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HISTORY MUSEUM OR RECORDS ACCESS AGENCY? DEFINING AND FULFILLING THE MISSION OF THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

HEARING

BEFORE THE

SUBCOMMITTEE ON INFORMATION POLICY, CENSUS, AND NATIONAL ARCHIVES

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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HISTORY MUSEUM OR RECORDS ACCESS AGENCY? DEFINING AND FULFILLING THE MISSION OF THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

WEDNESDAY, DECEMBER 16, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INFORMATION POLICY, CENSUS, AND NATIONAL ARCHIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:15 p.m. in room 2154, Rayburn House Office Building, Hon. Wm. Lacy Clay (chairman of the subcommittee) presiding.

Present: Representatives Clay, Norton, Driehaus, Cuellar, and McHenry.

Staff present: Darryl Piggee, staff director/counsel; Jean Gosa, clerk; Yvette Cravins, counsel; Frank Davis and Anthony Clark, professional staff members; Charisma Williams, staff assistant; Adam Hodge, deputy press secretary (full committee); Leneal Scott, information systems manager (full committee); Adam Fromm, minority chief clerk and Member liaison; Howard Denis, minority senior counsel; Chapin Fay and Jonathan Skladany, minority counsels.

Mr. CLAY. Good afternoon. The Information Policy, Census, and National Archives Subcommittee of the Oversight and Government Reform Committee will now come to order.

Without objection, the Chair and ranking minority member will have 5 minutes to make opening statements, followed by opening statements not to exceed 3 minutes by any other Member who seeks recognition.

And without objection, Members and witnesses may have 5 legislative days to submit a written statement or extraneous materials for the record.

Welcome to today's hearing on the mission of the National Archives. The purpose of today's hearing is to examine the National Archives' mission and how it is designed and fulfilled. We will consider several important topics, including the views of the new Archivist of the United States on NARA's mission, learning how the leaders of similar agencies, The Smithsonian Institution and the Library of Congress, balance competing needs while fulfilling their core missions, and hearing opinions of agency stakeholders on NARA's performance.

This is a time of rising budget pressures, explosive growth of Federal, especially electronic records, and mounting urgency to

make these records available to the public, the media, the courts and Congress more rapidly.

The subcommittee has heard from many of NARA's constituencies that they are concerned the agency's increasing emphasis on museum exhibits and related programs may be not only straining its resources, but diverting its focus from fulfilling its core mission. As we will hear from several of our witnesses, managing, preserving and providing prompt and proper access to Federal records has been and must continue to be the primary mission of the National Archives.

It is commendable that NARA wants to expand access programs, increasing the number and title of records available as well as increasing the number of those who can directly examine those records and learning from it and interpreting them for themselves. However, there are questions as to whether a museum exhibit truly qualifies as a records access program and if public visitors to a museum are actually exploring records.

There is also the question raised by many concerned about the agency, how NARA's elevation of its role as a history museum above that of its core mission may be increasing the agency's already considerable delays in receiving, preserving and opening Federal records.

The National Archives celebrated its 75th Anniversary this year. Congratulations to all National Archives employees. The history of the agency demonstrates that from its founding in 1934, each archivist has shaped the focus of the Archives to meet the unique challenges they face.

Archivist Connor, starting a new agency, had to invent management procedures for handling Federal records which by then already had grown to more than 10 million cubic feet. Archivist Buck changed the Archives from a passive records repository to an active service agency. Archivist Grover developed a plan to acquire and administer Presidential records that resulted in the Presidential Libraries Act of 1955.

Archivist Rhoads improved records management declassification and opened records for the scholarly use. Archivist Warner fought for and won independence for the National Archives. Acting Archivist Peterson prepared the agency's first strategic plan. Archivist Carlin improved communication with NARA's constituents and established the approach to electronic records management. Archivist Weinstein emphasized civic literacy and expanded museum education and outreach programs.

