposes and accomplishments of the special search; (5) numbers of relevant documents reviewed, redacted, and released to the public; and (6) costs associated with the search in terms of specific dollar amounts and manpower expenditures. Furthermore, I would appreciate a detailed summary of the declassification projects originally scheduled to be conducted by OIM in 1998-99, but which have been deferred due to the increase in special searches. I want to request the legal guidance upon which CIA and OIM rely to initiate and manage special searches for each of the four issue categories listed above. Finally, I would appreciate your recommendations as to possible means for more equitably allocating the costs of these special searches, such as using the FOIA cost recovery process as a model. I look forward to receiving your response no later than September 16, 1999.

Sincerely,

Porter J. Goss
Chairman

~~SECRET~~
Central Intelligence Agency

Washington, D.C. 20505

OCA 99-1494
18 October 1999

The Honorable Porter J. Goss
Chairman
Permanent Select Committee
on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

(U) This letter and a draft version of enclosure were faxed to the Committee on 20 September 1999 to the attention of Mr. Chris Barton. This is the final version for your retention.

4 ~~(FOUO)~~ The attached table, prepared by our Office of Information Management (OIM), addresses your request for a list of and relevant details for significant special searches since 1993.

4 ~~(C)~~ In addition to the significant cases listed, you should be aware that we receive and act upon a relatively large number of smaller special efforts that fall into four broad categories and also compete with special searches for resources: equal employment opportunity matters; criminal and/or civil inquiries from the Department of Justice (or subordinate agencies); Inspector General and other undenominated but official demands; and administrative appeals to Executive Branch classification decision. On an annual basis we receive, respectively, an average of 50, 180, 70 and 10 such taskings. They require, by approximate measure, 11 FTE personnel annually. We calculate that on average it costs $2.87 per page to declassify a document in our declassification factory; the average fully loaded salary per person is $62,000. Special searches, however, require a much higher level of effort.

DECLASSIFIED

~~CONFIDENTIAL~~ when Separated
from Enclosure

APPROVED FOR RELEASE
DATE JUL 21 2000

CL BY: [redacted]
CL REASON: 1.5(c)
DECL ON: x1
DRV FROM: Multiple

The Honorable Porter J. Goss

U ~~(FOUO)~~ You also requested a summary of declassification projects that have been deferred due to special searches. The identification of any one project, to the exclusion of others, would be misleading because special searches affect productivity across all information review and release programs. Simply stated, each resource directed to a new special search reduces the resources previously dedicated to an existing program. Some specific efforts have been deferred in their entirety; examples include a number of historical reviews previous Directors scheduled for action. Other efforts, such as Freedom of Information Act (FOIA), suffer reduced productivity.

(U) The legal authority upon which the CIA initiates and manages special searches derives from four broad areas:

- The basis for a significant percentage of all special searches is the inherent Constitutional authority of the Congress, the members of Congress, and the President, or the statutory authority granted to the heads of the various Executive Branch agencies and departments. Here, acting in accordance with their general authority, but not otherwise regulated by specific statute or appropriation, a tasking is created and, under principles of comity, executive branch agencies respond.

- A growing number of special searches are based upon specific special purpose disclosure laws. These range from the authorizing statute for the *Foreign Relations of the United States* (22 USC § 4351 et seq.) to the *JFK Assassination Records Collection Act* (44 USC § 2107) to the proposed Human Rights Information Act (HR 2653).

- Other special searches are predicated on treaty obligations such as the *Treaty with Spain on Mutual Legal Assistance in Criminal Matters.*

- In a minority of the cases, the CIA proceeds on a voluntary, confidential, humanitarian basis and these almost always are predicated on situations where a family has made the ultimate sacrifice of a loved one in service to his or her country.

U ~~(FOUO)~~ As to your request for our recommendations for how the costs of these special searches can be more equitably allocated including, possibly using the FOIA cost recovery process as a model. The FOIA cost recovery provisions offer

The Honorable Porter J. Goss

little assistance in the problems we jointly face. Last year, this Agency collected only $1,268.00 for processing in excess of 7,000 FOIA, Privacy Act, and/or Executive Order mandatory declassification requests. This very low cost recovery derives directly from the fact that amendments to the FOIA make the vast majority of such requests fee free; essentially, only commercial requesters acting in their commercial capacity are subject to fees. All other requesters either receive services without fees of any kind or pay only minimal fees for copying after receiving the first several hundred pages free.

U ~~(FOUO)~~ In sum, special searches are a growth industry and compete with the mandates of the many existing information review and release programs.

(U) Please let me know if you require additional information or further discussion. An original of this letter is also being sent to Ranking Democratic Member Dixon.

Sincerely,

John H. Moseman
Director of Congressional Affairs

Enclosure

DECLASSIFIED

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Compilation of Special Search Efforts at CIA (1993 to date)* (as of 01 September 1999)				
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
UN Truth Commission: El Salvador I	Congress/NSC	Completed	Letter from Senator Pell, Rep Hamilton and 15 other members for search of records relating to 32 Human Rights cases.	Over 6,000 hours to search and over 1,600 documents identified as responsive; [redacted]
El Salvador II	Congress	Completed	In April 1998, Senator Lautenberg requested the review and release of any documents related to the murders of four U.S. churchwomen in El Salvador in December, 1980.	Level of effort data not readily available.
El Salvador III	Congress	Completed	In May 1998, 32 members of Congress requested the declassification of any documents about the murders of the four U.S. churchwomen.	Level of effort data not readily available.
El Salvador IV	DCI	Completed	Religious order requested declassification of documents that pertain to the murders of the US churchwomen.	Level of effort data not readily available.
El Salvador V	Congress	Completed	An August 1998 letter from Reps Moakley and McGovern posed seven questions about the murders and individuals believed to have knowledge of the deaths.	Level of effort data not readily available.

*Data for years prior to 1998 may be incomplete, centralized management of most forms of information requests did not occur prior to that time.

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DATE JUL 21 2000

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[illegible]	Lead Agency Authority	Status	[illegible]	Summary of Level of Effort
El Salvador VI	DoJ	Completed	Justice requested information on the immigration or residency of named Salvadoran officials, [redacted]	A manual search of relevant paper files.
El Salvador VII	NSC	Completed	A manual review of the 48 documents responsive to El Salvador I was requested for possible release of additional information. The re-review commenced in September 1998.	Level of effort data not readily available.
El Salvador VIII	EXDIR	Ongoing	In November 1998, an updated search on the killings of the U.S. churchwomen, focused on post-1993. [redacted]	Electronic databases and paper files were searched. No substantive new information was found. [redacted]
El Salvador IX	EXDIR	Completed	In April 1999, the Lawyers Committee for Human Rights requested re-review of [redacted] documents with Agency equities. In June, requested general re-review, queried status of pending releases (FBI, El Sal VIII), and enclosed 47 documents for re-review.	[redacted] On 1 July, we answered the June queries, following exhaustive research of the enclosure, which contained both Agency and DIA documents.

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Title	Agency Seeking Authority	Status	Brief Description of Search	Summary of Search Effort
Guatemala I (NSC)	NSC	Completed	Selection of 15 named Human Rights cases from 1984.	Over 1,400 hours to search tens of thousands of documents. [redacted]
Guatemala (IOB)	IOB	Completed	Specific documents located in the Guatemala I search were requested for IOB review.	Over 900 hours to search for relevant documents and review for release. [redacted]
Guatemala I Follow-On (re: Myrna Mack)	NSC	Completed	Focused on the death in Guatemala of Myrna Mack, the noted anthropologist and Nobel Prize winner. CIA provided information to the family and worked with State to produce a statement for use in a foreign court case.	Conducted an oral Vaughn with lawyers for the sister of Myrna Mack; required research, notes on each paragraph of text discussed. [redacted] coordinated court statement with State and family attorneys.
Guatemala I Follow-On (re: Nicholas Blake)	NSC	Completed	Focused on the death in Guatemala of Nicholas Blake, a journalist.	Prepared an oral Vaughn for brothers of Nicholas Blake; provided case overview [redacted]
Guatemala I Follow-On (re: Diana Ortiz)	Federal Court	Completed	Litigation by Sister Diana Ortiz concerning her kidnapping and torture in Guatemala	Level of effort data not readily available.

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Project Title	Authority	Status	Brief Description	Summary of Level of Effort
Guatemala I Follow-On (re: Michael DeVine)	Federal Court	Ongoing	Litigation by Carola DeVine concerning the murder of her husband, Michael DeVine, in Guatemala.	To date, over 500 documents have been released.
Guatemala I Follow-On (re: Bamaca/Harbury)	Federal Court	Completed	Litigation by Jennifer Harbury concerning the murder of her husband, Efram Bamaca Velasquez.	Level of effort data not readily available.
Guatemala II	NSC	Completed	Focused on 18 named human rights cases in Guatemala prior to 1984.	Over 500 hours to search for relevant documents and review for release. [redacted]
Guatemala III	NSC and DCI	Completed	Addressed a selection of historically significant records pertaining to the 1954 CIA-backed coup in Guatemala.	Over 11,000 hours to search for relevant documents and review for release. 1,800 pages and 300 tapes were released.
Guatemala IV	NSC	Completed	Inquiry into more than 80 human rights events, many of which already had been addressed in other contexts.	Level of effort data not readily available.
Guatemala V	NSC	Completed	Query by the Guatemala Historical Clarification Commission for information in several areas.	Over 500 hours to search for relevant documents and review for release. [redacted]
Guatemala V, Follow-On	NSC	Completed	Additional questions concerning the documents released as a result of Guatemala V.	Level of effort data not readily available.