We trust that the new Archivist is ready to meet the current challenges and we offer our strong support for him as he begins his tenure. It is this subcommittee's hope that through our hearing today we can gain a better understanding of NARA's mission and issues of stakeholder concern, and provide the National Archives with some important information and advice they can use in reexamining how best to define and fulfill their mission.

Before we proceed, I would like to recognize the important contributions of several groups who have greatly assisted this subcommittee in preparing for this hearing including the International Association of Jewish Genealogical Societies, a records preservation

and access committee, and 17 other research organizations. We thank them for their efforts and statements of support.

And I now yield to my good friend from North Carolina, Mr. McHenry.

[The prepared statement of Hon. Wm. Lacy Clay follows:]

Statement
Of
Wm. Lacy Clay, Chairman
Information Policy, Census, and National Archives Subcommittee
Oversight and Government Reform Committee
Wednesday, December 16, 2009
2154 Rayburn HOB
2:00 p.m.

Good afternoon. Welcome to today's hearing on the
"History Museum or Records Access Agency? Defining and Fulfilling the Mission of the National Archives and Records Administration."

The purpose of today's hearing is to examine the National Archives', or NARA's, mission, and how it is defined and fulfilled. We will consider several important topics, including the views of the new Archivist of the United States on NARA's mission; learning how the leaders of similar agencies, the Smithsonian Institution and the Library of Congress, balance competing needs while fulfilling their core missions; and hearing the opinions of agency stakeholders on NARA's performance.

This is a time of rising budget pressures, explosive growth of federal – especially electronic – records, and mounting urgency to make these records available to the public, the media, the courts and Congress more rapidly. The Subcommittee has heard from many of NARA's constituencies that they are concerned the agency's increasing emphasis on museum exhibits and related programs may be not only straining its resources but diverting its focus from fulfilling its core mission. As we will hear from several of our witnesses, managing, preserving and providing prompt and proper access to federal records has been, and must continue to be, the primary mission of the National Archives.

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It is this Subcommittee's hope that through our hearing today we can gain a better understanding of NARA's mission and issues of stakeholder concern, and provide the National Archives with some important information and advice they can use in re-examining how best to define and fulfill their mission.

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Mr. MCHENRY. Thank you, Mr. Chairman. I appreciate your leadership across the board with this committee and your dedication and your friendship.

And thank you all for being here today. This is certainly an important matter of effective governance and making sure that we have records that are accessible to the public, whether across the three separate agencies we are talking about today.

Mr. Chairman, if I could, with time being short, with these votes ongoing, if I could submit my statement for the record and just say, in short, I certainly appreciate you three gentlemen being here. I certainly appreciate the importance of what you are doing as individuals, and the importance of ensuring that we have records available for future generations, whether it is the challenges of digital records of keeping the texts that we currently have available.

So, thank you.

Mr. CLAY. Without objection, Mr. McHenry's statement will be included in the hearing record.

Any other opening statements? If not, we can proceed to the panel.

Our first witness will be the Honorable David S. Ferriero, the 10th Archivist of the United States.

Prior to his nomination in July 2009 by President Obama to lead the National Archives, Mr. Ferriero served as the Andrew W. Mellon Director of the New York Public Libraries, the largest public library system in the United States. Among his responsibilities was the development of the library's digital strategy, which includes a digital library of more than 750,000 images that may be accessed fee of charge by any user around the world.

Mr. Ferriero also served in top positions at two of the Nation's major academic libraries, the Massachusetts Institute of Technology and Duke University. He is the first librarian to serve as Archivist of the United States. We want to congratulate Mr. Ferriero on his appointment, welcome him and wish him well.

Thank you for being here.

Our next witness is Dr. G. Wayne Clough, the 12th secretary of the Smithsonian Institution.

Dr. Clough currently leads a plan to digitize much of the Smithsonian's 137 million objects. Prior to his becoming secretary in July 2008, he served as president of the Georgia Institute of Technology for 14 years.

He received a Doctorate in Civil Engineering from the University of California Berkeley. Dr. Clough has been a professor at Duke University, Stanford University and Virginia Tech, and also served as Provost at the University of Washington.