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Task	Tasking Authority	Status	Description	Summary of Level of Effort
Honduras Working Group	DCI	Completed	Task force set up to focus on Agency's knowledge involving a variety of human rights issues in Honduras including Battalion 316.	Task force worked for 1 year. Located and reviewed thousands of documents. Briefed Congress on several occasions on findings and wrote a report on final findings.
Honduras I	NSC	Completed	Request for information on Father Carney.	Over 1,000 hours to search for relevant records and review for release. [redacted]
Honduras II	NSC	Completed	Request for information on five named individuals.	Over 500 hours to search for relevant documents and review for release. [redacted]
Honduras III	NSC	Completed	Request information on an Honduran Military leader, General Alvarez, re: Human Rights Issues.	Over 200 hours to search for relevant documents and review for release. Identified and released 21 documents.
Honduras IV	NSC	Completed	Request for information on [redacted] Battalion 316.	Over 100 hours to search for relevant documents and review for release. Identified and released 5 documents, including IG reports.
Honduras Follow-up	NSC	Completed	Conducted an oral Vaughn with Dr. Valladares and the Honduran Attorney General regarding the documents released in Honduras I, II, & III.	Level of effort data not readily available.
Honduras V	NSC	Ongoing	Follow-up requests from Dr. Valladares for explanations, re-review of material, and new search.	Level of effort data not readily available.

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[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Unit 731	White House & SecDef	Completed	Multiple inquiries re Japanese unit in WWII alleged to have conducted human experiments.	Responded to multiple but somewhat differing inquiries; extensive OSS and FOIA records searches; documents reviewed but not directly relevant and released w/minor redactions.
Pollard	DCI	Ongoing	Demands for documents (e.g., damage assessment) and declassification reviews alleged relevant to possibility of a parole for Pollard.	Research, searches, re-reviews and explanation on continued necessity for classification.
Mena, Arkansas	Congress, DoJ, & IG	Completed	Sought answers to allegations connecting Airport in Mena during the 1980s to guns, drug trafficking and/or money laundering and Pablo Escabor.	Two searches were done, but no CIA documents were located. Reviewed and released CIA information contained in other agency documents.
Dulles Papers	DCI	Completed	Request for review of papers held by DCI Alan Dulles.	A small task force was convened to review over 2,700 documents for release. Most of these documents were released.
Venona Documents	D/NSA & DCI	Completed	Multiple requests for insights into cryptographic information that formed partial basis of cold war spy cases.	Within 19 days completed our coordination, review, and release of information.

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Title of Task	Requesting Authority	Status	Brief Description	Summary of Level of Effort
[redacted]	DCI	Completed	[redacted]	Level of effort data not readily available.
UK Criminal - HMG vs. Deacon & Fuller	CIA General Counsel	Completed	Supported criminal prosecution that involved obtaining property by theft and forgery.	Level of effort data not readily available.
Air America	CSI	Ongoing	Review of all records linked to Air America and subsidiary corporations.	To date, over 42,000 pages have been released.
Gulf War Veterans' Illness Task Force	DCI and SecDef	Completed	Inquiry into information concerning Gulf War Illness and lessons learned.	Thousands of documents were released and put on the DIA Internet web site; exhaustive effort at CIA occupied for a time 20 FTE including all IROs; subsequent inquiries re errors continued until 1999.
Combest re Vietnam	Congress	Completed	Request that Agency provide copies of all previously released Vietnam-era documents to the Center for the Study of the Vietnam Conflict at Texas Tech.	Over 100 hours to search for material. Some 15,000 pages of records delivered to Rep. Combest.

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Project Title	Requesting Authority	Completed	Description of Project	Estimated Hours Effort
Merriman Family	DCI	Completed	Requested information on events surrounding the [redacted] death of John Merriman [redacted]	Researched officer's career and circumstances of death. Briefed family. Declassified administrative and photographic material.
Brownlee Family	Congress	Completed	Request for information from Rep Dornan regarding Vietnam Vet Brownlee, who was reported MIA in Vietnam on April 25, 1972.	Conducted a search and no records were located.
BNL Follow-on	NSC	Completed	A search and declassification review of the BNL holdings.	39 documents (174 pages) were released in part.
Contra Drugs, LA	CIA/IG	Completed	Response to allegations of CIA involvement in drug trafficking (cocaine) into the LA area.	Conducted exhaustive search for records - none located. IG Reports, classified and unclassified, were prepared.
OSS Member Records	DCI	Completed	Request for release of the total membership list, 21,000+ names as well as multiple individual requests for details of individual service.	Level of effort data not readily available.
OSS Operational Records	DCI	Completed	Transfer of OSS 1941-1946 records (328 cubic feet) to NARA.	Reviewed records of which approximately [redacted] were subsequently declassified.

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[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Zona Rosa	SSCI	Completed	Request for declassification of IG Report on Zona Rosa, San Salvador incident (4 Marines and 2 US businessmen killed).	Review and release completed. Also reviewed other agencies' IG reports for CIA entities.
Spanish MLAT re Pinochet	DoJ & OGC	Completed	Natl. Court of Spain investigation of Pinochet/ Chilean HR concerns for the period '73-'90; request under provision of Treaty with Spain for Mutual Legal Assistance in Criminal Matters.	[redacted] Located 43 documents.
Stargate	Congress	Nearing completion	Review of all USG records re parapsychology studies.	110,000 pages have been fully reviewed per the CDA.
Capt. Sanderson	Congress	Completed	Disappearance of AF Capt. Sanderson in 1953, shot down by Soviet aircraft over the Sea of Japan.	Conducted search no records located.
Reinhard Gehlen	Congress	Completed	Information concerning one document on Gen. Rheinhard Gehlen, purported Nazi and post war spymaster.	Determined that document had been previously released.
Mt Ararat	Congress	Ongoing	Multiple requests and demands for satellite imagery and/or analytical conclusions re presence of Noah's Ark.	More than 1,000 hours have been expended over time in responding to various requests, conducting searches, explaining results; no definitive information identified.

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[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Operation Peter Pan	Federal Court	Completed	Exodus of Cuban children to the United States.	One document located and released; well over 1,600 hours expended in searches, reviews, and defense.
Pinochet Chile I Tranche I	NSC	Ongoing	Request for information concerning Pinochet regarding human rights abuses and political violence (1973-1978).	To date, search effort completed (1968-1978). Tranche I released 492 documents from 1973-1978. Continuing review of remaining documents.
Pinochet Chile I Tranche II	NSC	Ongoing	Continuation of Chile I for 1968 - 1978.	See above
Pinochet Chile II	NSC	Anticipated	Continuation of Chile I, plus search for records in the 1979-1991 timeframe.	See above
MKULTRA	DCI	Ongoing	Search and review of information on CIA drug research and "mind control."	Over 2,000 hours expended this FY on searches, reviews, and preparation for court testimony.

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[illegible]	Tasking Authority	Status	Description	Resources Expended
Operation TAILWIND	DepSecDef & DCI	Completed	CNN and Time Magazine published charges that US troops had used lethal nerve gas in Laos in 1970 and had targeted American defectors; DepSecDef and DCI commissioned exhaustive document searches and historical research effort.	Over 1,000 hours expended (searches and interviews).
POW/MIA Records of the SSCI on POW/MIA Affairs	Congress	Ongoing	Senate-directed mandatory declassification review of SSCI POW/MIA Committee CIA documents, held by NARA and transferred to CIA for review.	Labor intensive review and re-review of more than 40,000 documents (22 cartons) is underway, matching them to earlier releases, as documented in MORI database, where applicable.
Ustashe Gold	Dept of State+B68	Completed	Request for records of Holocaust related assets of the Croatian Nazis.	Located and released 23 documents.
Illegal Campaign Finance Contributions	DoJ, NSC, Congress	DoJ ongoing, Congress and NSC completed	Investigation of alleged international criminal activities in political fundraising.	Conducted searches and reviews levied by six Congressional committees, NSC, and DoJ. Original DoJ request included several hundred names.

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Title	Tasking Authority	Status	Description	Resources Expended
China Technical Transfer/Cox Committee	Cox Committee	See Above	An initial Cox Committee focus on generic campaign financing became focus on tech transfer to China.	Level of effort data not readily available.
China Threats to National Labs	PFIAB	Completed	Foreign espionage threats to named national laboratories.	Level of effort data not readily available.
[redacted]	DCI	Completed	Parents requested information about their son's work for the Agency.	Approximately 50 hours expended researching officer's career and briefing family.
[redacted]	DCI	Completed	[redacted]	Researched officer's career and circumstances of death, [redacted]

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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	DCI	Completed	Request for details of father's relationship with the Agency [redacted]	[redacted]
[redacted]	Congress	Completed	[redacted]	Conducted search, briefed individual, [redacted]
[redacted]	DCI	Completed	[redacted]	Level of effort data not readily available.
Memorial Wall/Stars	DCI	Completed	Request to review whether information/identities of CIA persons who died in line of duty could be declassified.	Level of effort data not readily available.
Ballistic Missile Commission Records	DCI	Completed	Support to Congressional Committee, including review of testimony, review of commission report, and decisions on record storage.	Level of effort data not readily available.

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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Project Poppy	NRO	Ongoing	Classification review of programmatic and other records pertaining to Project Poppy, which is America's first ELINT satellite by the Naval Research Laboratory.	Level of effort data not readily available.
Kirkpatrick Report	DCI	Completed	1998 news articles alleged CIA withholding Kirkpatrick IG Report on Bay of Pigs.	Determined that the Agency did not deny release of document.
[redacted]	DCI	Completed	Official request to determine if there were any previous, official releases on this subject.	Level of effort data not readily available.
Berlin Tunnel Project	DCI	Completed	Request to review Agency records and obtain recognition for the work of six military translators detailed to the Berlin Tunnel Project in the mid-1950s.	Level of effort data not readily available.
Harvard Intelligence & Policy Program	DCI	Ongoing	Provide support of research programs and the development of instructional material and case studies for their National Security Programs curriculum.	Level of effort data not readily available.
UFO/Roswell	DCI	Ongoing	Request for information re: UFO sightings.	To date, over 2,700 pages have been released. Documents have been put on the CIA FOIA internet site.