And after Dr. Clough, we will hear from Dr. James H. Billington, the 13th Librarian of Congress.

Dr. Billington has served as Librarian for more than 22 years, championing, among other important programs, the American Memory National Digital Library. He earned his Doctorate from Oxford University where he was a Rhodes Scholar at Balliol College.

Following service with the U.S. Army, he taught history at Harvard University and at Princeton University. Prior to his appoint-

ment as Librarian, Dr. Billington was director of the Woodrow Wilson International Center for Scholars for 14 years.

I thank all of our witnesses for appearing today and look forward to their testimony.

It is the policy of the subcommittee to swear in all witnesses before they testify and I would ask you now to please stand and raise your right hands.

[Witnesses sworn.]

Mr. CLAY. Thank you and you may be seated. Let the record reflect that the witnesses answered in the affirmative.

I ask that each of the witnesses now give a brief summary of their testimony. Please limit your summary to 5 minutes. Your complete written statement will be included in the hearing record.

Mr. Ferriero, you may begin.

STATEMENTS OF DAVID S. FERRIERO, ARCHIVIST OF THE UNITED STATES; G. WAYNE CLOUGH, SECRETARY OF THE SMITHSONIAN INSTITUTION; AND JAMES H. BILLINGTON, LIBRARIAN OF CONGRESS

STATEMENT OF DAVID S. FERRIERO

Mr. FERRIERO. Thank you, Mr. Chairman and members of the subcommittee.

I am David S. Ferriero, Archivist of the United States. Thank you for this opportunity to discuss the mission of the National Archives.

I am pleased to appear here alongside the Librarian of Congress, Dr. Billington, and the secretary of the Smithsonian, Dr. Clough. I am looking forward to the benefit of their wisdom as heads of major national institutions that, like the Archives, preserve and make the historical and cultural treasures of our country accessible to millions of people.

It has been just over a month since I was confirmed as the 10th Archivist of the United States. I come to the job having spent my entire career in service to people seeking access to information, first at the libraries of MIT and Duke University, and most recently as the Director of the Libraries of the New York Public Library.

The National Archives exist for access, and I firmly believe that every component of the agency is in service to that fundamental mission. We do this in records management by ensuring that agencies create and maintain records of their activities for future access. We do this in preservation by safeguarding the long-term viability of records so that they can be accessed. We do this in reference services by responding to requests for access in specific records. And we do this in our museum and educational programs by making records interesting and, indeed, exciting to visitors.

Before I comment on the issues that you have asked me to address, I would first like to say that we, you have my commitment to an open dialog, from me and my leadership team, as you conduct your oversight of the Archives.

One concern high on your list and mine is agency security, both for information technology systems and physical holdings. We abso-

lutely must be able to ensure that NARA is able to safeguard the documentary heritage of our Nation.

I am pleased to tell you that on the 7th of December, I announced the creation of the National Archives Holding Protection Program. This program will strengthen the protection of original records, regardless of their format. As a team leader, I have appointed Mr. Eric Peterson who comes to NARA from the Naval Information Operations Command where he was responsible for loss prevention and classified programs.

Also, I know that this committee is very familiar with the work of NARA's Inspector General. I plan to work closely with him and the security staff on the front lines to improve NARA security across the board.

Another priority is meeting the challenge of archiving electronic records. I believe NARA has built a solid foundation of promoting and ensuring effective records management across the Federal Government. However, the agency faces serious challenges when it comes to electronic records, including the continuing proliferation of formats in which Federal records are created and the mixed nature of Federal recordkeeping, where agencies create both paper and electronic records.

Our responsibility in regard to electronic records it not just to build the electronic records archives. It is also to ensure that agencies are managing the electronic records they create and identify as permanently valuable. We can, and we will, do a better job of making sure agencies are taking this responsibility seriously.