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Project Title	Project Authority	Status	Project Description	Staffing and Level of Effort
Bay of Pigs	DCI	Ongoing	Records pertaining to the 1960 Bay of Pigs Conflict.	To date, thousands of hours expended conducting searches and reviews of material. 1,200 pages released, [redacted]
JFK Records Program	JFK Board	Ongoing	The largest special search every conducted -- all records pertaining to the assassination of JFK -- given an extremely broad definition of responsive records.	Over the life of the project, over 200 FTE have been expended; some 250,000 pages have been identified and processed for release to the public; only minimal withholdings.
1954 Guat Coup	DCI	Ongoing	Historically significant records pertaining to the 1954 CIA-backed coup in Guatemala.	To date, 1,800 pages & 300 tapes have been sent to NARA, see Guat III. Continue to work on remaining 100,000 pages for release.
Soviet National Intelligence Estimates (NIEs)	DCI	Ongoing	Review for possible release NIEs pertaining to the Soviet Union.	To date, thousands of hours expended conducting searches and reviews of material. Over 500 NIEs released to date.
Soviet Finished Intelligence	DCI	Ongoing	Review for possible release of finished intelligence reports concerning the Soviet Union.	To date, thousands of hours expended conducting searches and reviews of material. Research and review of approximately 33,000 pages.

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Project Title	Tasking Authority	Status	Project Description	Summary of Level of Effort
ODCI Records	DCI	Ongoing	Identified in 1995 as an objective for DCI historical program, focus is systematic review of O/DCI records beginning with the oldest and progressing forward.	To date, 3,200 pages reviewed and awaiting final approval. Program requires 3 FTE.
Studies of Intelligence	DCI	Ongoing	Review of articles, book reviews, etc. on current and historical intelligence issues.	To date, 4,000 pages released.
CORONA Imagery Program	DCI	Completed	Pursuant to Executive Order, a declassification effort of all KH 1-6 (Corona, Argon, Lanyard Programs) Imagery.	All imagery (some 800,000 frames) was reviewed and transferred to NARA and the US Geological Service for public access. Efforts exceeded 15 FTE.
Nazi War Crimes	Congress	Ongoing	Search, review, and declassification, where possible, of all records related to Nazi War Crimes.	To date, thousands of hours expended conducting searches and reviews of material.
Human Radiation Experiments	President's Advisory Board	Completed	Search and review of information regarding human radiation experiments.	Level of effort data not readily available.

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Title	Tasking Authority	Status	Description	Summary of Level of Effort
Airborne Imagery	DCI	Completed	Review and declassify CIA airborne imagery.	Level of effort data not readily available.
[redacted]	DCI	Ongoing	[redacted]	Level of effort data not readily available.
[redacted]	DCI	Ongoing	[redacted]	New tasking

*Data for years prior to 1996 may be incomplete, centralized management of most forms of information requests did not occur prior to that time.

STATEMENT OF STEVEN GARFINKEL
DIRECTOR, INFORMATION SECURITY OVERSIGHT OFFICE*
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

before the

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

July 26, 2000

Mr. Chairman and Members of the Committee:

I am very pleased to appear before you today to express strong support for the enactment of S. 1801, the "Public Interest Declassification Act," as that legislation has been modified to meet the concerns of the Administration. As director of the Information Security Oversight Office, or "ISOO," I am the executive branch official primarily responsible for monitoring government-wide compliance with the security classification and declassification policies that the President issues through Executive order. The director of ISOO would also serve as Executive Secretary of the Public Interest

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*The Information Security Oversight Office, or ISOO, is responsible for overseeing Government-wide implementation of the security programs under Executive Order 12958, "Classified National Security Information," and Executive Order 12829, "National Industrial Security Program." ISOO is also responsible for reporting annually to the President on the status of these programs. Created in 1978, ISOO became a component of the National Archives and Records Administration in November 1995. In addition to reporting to the Archivist of the United States, the Director of ISOO receives policy guidance from the National Security Council.

Among its functions, ISOO: (1) develops implementing directives and instructions; (2) maintains liaison with all agencies that create or handle classified information; (3) inspects agency programs and reviews their classified records; (4) receives and responds to public complaints, appeals and suggestions; (5) collects and reports to the President and Congress relevant statistical data about the security classification program, including data about its costs; (6) serves as a spokesperson for information about the security classification program; (7) provides program and administrative support for the Interagency Security Classification Appeals Panel; and (8) recommends policy changes to the President through the National Security Council.

Declassification Board should S. 1801 be enacted in its current form. I appear before you today to express support for the revised legislation on behalf of the Administration and from my personal perspective as director of ISOO.

My support for S. 1801 arises from my belief that the establishment of the Public Interest Declassification Board, or "the Board" as I will refer to it, could not come at a more propitious time. Over the past five years, we have witnessed unprecedented progress in declassifying the vast archives of classified information that has built up since World War II. Under the policies of Executive Order 12958, issued in 1995, the agencies of the executive branch, to their great credit, have declassified many hundreds of millions of pages of classified information. This information is contained in those records that have been determined by the Archivist of the United States to have permanent historical value. I call to your attention the chart attached to my statement and posted as an exhibit, which illustrates the enormous progress we have made and the challenges that remain.

To many interested observers, this progress in declassification, while laudatory, is only the beginning of what needs to be done to make available to the American people those heretofore secret archives of governmental activity. To other observers, declassification has proceeded at too rapid a pace, outstripping our ability to be certain that we are not opening up information that needs to remain confidential in order to protect our national interests, and at a cost that is too expensive to maintain on an annual basis.

The establishment of the Board offers the opportunity, at a modest cost, for a panel of experts to provide its immediate and continuing objective evaluation of these policies and their implementation. The timing could not be more critical. In January 2001, a new President will take office. Because the security classification system has historically been based upon Executive order, the new President will very quickly receive conflicting advice about what should be done with respect to the policies of E.O. 12958. Some will urge its continuation or expansion. Others will argue for its modification or fine-tuning. And still others will recommend that the President revert to the policies of the past with respect to the declassification, or, some would say, the absence of declassification of information. The existence of this Board of experts suggests that any action that the President ultimately takes will benefit from a reasoned and reasonable analysis of the myriad options that will be urged upon him.

The creation of the Board portends another positive development – a more objective analysis of special declassification projects before they are enacted. While each of these programs may be argued to be in the public interest, each comes with significant costs. First and foremost in my view, a special program diverts tremendous resources away from general access to information programs like systematic declassification, and from Freedom of Information or mandatory review for declassification actions. The individuals who are reviewing records for declassification in order to comply with a special program are not new hires. They are the same people who would otherwise be declassifying records in an order based upon an analysis of costs and benefits, or who would be responding to the hundreds of thousands of Freedom of Information requests

that the agencies of the executive branch receive each year. While those who are primarily interested in the subject matter of a special declassification program may benefit from enhanced access to these particular records, others, whose interest in access is just as important to them, will suffer vastly increased delays in the processing of their requests. Perhaps more ominous for them, their requests may be undertaken by far less experienced reviewers, who are far less likely to declassify the information.

I am not suggesting that all special declassification programs should be avoided. To be sure, at times current events or circumstances demand that we pay special attention to making publicly available the records of a particular subject. What we should try to avoid, however, are situations in which the interests of the few take precedence over the interests of the many. The Board will be particularly well suited to provide its expertise on these matters.

Another area to which the Board should be able to contribute significantly is classification management and policy. Even though the Cold War ended a decade ago, we remain in a transitional period between the Cold War era and the post-Cold War era as far as our national security policies go. Moreover, we are in the midst of a technological revolution whose product is greatly enhanced public access to information. In this environment, the policies and decisions that we make regarding security classification are more difficult and problematical. Not that many years ago, a classified secret existed on several pieces of paper and in the minds of a few individuals. Today, the same type of secret can be and often is distributed to hundreds

of computer terminals, with thousands of individuals potentially having access to it. And the small electronic medium on which that secret is stored may also store thousands of other secrets. The Board's insights will bring a welcome perspective to our efforts to cope with this dilemma.

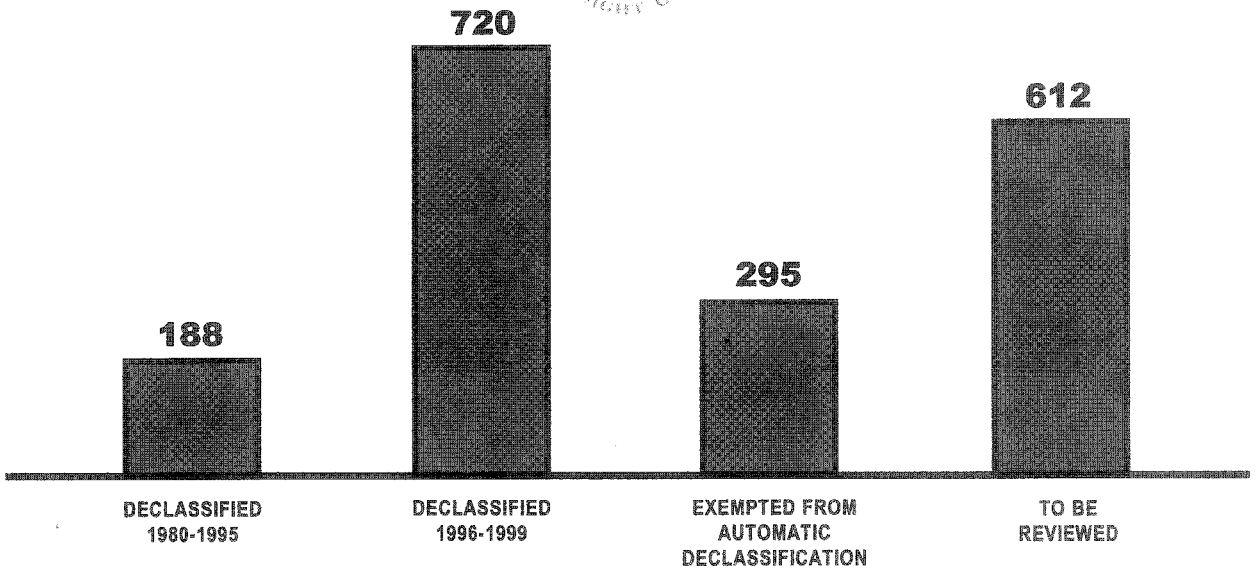
From the point of view of the Board's potential Executive Secretary, I anticipate that the costs associated with the Board will be quite modest. ISOO's infrastructure is long established, allowing it to serve as the staff for the Board and its Chairperson with minimal start-up costs. I also anticipate that very modest increased staff resources should be sufficient to provide administrative support for the Board. Strong communication between the Chairperson and the members, and between the Chairperson and the Executive Secretary, and given the technological resources available today, portends the ability to conduct the Board's business without formally convening its membership excessively.

Mr. Chairman and Members of the Committee, as I stated above, the establishment of the Public Interest Declassification Board could not come at a more propitious time for providing expert advice on the timely issues of classification and declassification policy. Over the past several years, its existence and input would, in my view, have been most welcome and helpful. I think, for example, of those occasions when the Congress has considered the impact of our declassification program on the protection of information classified under the Atomic Energy Act; or when the Congress and the Administration have considered the establishment of a number of special declassification projects; or

as the Congress now considers legislation that would establish a new criminal provision for the unauthorized disclosures of classified information. As a new presidential administration assumes office, these examples will surely multiply. The Public Interest Declassification Board offers a means to help achieve reasonable solutions to the controversies inherent in Government secrecy, and classification and declassification policy. Therefore, on behalf of the Administration I most strongly recommend your positive action on S. 1801.

DECLASSIFYING PERMANENTLY VALUABLE RECORDS

(IN MILLIONS OF PAGES)



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Statement of
Steven Aftergood
Director, Project on Government Secrecy
Federation of American Scientists

before the
Committee on Governmental Affairs
United States Senate

Hearing on
S.1801, The Public Interest Declassification Act

July 26, 2000

Summary

The Public Interest Declassification Act is an extremely modest proposal.

In fact, the objectives of the Act are so limited that if it were the final result of the ambitious process that began with the Moynihan Commission in 1995, then it would be a pathetic conclusion indeed.

But if it is a "middle" rather than an "end," and if it can contribute to the advancement of more substantial changes in national security classification policy, as I believe, then the Act represents an opportunity that should be seized.

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My name is Steven Aftergood and I am a senior research analyst at the Federation of American Scientists (FAS), which was founded in 1945 by Manhattan Project scientists at Los Alamos. FAS performs policy research and advocacy on a range of national security policy issues, with an emphasis on nuclear arms control. I direct the FAS Project on Government Secrecy, which studies government secrecy and information security policies, and generally favors greater openness in national security policy.

Background

The last time this Committee held a hearing on government secrecy was two years ago.[1] Since that time, there have been several changes in secrecy policy that are unfavorable to "protecting and reducing government secrecy," as the official name of the Moynihan Commission would have it. To the contrary, secrecy is increasing in scope and diminishing in effectiveness. For example:

- Two years ago, in FY 1998, the intelligence budget total ($26.7 billion) was unclassified. Today, in FY 2000, it is classified as a national security secret.

- In 1999, Congress imposed a new cap of $51 million for spending on declassification in FY 2000 by all Department of Defense components. (By comparison, classification related costs exceed $5 billion annually, according to the Information Security Oversight Office.) Last May, the House voted to lower that cap by nearly 50 percent to $30 million in FY 2001.

- In 1998, Congress sharply restricted automatic declassification under the provisions of Executive Order 12958. In 1999, Congress dealt a further blow to

[1] "S.712-- Government Secrecy Act of 1997," hearing before the Committee on Governmental Affairs, March 25, 1998, S. Hrg. 105-525.

declassification by requiring declassification officials to conduct a new review of hundreds of millions of pages at the National Archives that had already been declassified to search for inadvertent disclosures of still classified information.

- The Freedom of Information Act is steadily being eroded. Earlier this month in the Defense Authorization Act for FY 2001, the Senate voted to block public access to certain unclassified foreign government information, to further restrict public access to certain unclassified imagery and map products, and to grant the Defense Intelligence Agency a categorical exemption from disclosure for its operational files, despite their previous availability and exceptional utility.[2]

- Meanwhile, "leaks," or unauthorized disclosures of classified information, seem to be steadily growing in frequency and magnitude. One notable recent case concerns the official history of the 1953 CIA covert action in Iran, a matter which CIA officials pledged to process for declassification in the early 1990s. Last year, the CIA told a federal court that no more than one sentence of that 200 page history could be declassified. But then the full classified document was leaked to the New York Times and published almost in its entirety on the Times web site.[3]

- Classified documents are entering the public domain at an unprecedented rate. Just last week, a set of CIA briefing documents, classified at the Secret level, was posted on the world wide web.[4]

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[2] See "Seeking Secrecy Where There Was Sunshine," by Tom Blanton, *The Washington Post*, July 19, 2000.

[3] See <http://www.nytimes.com/library/world/mideast/041600iran-cia-index.html>.

[4] See "Web Site Posts Secret CIA Briefing Papers," by Vernon Loeb and Doug Struck, *The Washington Post*, July 23, 2000. The web site is <http://jya.com/crypto.htm>.

Instead of "protecting and reducing" government secrecy, we have been "expanding and exposing" it. It is evidently easier to allow the classification system to break down than it is to agree on how it should be fixed.

The Present Bill

The present bill would not do much to solve the problem. The secrecy legislation that was first introduced in 1997 has been watered down in each subsequent iteration to the point that the present bill would have no direct impact on secrecy policy whatsoever. The bill would create a "Public Interest Declassification Board" that has no independent authority to declassify or compel declassification. Its "advice" and "recommendations" would create no obligation on the part of the recipient.

We know from experience that such declassification advisory bodies can make a positive contribution when they have independent declassification authority, as in the case of the JFK Assassination Records Review Board. But lacking such authority, as in the case of the CIA Historical Review Panel, for example, they are purely cosmetic and without effect.

It is hard for those who have read and admired the Report of Sen. Moynihan's Commission on Protecting and Reducing Government Secrecy not to be disappointed with this meager outcome. If the final result of the process were nothing more than a mere advisory body, then the entire Commission would have been largely a waste of time, as would the related efforts of this Committee over the years.

But that need not be the case. I believe that the S. 1801, the Public Interest Declassification Act, could still serve as a vehicle for advancing more ambitious goals, and should be enacted.

S.1801 As a Stepping Stone to Larger Goals

Despite its clear limitations, I believe that S.1801 could still serve several useful purposes and should be enacted. These purposes include:

a. **Advocate Reform within the Executive Branch.**

The Board could serve as an advocate within the executive branch for the promotion of policies consistent with the executive order, the findings of the Moynihan Commission, and other reform initiatives. The Board could help oversee compliance with executive order declassification milestones, special initiatives such as the Chile Declassification Project, and so forth. It could identify specific obstacles to secrecy reform and develop its own declassification policy proposals. It could also serve as an internal executive branch advocate for declassification funding. Even though it could not compel compliance with declassification standards, the Board could serve a useful function by highlighting problem areas for others to act upon.

b. **Advise Congress on Pending Legislation**

The Board could play an enormously valuable role by overseeing the development of legislation affecting classification and declassification policy and advising Congress, as appropriate.

This function is particularly important since Congress has of late adopted significant legislation on secrecy policy without public hearings or other opportunity for public comment. Some of the secrecy policy issues presently before Congress include: Should Defense Intelligence Agency operational files and unclassified foreign government information be exempt from the Freedom of Information Act? Does the benefit of re-reviewing declassified files at the National Archives outweigh the costs involved? Should limits on declassification spending be lowered by 50%?

The Board could take the initiative to provide well-informed input into these and

other highly consequential legislative actions, a function that is clearly consistent with Section 3(b)(2) of the bill.

c. **Provide an Occasion for Legislative Oversight**

The passage of S.1801 and the creation of the Public Interest Declassification Board would give Congress a "stake" in the conduct of declassification policy, and would provide an occasion for regular oversight of the classification system. This has been sorely lacking.

Although there have been valuable hearings held on legislation affecting particular categories of records involving human rights in Central America, Nazi war crimes, and other topics, there has been no regular or systematic oversight of classification policy for years.

If classification and declassification policy really is as important as I think this Committee believes, then there is a role for increased congressional oversight and the new Board could help bring that about.

Conclusion

In the interests of advancing these important objectives, I respectfully suggest that the Committee give favorable consideration to this legislation.

STATEMENT OF WARREN F. KIMBALL
ROBERT TREAT PROFESSOR OF HISTORY
RUTGERS UNIVERSITY
and
MEMBER, DEPARTMENT OF STATE ADVISORY COMMITTEE
ON HISTORICAL DIPLOMATIC DOCUMENTATION

before the

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

July 26, 2000

Mr. Chairman and Members of the Committee:

I thank you for the opportunity to speak to S. 1801, the "Public Interest Declassification Act of 2000," and to explain why I believe such legislation would be in the national and public interest. It is my firm conviction that this act and the Public Interest Declassification Board that it creates will improve our ability to protect important national security information. At the same time, it will promote public confidence in government by maintaining and expanding knowledge of the history of how national security policy was developed and implemented . Moreover, the legislation takes a significant step toward cutting the excessive costs of maintaining the security of classified information.