The title of this hearing begins with a question about our museum function. We have been inviting the public to see records and exhibits at the National Archives for our entire 75 year history, and we have long been leaders in encouraging the use of primary sources in history and civics education. The last decade has brought substantial growth in our exhibit and education programs, thanks to the Foundation for the National Archives and the Presidential Library Foundations which raise millions of dollars to fund museum and education programs here and across the Nation.

More than a year ago, NARA began to look into ways that we could better provide visitor services at the National Archives building while retaining the service that we provide to researchers. The significant drop is microfilm usage made it possible to reduce the size of the microfilm reading room and expand exhibit space without diminishing researcher services.

I was dismayed, however, that NARA management did a poor job communicating with both research staff and researchers on this issue and in recent weeks there has been a great deal of concern expressed by some of our researchers about the changes under discussion. We will be holding a public forum tomorrow afternoon to discuss these issues. I am personally participating in the forum, not only as the Archivist, but as one who has spent four decades as a research librarian. Those who visit our facilities as researchers are highly valued stakeholders and they have the ear of this research librarian turned archivist.

As I set out to improve the agency's communications with stakeholders, I am including Congress. First, I have already met with some members of this subcommittee and I am looking forward to

meeting with all of you as soon as possible. Second, the Archives have 44 facilities in 19 States, and I intend to reach out to each Congressperson who represents the women and men who work at these locations.

Additionally, I want all Members to know that they have an open invitation to visit any NARA facility, especially the one just a few blocks away, so that they can get a first-hand look at what we do. We have a great story to tell with the records we hold which include the records of Congress starting with day 1 of the First Congress. Come and spend 30 minutes with us and I can promise you a very memorable experience.

Finally, I share this subcommittee's concerns with NARA's management culture. As I set about changing that culture, my immediate goal is addressing unacceptably poor survey results on employee job satisfaction. All NARA employees, from those operating forklifts to the most senior archivists, are equally important to the success of this mission. I say this with the prospective of one who began his career shelving books.

In my very short time as Archivist of the United States, I have become keenly aware of the skill, talent and spirit that have shaped this unique organization for its first 75 years. I have also become aware of the many challenges that face this agency and, in that regard, I would like to thank you, Mr. Chairman, and the members of the subcommittee, for the fair and honest oversight you provide.

I would be happy to answer any questions.

[The prepared statement of Mr. Ferriero follows:]

TESTIMONY OF DAVID S. FERRIERO

ARCHIVIST OF THE UNITED STATES

BEFORE THE SUBCOMMITTEE ON

INFORMATION POLICY, CENSUS AND NATIONAL ARCHIVES

OF THE

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

ON

"HISTORY MUSEUM OR RECORDS ACCESS AGENCY? DEFINING AND FULFILLING THE MISSION OF THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION"

DECEMBER 16, 2009

Chairman Clay, Ranking Member McHenry, and Members of the Subcommittee, I am David S. Ferriero, Archivist of the United States. Thank you for this opportunity to appear before you to discuss the mission of the National Archives and Records Administration. I would also like to thank you for affording me the opportunity to appear at this hearing, which is my first as Archivist, alongside the Librarian of Congress, Dr. James Billington, and the Secretary of the Smithsonian, Dr. Wayne Clough. I am looking forward to the benefit of their wisdom as heads of major national institutions that, like the National Archives, preserve and make the historical and cultural treasures of our country accessible in many different ways to millions of people, ranging from PhD candidates to busloads of school children.

It has been just over one month since I was confirmed as the 10th Archivist of the United States; however, although I am new to the Archives and Washington, DC, I am not new to the challenges of leading complex organizations that exist to serve a diversity of constituents. I have spent my entire career in service to people seeking access to information, and particularly those engaged with the rigor of academic or professional research. I would like to take this opportunity to share with this Subcommittee some details about my background that I think are relevant to the challenges I face.