How does this bill accomplish all that? Is this nothing more than a piece of innocuous legislation that just follows the Hippocratic oath--"do no harm"? If it is merely like chicken soup--might help, can't hurt--then why create another government board that may live long after everyone has forgotten why, or even that, it exists? Were that the case, I would oppose creation of the Board as a piece of smoke-and-mirrors that only distracts from effective reform of our government's declassification programs. But that is not the case. The Public Interest Declassification Board will inform and improve the healthy debate over what should and what should not be kept secret.

The Board would also help to limit the plethora of special searches, those "boutique" declassification efforts that devour resources that should go to systematic declassification review. Some of those special searches have been legitimate. Some have been trivial. Many have been repetitive and unrewarding, as illustrated in some of the exhibits before you. *All* have been

exorbitantly expensive in both money and workhours. *All* were, or should have been, unnecessary. If effective, routine, comprehensive systematic declassification review were in place for all agencies, and if the public believed in the integrity and thoroughness of those review processes, then important documentation--such as what was uncovered by the Nazi Gold search--would be routinely reviewed and declassified without an expensive "special search." The Board established by this legislation will be able to foster the development of effective, comprehensive systematic declassification review programs for historical documentation by gathering information on "best practices" and by reporting on progress made. At the same time, the Board would assess the effectiveness and reasonableness of an agency's declassification review program and recommend remedies for any shortcomings, thus building public confidence in the process.

But until that effective government-wide systematic declassification review exists, "special searches" will and should continue to be proposed, so long as there are legitimate and important reasons. But how can Congress and the White House best decide which "specials" will be legitimate and will release important new information, and which will not? How can the public--media, researchers, pressure groups, and individuals--be assured that their government is not hiding the truth for the wrong reasons? The answer is provided by this bill. The Public Interest Declassification Board could and should study any proposed "special search," evaluate the results of similar previous declassification efforts, examine the classified documentary record, and then report to the President and Congress. That would provide Congress and the Executive Branch with validation from an independent public board of the legitimacy of the request, and provide expert advice on establishing priorities for those "specials" that should be implemented.

I spent twenty-three years in the Naval Intelligence Reserve, and have been a member of the State Department Historical Advisory Committee for nine years--eight as chairman. I have come to appreciate the complexity of declassification issues, even for historical information that is twenty-five years old or older. Before going any further, let me emphasize two points: First, this legislation does not change the current approach to systematic declassification review, which is aimed at ***historical*** records that are twenty-five and thirty-years old--***not*** current plans,

operations, and intelligence activities. Second, declassification ***review*** is not the same as declassification. Nothing in this bill changes the current practice that puts declassification decisions in the hands of the agency that has ownership or "equity" in the information. There is nothing in this legislation that threatens or changes current information security procedures. Access to Special Compartmentalized Intelligence (SCI) is, quite appropriately, given special attention. Nor can the Public Interest Declassification Board declassify anything--it can only examine, assess, advise, and report.

Setting standards and guidelines for declassifying even historical information requires careful thought and extensive experience. No one wants to disclose anything that might seriously jeopardize our national security or the lives of those who work to protect this nation. But sensible, practical standards and guidelines can be and have been established. Since the early 1990s, systematic declassification review by the State Department has opened up 95% of its historical records. Using a "most important first" rather than "easiest first" approach, State Department reviewers have opened highly sensitive records of our diplomacy as well as intelligence records, all without a single reported breach of national security. As an aside, but to dispel rumors of security breaches caused by systematic declassification review, the head of the Department of Energy's information security program has stated that he has not uncovered any inadvertent disclosures of classified or RD/FRD information due to the systematic declassification reviews conducted in accordance with the current Executive Order on Information Security (EO 12958).

Yet, with only one exception (the Air Force has apparently put in place a successful systematic review program), the State Department is the only major agency or department that has reviewed and declassified, where appropriate, its historical records, ***and*** made them available to the American public. During the now-ended Cold War, foreign and national security policy became the responsibility of many agencies and departments besides the State Department, yet those agencies have not implemented similarly successful declassification review programs. That means that Americans, and their representatives in Congress, do not have comprehensive access to the record of national security policy from twenty-five and more years ago--a time when Gerry Ford was president.

Of course perfection is the enemy of progress. *No declassification review system can be perfect*. To attempt to reach such perfection is neither possible nor desirable. The cost alone would be staggering. The effect on our democratic society even greater. Democracy is not a suicide pact. No one wants properly classified information to be inadvertently released, least of all significant information relating to nuclear weapons development, even when it is thirty year-old technology. But there is little risk of that happening when declassification review programs are applied with the rigor of that implemented by the State Department. At the same time, the confidence of a people in their government depends critically on their being part of the process and on the conviction that their government is held accountable for its actions. Confidence is built on trust, and that can come only with public knowledge about government policies--even if it takes 25 to 30 years for the information to become available.

This bill will not create instant public accountability for intelligence agencies, the Department of Defense, or even the State Department. Individuals will instinctively try to cover embarrassment, unethical conduct, and foolishness by classifying the information that exposes their conduct. But if we can move a step closer to opening the ***historical*** record to the scrutiny of the American public, we will have won a battle in what is an ongoing struggle. Accountability is a democratic issue, not just one for accountants. Such accountability does not have to come in ways that jeopardize legitimate (to be defined) current activities or living individuals, but at some point the door must swing open far enough (also to be defined) or the very democracy that government officials and intelligence operatives are protecting is no longer a democracy. These are serious issues for the Republic that are worth an informed, responsible debate; something the Public Interest Declassification Board can facilitate.

Why have so few systematic declassification ***review*** programs of thirty-year old records been fully implemented? I have some opinions, some educated guesses based on forty years of research in the records and nearly a decade on the State Department Historical Advisory Committee. But "guesses," however educated, are not a sufficient basis for Congressional and/or Executive Branch action. The Public Interest Declassification Board that this legislation would create could, and should, study the issue and provide careful, well-researched answers and recommendations for remedies.

In closing, I do suggest three very brief amendments, all designed to improve the effectiveness and credibility of the Board (changes in italics):

First, the Board should be required to meet at least two or three times a year. That will ensure that its work cannot be impeded by a lack of support from the Executive Branch. [Sec. 3 (e): change first sentence to read: "The Board shall meet as needed to accomplish its mission, consistent with the availability of funds *but at least three times a year*."]

Second, currently serving government officers and officials should be excluded from membership on the Board lest its ability to validate the completeness and honesty of special searches be compromised. The Board ***must*** have the public's confidence that it is independent if it is to confirm the comprehensiveness of declassification programs and legitimate "special searches." Agencies will have ample opportunity to express concerns since this legislation allows every agency with classified material to appoint an agency liaison to the Board. [Sec. 3 (c)(1): add final clause reading: ", *and who are not currently employees or officers of the United States.*"]

Third, the Board should be able to request additional details from the Department of Defense about systematic declassification review programs since each agency within that Department has its own initiatives and procedures, with the Air Force program being a good example. Gross statistics, for example the number of pages reviewed for declassification, can be very misleading since that does not necessarily reflect the quality and importance of the information so reviewed. Such statistics can be inflated by including reviews of large quantities of obviously unimportant files related to such things as administration. [Sec. 4 (a)(2): change final clause to read: ", *may* present a consolidated report and briefing to the Board, *although the Board may request details concerning specific DOD agencies and activities*."

The American Historical Association and the Society for Historians of American Foreign Relations have both gone on record as favoring systematic declassification review. I strongly endorse this legislation as a meaningful step in the further development of a rational, responsible,

cost-effective, government-wide program for the declassification review of the mountain of historical documentation that threatens to bury us; a mountain of material containing so much that does not need to be secret that government officials and the public are prompted to treat it all too casually. That growing sense of contempt may be the greatest threat to the security of appropriately classified information. "If everything is classified, there are no secrets."

Statement of R. James Woolsey

before the

Committee on Governmental Affairs

United States Senate

July 26, 2000

Mr. Chairman, Members of the Committee. It is an honor to have been asked to testify before you today on S. 1801, "The Public Interest Declassification Act of 2000".

Let me say, first of all, that although the tools proposed by this bill are relatively modest, the bill seems to me to be a positive attempt to begin to come to terms with one of the most vexing problems in the important field of government secrecy - the issue of special searches of classified material for declassification review.

I think that the beginning of wisdom about this aspect of government activity - secrecy and declassification - is to recognize the need both for reform on the one hand and for caution and experimentation on the other. This bill is crafted in that spirit. I will turn in a moment to a few of its specific provisions, but let me first explain why I believe that this overall stance is the right one.

Reform is important because the system is broken and will soon be even more so, as the digital age adds reams of records - e-mails, to mention only one - to the government's vast store of classified material. It is obvious that much of this classified material would be useful to historians and other citizens for a range of important purposes -- and it is equally obvious that some of it was improperly classified in the first place.

Two examples.

I ordered the declassification of a number of files on covert actions during the Cold War some six years ago when I was Director of Central Intelligence. Some of that material has been released after subsequent review. Some has been said, subsequently, not to exist any longer in the government's files. And some (relating to Iran), has been lost inside the government but then, in effect, "released" through a leak to the press. On the Iranian material historians have benefitted, in part by being able to see that the U.S. Government's effect on the 1954 coup in Iran was far from central. After reading the material in the press I can see no defensible reason why, after review, it was not released officially by the government as I had ordered.