My work experience has provided me with a set of professional credentials that I believe to be of particular value to NARA. At Massachusetts Institute of Technology, I started shelving books in 1965 and left 31 years later having served as Acting Co-Director of Libraries. I was the University Librarian at Duke University, where I created the first

Records Management Program and learned the importance of fundraising. Most recently, I served as the Andrew W. Mellon Director of Libraries at the New York Public Library, where I was responsible for collection strategy, conservation, digital experience, reference and research services, and education, programming, and exhibitions. I believe that one of my greatest contributions there was that I was able to bring together a diverse collection of individual units into one library experience.

In all these settings, I have had preservation and conservation experience. Most importantly, however, I have experienced and managed aspects of technological transformation in all three institutions. As the new Archivist of the United States, and the first librarian to serve in this capacity, I admit that I have much to learn in the weeks and months to come. At the same time, I am confident that my past experiences will serve me well and I am looking forward to a close working relationship with this Subcommittee as I begin this most humbling appointment.

NARA's Mission

NARA's current strategic plan articulates our mission as serving American democracy by safeguarding and preserving the records of our Government, ensuring that the people can discover, use, and learn from this documentary heritage. We ensure continuing access to the essential documentation of the rights of American citizens and the actions of their government. We support democracy, promote civic education, and facilitate historical understanding of our national experience.

Our mission is rooted in the Federal Records Act (FRA) and related legislation codified principally under Chapters 21-33 of Title 44 of the United States Code. The authority given to the Archivist of the United States in this legislation includes providing guidance and assistance to Federal officials on the management of federal records; determining the retention and disposition of records; storing federal records in records centers from which agencies can retrieve them; and receiving, preserving, and making accessible permanently valuable Federal and Presidential records. This last clause about making permanently valuable records accessible is further explicated in sections 2109 and 2114 of the FRA as embracing both research access and exhibition.

The National Archives exists for access and I firmly believe that every component of the agency is in service to that fundamental mission. We do this in records management by ensuring that agencies create and maintain records of their activities for future access; we do this in preservation by safeguarding the long-term viability of the records in our custody so they can be accessed; we do this in reference services by responding to requests for access to specific records; and we do this in our museum programs in Washington, DC, and the Presidential Libraries by making records available to visitors.

My intent is to make sure that every part of our agency - including our flagship building on the National Mall – continues to be a place where records are explored, whether by tenured university professors or family genealogists or simply curious school children, with a desire to know more about the documents that comprise their American history.

The grandmother who comes to the National Archives to pull together her family tree is no less important to us than the lawyer who needs to pull together a case for trial. The school child who is inspired by seeing the Constitution is no less vital than the scholar writing a book about the Constitution. I believe our charter demands that we responsibly and responsively make the records of the American government available to the American people. At the same time, serving such a varied constituency requires a proper balance of resources and priorities to meet the different needs and expectations of the tens of thousands of researchers who visit our research rooms and the millions of visitors who line up to view our exhibitions. I want every one of them to have the rich experience that they deserve from their National Archives and I do not see their needs as competing interests.

Challenges and Opportunities

In my letter of invitation to this hearing, you have outlined issues that this Subcommittee has recently examined. Since I have only just begun my job as Archivist, I must respectfully ask for the Subcommittee's patience as I develop plans to more fully address these and other priority issues in the months to come. Thankfully, I have the recent work of this Subcommittee, the diligent efforts of NARA's Inspector General and the expert views of the Government Accountability Office, to help me get started. As I move forward I would like the members of this Subcommittee to know that you have my personal commitment to an open dialog from me and my leadership team.

Today, I would like to briefly comment on the issues you raised because I believe them to be deeply important:

Agency security, including information technology as well as physical security:

Agency security, both for information technology and our physical holdings, is high on my list of priorities for NARA. We absolutely must be able to ensure that NARA is able to safeguard the documentary heritage of our nation. I know from personal experience that security is an issue that every research library and archives deals with on a daily basis – the tension between protecting and providing access to primary materials is great, and the balance is a difficult one to perfect.