(You may have noted, by the way, that I have avoided mentioning the name of the government agency I used to head (let's call it "the C Agency") that was involved in these matters. This is because I returned from travel very recently and was only able to prepare this testimony late yesterday afternoon, when it was already past due to the Committee. Consequently there was no time to submit it for security clearance by that Agency, a procedure I was recently informed by the Agency's Chairman of Publications Review that I should follow if I even "mention" the Agency's name. Hence a slight coyness in prose style to comply with the letter - admittedly not the spirit - of what seems to me to be a rather bizarrely inclusive rule related to classification.)

I have recently represented several Iraqis in an immigration case in which the men were imprisoned based almost entirely on classified evidence introduced by the government that neither the men nor their counsel were permitted to see. After several influential Senators wrote to the Attorney General about the matter two years ago, the government said, in effect,

"whoops", and released about 90 per cent of the evidence, saying that it had been improperly classified initially. Yet six men served two years in prison and two men are there still, in no small measure because of this improper classification. And the written version of the immigration judge's recent decision, announced from the bench in non-final form, to rule in favor of the remaining two men and release them has been held up for many weeks in the Justice Department. Need I say that the reason given by the Justice Department is that the judge's written decision is still undergoing classification review?

On the other hand, there is good reason for the government to be cautious with the release of some types of information, even many years after it is acquired.

It is not only the details of code-breaking or espionage tradecraft or agent identity that must be protected -- and frequently for many decades. Often the substance of what is known about a foreign government, or the time when it was known, can indirectly lead to the betrayal of, for example, an agent identity or a broken code. These things must be assessed carefully by experts before intelligence records are released.

Moreover, much of what the U.S. obtains in intelligence is obtained through liaison arrangements - essentially trading intelligence - with foreign countries. Those valuable liaison relationships will dry up if we release material, even after many decades, even if it is material that we ourselves would like to release, without the permission of the foreign intelligence service from which it was obtained. And these relationships save American lives. I daresay that any American who was a tourist in Jordan at the beginning of this year -- and whose life may well have been saved by very professional and cooperative Jordanian intelligence actions

that thwarted terrorist attacks on American targets there - would probably not be an advocate of releasing material received from Jordan without Jordanian consent and thereby undermining U.S.-Jordanian intelligence cooperation in the future.

Because of the complexity of making many of these judgments, and the professional experience required, reforms should be carefully considered. They should not, in my view, at least in the intelligence field, rely on broad and automatic rules - such as a certain number of years since the document was created - for declassification criteria. Reforms should be tailored carefully to protect what must be protected for sound reasons, all of it, even if it is many years old, and to declassify the rest as promptly as possible.

As anyone who has worked in this area in government should know, this is not a simple job. There is more than one way to err. Statisticians talk of "type 1" and "type 2" errors - essentially sins of omission and sins of commission. A radar, for example, should ideally detect all enemy aircraft and have no false alarms, e.g. should detect no birds. But in the real world one often has to choose between catching all enemy aircraft as well as a few birds, or picking up no birds but missing a few enemy aircraft. One comes closer and closer to the ideal over time the better, the more experienced, the smarter one's radar designers. There is no substitute for careful experimentation, trial and error.

In this overall context the Public Interest Declassification Board established by the bill seems to me to be a positive step. Experimentation, trial and error are needed. Special searches have been overdone, but they can be valuable tools for the historian and others in some circumstances. One wants only the useful special searches, not the repetitive and trivial. The Board will not be able to achieve this ideal balance on its own, but its recommendations should

contribute toward a positive set of rules about which searches are undertaken. Even cutting down on duplicative searches will be a step in the right direction for the hard-pressed professionals in the agencies that are trying to deal with this very difficult problem of making declassification decisions.

I do believe that it would be useful, as Professor Kimball has suggested, for the Board to meet at least two or three times a year and to consist of persons other than current officers or employees of the U.S. Government. It should also, in my judgment, be selected with an eye toward diversity of experience in the world of classified material. There should be both historians and former intelligence and military officers, for example. It is only out of debate over this difficult subject -- between people of good will who both have something to teach and the humility to realize that they also have something to learn - that we are likely to get any useful recommendations for improving the current unsatisfactory system.

II

106TH CONGRESS
1ST SESSION

S. 1801

To provide for the identification, collection, and review for declassification of records and materials that are of extraordinary public interest to the people of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 27, 1999

Mr. MOYNIHAN introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To provide for the identification, collection, and review for declassification of records and materials that are of extraordinary public interest to the people of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Interest Declassification Act of 1999".

SEC. 2. FINDINGS.

Congress makes the following findings:

1 (1) A comprehensive reform of the management
2 of the classification and declassification of informa-
3 tion is essential but will require additional funding,
4 more technical development, and more coordination
5 by the executive branch.
6 (2) The dissemination of declassified records of
7 permanent historic value that pertain to the national
8 security of the United States is in the public interest
9 and can best be accomplished through continued on-
10 going systematic declassification of classified infor-
11 mation.
12 (3) It is in the national interest to establish an
13 effective, coordinated, and cost-effective means by
14 which records on specific subjects of extraordinary
15 public interest may be collected, retained, reviewed,
16 and disseminated for Congress, policymakers in the
17 executive branch, and the public.
18 (4) Ensuring, through such measures, public
19 access to information that does not require protec-
20 tions is a key to striking the balance between secrecy
21 and the openness that is central to the proper func-
22 tioning of the political institutions of the United
23 States.

1 **SEC. 3. PUBLIC INTEREST DECLASSIFICATION BOARD.**

2 (a) ESTABLISHMENT.—There is established within
3 the National Archives and Records Administration a board
4 to be known as the "Public Interest Declassification
5 Board" (in this Act referred to as the "Board").

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

8 (1) To direct and provide, through rec-
9 ommendations to the Archivist of the United States,
10 for the thorough, coordinated, comprehensive, and
11 cost-effective identification, collection, review for de-
12 classification, and release to Congress, interested
13 agencies, and the public of records and materials
14 (including donated historical materials) that are of
15 extraordinary public interest.

16 (2) To provide Congress, interested agencies,
17 and the public with the fullest possible access to a
18 thorough, accurate, and reliable documentary record
19 of significant United States national security deci-
20 sions and significant United States national security
21 activities in order to—

22 (A) support the oversight and legislative
23 functions of Congress;

24 (B) support the policymaking role of the
25 executive branch;

1 (C) respond to the interest of the public in
2 national security matters; and
3 (D) promote reliable historical analysis and
4 new avenues of historical study in national se-
5 curity matters.
6 (c) MEMBERSHIP.—(1)(A) The Board shall be com-
7 posed of nine individuals appointed by the President from
8 among citizens of the United States who are preeminent
9 in the fields of history, national security, foreign policy,
10 social science, law, or archives, including individuals who
11 have served in Congress or otherwise in Federal Govern-
12 ment or have otherwise engaged in research, scholarship,
13 or publication in such fields on matters relating to the na-
14 tional security of the United States.
15 (B) The President shall appoint members of the
16 Board after consideration of recommendations made by
17 appropriate organizations, including the American Histor-
18 ical Association, the Organization of American Historians,
19 the American Political Science Association, the Society of
20 American Archivists, the American Society of Inter-
21 national Law, the Standing Committee on Law and Na-
22 tional Security of the American Bar Association, and the
23 Society for Historians of American Foreign Relations.
24 (C) An officer or employee of the Federal Govern-
25 ment may not serve as a member of the Board.

1 (2)(A) Of the members initially appointed to the
2 Board, three shall be appointed for a term of three years,
3 three shall be appointed for a term of two years, and three
4 shall be appointed for a term of one year.
5 (B) Any subsequent appointment to the Board shall
6 be for a term of three years.
7 (3) A vacancy in the Board shall be filled in the same
8 manner as the original appointment. A member of the
9 Board appointed to fill a vacancy before the expiration of
10 a term shall serve for the remainder of the term.
11 (4) A member of the Board may continue to serve
12 on the Board when the member's term expires until a suc-
13 cessor is appointed.
14 (5) A member of the Board may be appointed to a
15 new term on the Board upon the expiration of the mem-
16 ber's term on the Board, except that no member may serve
17 more than three full terms on the Board.
18 (d) CHAIRPERSON; EXECUTIVE SECRETARY.—(1)(A)
19 The President shall designate one of the members of the
20 Board as the chairperson of the Board.
21 (B) The term of service as chairperson of the Board
22 shall be one year.
23 (C) A member serving as chairperson of the Board
24 may be re-designated as chairperson of the Board upon

1 the expiration of the member's term as chairperson of the
2 Board.
3 (2) The Archivist of the United States shall select
4 the Executive Secretary of the Board.
5 (e) MEETINGS.—The Board shall meet at least quar-
6 terly. A majority of the members of the Board shall con-
7 stitute a quorum.
8 (f) STAFF.—(1) The Chairperson of the Board may,
9 with the concurrence of the Board, appoint such staff of
10 the Board as the Board requires to carry out its duties
11 under this Act.
12 (2) Any employee of the Federal Government may be
13 detailed to the Board, without reimbursement to the de-
14 tailing agency, and such detail shall be without interrup-
15 tion or loss of civil service status or privilege.
16 (g) SECURITY.—(1) The members and staff of the
17 Board shall, as a condition of appointment to or employ-
18 ment with the Board, hold appropriate security clearances
19 for access to the classified records and materials to be re-
20 viewed by the Board and shall follow the guidance and
21 practices on security of the Assistant to the President for
22 National Security Affairs.
23 (2) The head of an agency may, as a condition of
24 granting access by a member or staff of the Board to clas-

1 sified records or materials of the agency under this Act,
2 require the member or staff to—
3 (A) execute an agreement regarding the secu-
4 rity of such records or materials that is approved by
5 the head of the agency; and
6 (B) hold an appropriate security clearance
7 granted or recognized under the standard procedures
8 and eligibility criteria of the agency, including any
9 special access approval required for access to such
10 records or materials.
11 (2) Members and staff of the Board may not use any
12 information acquired in the course of their official activi-
13 ties on the Board for nonofficial purposes.
14 (3) For purposes of any law or regulation governing
15 access to classified information that pertains to the na-
16 tional security of the United States, and subject to any
17 limitations on access arising under section 6(c), a member
18 of the Board seeking access to a record or material under
19 this paragraph shall be deemed to have a need to know
20 the contents of the record or material.
21 (h) COMPENSATION.—(1) Each member of the Board
22 shall receive compensation at a rate not to exceed the daily
23 equivalent of the annual rate of basic pay payable for posi-
24 tions at SES–1 of the Senior Executive Service under sec-
25 tion 5382 of title 5, United States Code, for each day such

1 member is engaged in the actual performance of duties
2 of the Board.

3 (2) Members of the Board shall be allowed travel ex-
4 penses, including per diem in lieu of subsistence at rates
5 authorized for employees of agencies under subchapter 1
6 of chapter 57 of title 5, United States Code, while away
7 from their homes or regular places of business in the per-
8 formance of the duties of the Board.

9 (i) GUIDANCE; ANNUAL BUDGET.—(1) On behalf of
10 the President, the Assistant to the President for National
11 Security Affairs shall provide guidance on policy and secu-
12 rity matters to the Board, including guidance and prac-
13 tices on security under subsection (g)(1).

14 (2) The Archivist of the United States shall, in con-
15 sultation with the Assistant to the President for National
16 Security Affairs and the Director of the Office of Manage-
17 ment and Budget, prepare the annual budget for the
18 Board.

19 (j) PUBLIC AVAILABILITY OF RECORDS AND RE-
20 PORTS.—(1) The Board shall make available for public in-
21 spection records of its proceedings and reports prepared
22 in the course of its activities under this Act to the extent
23 such records and reports are not classified and would not
24 be exempt from release under the provisions of section 552
25 of title 5, United States Code.

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

7 (k) INAPPLICABILITY OF FACA.—The provisions of
8 the Federal Advisory Committee Act (5 U.S.C. App.) shall
9 not apply to the activities of the Board under this Act.

10 **SEC. 4. IDENTIFICATION, COLLECTION, AND REVIEW FOR**
11 **DECLASSIFICATION OF INFORMATION OF EX-**
12 **TRAORDINARY PUBLIC INTEREST.**

13 (a) RECOMMENDATIONS.—(1) The Board may rec-
14 ommend to the Archivist of the United States that an
15 agency or Federal Presidential library be directed to carry
16 out an activity specified in paragraph (2) with respect to
17 records or materials that the Board determines are
18 records or materials (including donated historical mate-
19 rials) of extraordinary public interest for purposes of the
20 release of such records or materials to the public or the
21 provision of such records or materials to Congress or pol-
22 icymakers in the executive branch.

23 (2) The activities that may be recommended by the
24 Board under paragraph (1) are the following:

25 (A) Identification of records or materials.

1 (B) Collection of records or materials.

2 (C) Review for declassification of records or
3 materials.

4 (D) Any combination of activities specified in
5 subparagraphs (A) through (C).

6 (3) In making recommendations under paragraph
7 (1), the Board shall consider the following:

8 (A) The opinions and requests of Members of
9 Congress, including opinions and requests expressed
10 or embodied in letters or legislative proposals.

11 (B) The opinions and requests of the National
12 Security Council and of the heads of agencies.

13 (C) The opinions of United States citizens.

14 (D) The opinions of individual members of the
15 Board.

16 (E) In the case of unscheduled or temporary
17 records or materials, the assessment of the Archivist
18 of the United States as to the value of identifying,
19 collecting, and conducting declassification reviews of
20 such records or materials.

21 (4) The Board shall, subject to the policy, budgetary,
22 and security guidance provided under section 3, establish
23 such priorities as the Board considers appropriate for pur-
24 poses of this section.

1 (5) The Board should establish liaisons, and may con-
2 sult, with such other historical advisory committees, in-
3 cluding panels and boards created under statute, or agen-
4 cy directive, concerned with the identification, collection,
5 and review for declassification of classified information as
6 the Board considers appropriate for purposes of this Act.
7 (b) ORDERS.—(1) The Archivist of the United States,
8 or the designee of the Archivist, shall, in consultation with
9 the Assistant to the President for National Security Af-
10 fairs, consider each recommendation made by the Board
11 under subsection (a).
12 (2) If the Archivist accepts a recommendation of the
13 Board under subsection (a), the Archivist shall order that
14 the actions contained in the recommendation be taken.
15 (3) If the Archivist does not accept a recommendation
16 of the Board under subsection (a), the Board shall notify
17 Congress of the lack of acceptance of the recommendation
18 in a report under section 6(f)(2).
19 (c) COMPLIANCE WITH ORDERS.—(1) Except as oth-
20 erwise provided in section 5(a) or 6(c), and subject to the
21 availability of funds under section 8, an agency or Federal
22 Presidential library shall comply with an order made to
23 the agency or library, as the case may be, under subsection
24 (b).

1 (2)(A) If an order to an agency or Federal Presi-
2 dential library under subsection (b) requires a review for
3 declassification of records or materials originated by an-
4 other agency, the agency or library, as the case may be,
5 shall refer such records or materials to such other agency
6 for review in accordance with the order.

7 (B) The actions of an agency referred records or ma-
8 terials under subparagraph (A) shall be subject to the
9 terms of the order relating to such records or materials
10 and to limitations relating to funding under section 8.

11 (3)(A) The Board shall, through the head of an agen-
12 cy or Federal Presidential library given an order under
13 subsection (b), provide oversight of any identification, col-
14 lection, or review of records or materials ordered under
15 that subsection.

16 (B) In providing oversight of identification, collection,
17 or review under this paragraph, the Board shall, in con-
18 sultation with the Archivist of the United States, take ap-
19 propriate actions to ensure that such activities preserve
20 the archival integrity of the records or materials involved.

21 (d) RELEASE OF UNCLASSIFIED AND DECLASSIFIED
22 INFORMATION.—An agency or Federal Presidential li-
23 brary that undertakes a review for declassification of
24 records or materials under an order under this section
25 shall release any unclassified records or materials identi-

1 fied, or classified records or materials that are declas-
2 sified, as a result of the review.

3 **SEC. 5. PROTECTION OF NATIONAL SECURITY INFORMA-**
4 **TION AND OTHER INFORMATION.**

5 (a) IN GENERAL.—Nothing in this Act shall be con-
6 strued to limit the authority of the head of an agency to
7 classify information or to continue the classification of in-
8 formation previously classified by an agency.

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

13 (c) EXEMPTIONS AND EXCEPTIONS TO RELEASE OF
14 INFORMATION.—Nothing in this Act shall be construed to
15 limit any exemption or exception to the release to the pub-
16 lic under this Act of information that is protected under
17 section 552(b) of title 5, United States Code (commonly
18 referred to as the Freedom of Information Act), or section
19 552a of title 5, United States Code (commonly referred
20 to as the Privacy Act).

21 (d) WITHHOLDING INFORMATION FROM CON-
22 GRESS.—Nothing in this Act shall be construed to author-
23 ize the withholding of information from Congress.

1 **SEC. 6. STANDARDS AND PROCEDURES FOR IDENTIFICA-**
2 **TION, COLLECTION, AND REVIEW OF INFOR-**
3 **MATION.**

4 (a) STANDARDS AND PROCEDURES.—(1) Not later
5 than 180 days after the date of the enactment of this Act,
6 each agency and Federal Presidential library that pos-
7 sesses or controls classified records or materials shall de-
8 velop standards and procedures for access to such records
9 and materials by the Board and by the employee of such
10 agency or library, as the case may be, designated to serve
11 as liaison to the Board under subsection (b).

12 (2) The standards and procedures developed by an
13 agency or Federal Presidential library under paragraph
14 (1) shall include provisions to achieve the following:

15 (A) To forward to the Board for its consider-
16 ation under this Act any request, or if appropriate
17 notice of a request, other than a request under sec-
18 tion 552 or 552a of title 5, United States Code,
19 from outside the agency or library, as the case may
20 be, for the identification, collection, or review for de-
21 classification of records or materials, or for other
22 provision with respect to records or materials, that
23 are records or materials of extraordinary public in-
24 terest.

25 (B) To coordinate with the Board in estab-
26 lishing priorities for the identification, collection,

1 and review of records and materials under orders
2 under section 4(b).
3 (C) To provide that the employee who is des-
4 ignated as the liaison to the Board—
5 (i) is designated in consultation with the
6 Board; and
7 (ii) is eligible under the procedures and eli-
8 gibility criteria of the agency or library, as the
9 case may be, for access to any records and ma-
10 terials covered by an order under section 4(b).
11 (D) To permit access by the employee des-
12 ignated to serve as the liaison to the Board to any
13 classified records or materials originated or con-
14 trolled by the agency or library, as the case may be,
15 to which access has not been denied or restricted
16 under subsection (c), which has not otherwise been
17 exempted from review under that subsection or
18 under this Act, or that are not controlled under a
19 special access program to which the head of the
20 agency has denied or restricted access.
21 (E) To permit access by members and staff of
22 the Board to records or materials covered by an
23 order under section 4(b) to which access has not
24 been denied or restricted under subsection (c), which
25 has not otherwise been exempted from review under

1 that subsection or under this Act, or that are not
2 controlled under a special access program to which
3 the head of the agency has denied or restricted ac-
4 cess.

5 (F) To notify the Board of the completion of
6 compliance with an order under section 4(b), includ-
7 ing instances when access to records or materials is
8 denied or restricted under subsection (c) or records
9 or materials are otherwise exempted from review
10 under that subsection or under this Act.

11 (b) DESIGNATION OF LIAISON TO BOARD.—The head
12 of each agency and Federal Presidential library shall des-
13 ignate an employee of such agency or library, as the case
14 may be, to act as liaison to the Board for purposes of
15 this Act.

16 (c) LIMITATIONS ON ACCESS.—If the head of an
17 agency or Federal Presidential library determines it nec-
18 essary to deny or restrict access by the Board, or by the
19 agency or library liaison to the Board, to information con-
20 tained in a record or material, in whole or in part, or to
21 exempt any record or material from identification, collec-
22 tion, or review under this Act, the head of the agency or
23 library, as the case may be, shall promptly notify the
24 Board in writing of such determination. Each such notice
25 shall include a description of the nature of the records or

1 materials, and a justification for the determination, cov-
2 ered by such notice.

3 (d) RECONSIDERATION.—(1) The Board may request
4 the reconsideration by the head of an agency or Federal
5 Presidential library of a determination made by the head
6 of the agency or library, as the case may be, under sub-
7 section (c). Such a request may not be made sooner than
8 two years after the date of the determination in question.

9 (2) To accommodate a request under paragraph (1)
10 for reconsideration of a determination regarding records
11 or materials, the head of the agency or Federal Presi-
12 dential library making the determination shall maintain
13 an appropriate record of the results of any review of the
14 records or materials covered by the determination and, to
15 the extent records and materials have been identified as
16 part of the review upon which the determination is based,
17 shall tag, index, physically set aside, or otherwise enable
18 the ready retrieval of such records or materials.

19 (e) DISCRETION TO DISCLOSE.—At the conclusion of
20 a declassification review, or upon a request by the Board
21 for reevaluation under subsection (c), the head of an agen-
22 cy or Federal Presidential library may, in his discretion,
23 determine that the public's interest in disclosure of records
24 or materials covered by such review or request, and still
25 properly classified, outweighs the Government's need to

1 protect such records or materials. In such case, the head
2 of the agency or library, as the case may be, may release
3 such records or materials.

4 (f) REPORTS.—(1) The Board shall annually submit
5 to the appropriate congressional committees a report on
6 the activities of the Board under this Act.

7 (2) The Board shall submit to the appropriate con-
8 gressional committees a report on the following:

9 (A) Any denial by the head of an agency or
10 Federal Presidential library of access for the Board
11 to records or materials under this Act.

12 (B) Any failure or refusal by the Archivist of
13 the United States to accept a recommendation of the
14 Board under section 4(a).

15 (3) In this subsection, the term "appropriate congres-
16 sional committees" means the Select Committee on Intel-
17 ligence of the Senate and the Permanent Select Committee
18 on Intelligence of the House of Representatives.

19 **SEC. 7. JUDICIAL REVIEW.**

20 Nothing in this Act limits the protection afforded to
21 any information under any other provisions of law. This
22 Act is not intended and should not be construed to create
23 any right or benefit, substantive or procedural, enforceable
24 at law against the United States, its agencies, its officers,
25 or its employees. This Act does not modify in any way

1 the substantive criteria or procedures for the classification
2 of information, nor does this Act create any right or ben-
3 efit subject to judicial review.

4 **SEC. 8. FUNDING.**

5 (a) FUNDING REQUESTS.—The President shall in-
6 clude in the budget submission to Congress for each fiscal
7 year under section 1105 of title 31, United States Code,
8 a request for amounts for the activities of the Board under
9 this Act during such fiscal year, including amounts to be
10 transferred to agencies and Federal Presidential libraries
11 for activities in compliance with orders under section 4.
12 Such amounts shall be included in amounts requested for
13 the National Archives and Records Administration for the
14 fiscal year concerned, and shall be stated as a separate
15 item among the amounts requested for the Administration
16 for such fiscal year.

17 (b) ESTIMATE OF AGENCY AND LIBRARY EX-
18 PENSES.—(1)(A) An agency or Federal Presidential li-
19 brary receiving an order from the Archivist of the United
20 States under section 4(b) shall provide the Board an esti-
21 mate of the costs, and of the time, required for compliance
22 with the order.

23 (B) If an order covers records or materials to be re-
24 ferred to another agency for review under section 4(c)(2),
25 the estimate under this paragraph shall include, and shall

1 set forth separately, the estimate of such other agency of
2 the costs and time required for the compliance of such
3 other agency with the portion of the order applicable to
4 such other agency.

5 (2) Upon receipt of an estimate of costs from an
6 agency or Federal Presidential library under paragraph
7 (1), the Board shall determine the amount of funds re-
8 quired by the agency or library, as the case may be, to
9 comply with the order concerned under section 4(b). Such
10 determination shall take into account the estimate of costs
11 upon which the determination is based.

12 (3) Upon determining the amount of funds required
13 by an agency or Federal Presidential library under para-
14 graph (2), the Board shall submit to the Archivist a rec-
15 ommendation that the Archivist transfer to the agency or
16 library, as the case may be, an amount of funds equal to
17 the amount determined under that paragraph.

18 (c) TRANSFERS OF FUNDS.—(1) The Archivist of the
19 United States shall transfer to an agency or Federal Pres-
20 idential library for purposes of the activities of the agency
21 or library, as the case may be, under an order under sec-
22 tion 4(b) an amount equal to the amount recommended
23 to be transferred with respect to the order under sub-
24 section (b)(3).

1 (2) Amounts transferred under paragraph (1) shall
2 be derived from amounts appropriated for the Board for
3 purposes of this Act.

4 (d) USE OF FUNDS.—(1) An agency or Federal Pres-
5 idential library shall use funds transferred to the agency
6 or library, as the case may be, under subsection (c) for
7 purposes of compliance with an order under section 4(b).

8 (2)(A) An agency or Federal Presidential library
9 shall not be required to comply with an order under sec-
10 tion 4(b) until the agency or library, as the case may be,
11 receives funds under subsection (c) that are sufficient to
12 permit the agency or library, as the case may be, to comply
13 with the order.

14 (B) If the funds transferred to an agency or Federal
15 Presidential library under subsection (c) are not sufficient
16 for compliance with an order under section 4(b), the agen-
17 cy or library, as the case may be, shall hold compliance
18 in abeyance until such time as sufficient funds are trans-
19 ferred from the Board to the agency or library, as the
20 case may be.

21 (C) The Board may recommend to the Archivist of
22 the United States that additional funds be transferred
23 from the Board to an agency or Federal Presidential li-
24 brary to ensure compliance with an order under section
25 4(b). The Archivist shall treat a recommendation under

1 this subparagraph as a recommendation for purposes of
2 subsection (c).

3 (3)(A) If the costs incurred by an agency or Federal
4 Presidential library to comply with an order under section
5 4(b) are less than the amounts transferred to the agency
6 or library, as the case may be, under subsection (c), the
7 agency or library, as the case may be, shall transfer any
8 funds not required to comply with the order to the Na-
9 tional Archives and Records Administration.

10 (B) Any funds transferred to the Administration
11 under subparagraph (A) shall be merged with funds in the
12 appropriation or account providing funds for the Board
13 for purposes of this Act, and shall be available to the same
14 extent, and subject to the same limitations, as funds in
15 such appropriation or account are available for the Board.

16 **SEC. 9. DEFINITIONS.**

17 In this Act:

18 (1) AGENCY.—(A) Except as provided in sub-
19 paragraph (B), the term "agency" means the fol-
20 lowing:

21 (i) An executive agency as that term is de-
22 fined in section 105 of title 5, United States
23 Code.

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

1 (iii) Any other entity in the executive
2 branch that comes into possession of classified
3 information.
4 (B) The term does not include the Board.
5 (2) CLASSIFIED MATERIAL OR RECORD.—The
6 terms "classified material" and "classified record"
7 include any correspondence, memorandum, book,
8 plan, map, drawing, diagram, pictorial or graphic
9 work, photograph, film, microfilm, sound recording,
10 videotape, machine readable records, and other docu-
11 mentary material, regardless of physical form or
12 characteristics, that has been determined pursuant
13 to Executive order to require protection against un-
14 authorized disclosure in the interests of the national
15 security of the United States.
16 (3) DECLASSIFICATION.—The term "declas-
17 sification" means the process by which records or
18 materials that have been classified are determined
19 no longer to require protection from unauthorized
20 disclosure to protect the national security of the
21 United States.
22 (4) DONATED HISTORICAL MATERIAL.—The
23 term "donated historical material" means collections
24 of personal papers donated or given to a Federal

1 Presidential library or other archival repository
2 under a deed of gift or otherwise.
3 (5) FEDERAL PRESIDENTIAL LIBRARY.—The
4 term "Federal Presidential library" means a library
5 operated and maintained by the United States Gov-
6 ernment through the National Archives and Records
7 Administration under the applicable provisions of
8 chapter 21 of title 44, United States Code.
9 (6) NATIONAL SECURITY.—The term "national
10 security" means the national defense or foreign rela-
11 tions of the United States.
12 (7) RECORDS OR MATERIALS OF EXTRAOR-
13 DINARY PUBLIC INTEREST.—The term "records or
14 materials of extraordinary public interest" means
15 records or materials that—
16 (A) demonstrate and record the national
17 security policies, actions, and decisions of the
18 United States, including—
19 (i) policies, events, actions, and deci-
20 sions which led to significant national se-
21 curity outcomes;
22 (ii) the collection and analysis of espe-
23 cially important intelligence; and

1 (iii) the development and evolution of
2 significant United States national security
3 policies, actions, and decisions;
4 (B) will provide a significantly different
5 perspective in general from records and mate-
6 rials publicly available in other historical
7 sources; and
8 (C) are, or are likely to be, of extraor-
9 dinary interest to the public, its elected rep-
10 resentatives, or policymakers in the executive
11 branch.

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