I am pleased to tell you that on December 7th, I announced the creation of the National Archives and Records Administration Holdings Protection Program. This program will serve as an agency-wide resource, developing and administering policies to enhance holdings protection of original records regardless of their format to reduce the loss of and aid in the recovery of holdings while ensuring ready access for research. I have appointed Mr. Eric Peterson as the team leader. Mr. Peterson was most recently the Special Security Officer for the Naval Information Operations Command in Suitland, Maryland, where he was responsible for loss prevention and classified programs.

This new program is only a start to improving security. As this Subcommittee knows, NARA's Inspector General has conducted extensive investigations and research on

NARA's security shortcomings. I am especially looking forward to his guidance, along with that of those who are on the front lines of NARA security.

Records management, including but not limited to the Electronic Records Archives and other kinds of records:

As new Archivist, I bring with me archival and records management experience. The records management programs at MIT, Duke, and the New York Public Library were created under my watch and are among the best in the nation.

Regarding government-wide records management and electronic records management, NARA's strategic plan states:

> Promoting and ensuring effective records and information management across the Federal Government is the foundation on which the long-term success of NARA's mission depends. We carry out this foundational work by ensuring that—
>
> > *Federal agencies can economically and effectively create and manage records necessary to meet business needs*
> >
> > *Records are kept long enough to protect rights and assure accountability, and*
> >
> > *Records of archival value are preserved and made available for future generations.*

Our responsibilities—and the records and information responsibilities of the Congress, the Courts, the President, and the Federal agencies—are grounded in law and regulation. However, our mandate goes beyond compliance, especially during this period of rapid technological change. I believe that we can do a much better job in this area. We can and should be more proactive and, frankly, more aggressive with compliance and audits. In the past 18 months, the National Archives devised an agency self-assessment program that will support NARA's reinvigorated records management evaluation and inspection program. This self-assessment tool will identify agencies most in need of assistance. I see this as a good first step, but only a step.

While I believe NARA has built a good records management foundation, the agency faces serious challenges when it comes to electronic records.

Several of the challenges include:

(1) The continuing proliferation in volume and number of formats in which Federal records are created or received, with general, large-scale challenges associated with email and web records management across the Federal government.

(2) The particular challenges associated with agencies creating Federal records in multi-agency work environments (e.g., the Intelligence Community; Natural Resources community with fire records; etc), as well as the new collaborative, web 2.0 technologies that agencies increasingly use to carry out their work, to create or receive records, and to make records and other information available.

(3) The mixed nature of the Federal Government recordkeeping environment, where agencies still create both paper and electronic records, with an increasing expectation within and outside of Government that records and information will be created electronically, and that these electronic records will be managed and made available electronically.

We must also continue laying out the marker as to what our job is in an electronic government. As you know, NARA is currently developing the Electronic Records Archives, or ERA, a system designed to preserve and provide long-term access to the permanent electronic records that NARA receives from agencies and presidential administrations. ERA met some critical milestones this past year, enabling NARA to ingest and store unclassified electronic records of the Executive Office of the President that were transferred to us at the end of the George W. Bush Administration.

But our responsibility in regard to electronic records is not just to build ERA. It is also to ensure that agencies are able to manage the electronic records they create and to identify permanently valuable electronic records wherever they are, capture them, and make them available in a usable form as quickly as the law allows. We must therefore be committed to maintaining an electronic records management program that is responsive to the federal agencies that create the records as well as to our customers who expect continuing access to our government's records, whether those records are paper or digital.

Exhibits, civic education and other public programs, including but not limited to the presidential libraries and the current discussions over expanding museum and public visitor space and redesigning researcher areas at the National Archives Building in Washington:

When the National Archives Building was constructed in 1934, it was built with an exhibit hall we now refer to as the Rotunda for the Charters of Freedom. We have been inviting the public to see records in exhibits at the National Archives for our entire 75 year history. We have been leaders in encouraging the use of primary sources in history and civics education since at least the 1970s. Our partnership with the National Council for Social Studies, for example, has been instrumental in the growing use of records as teaching tools in the classroom.

The last decade has brought substantial growth in our engagement in exhibits and education. First, under Governor John Carlin's leadership, NARA launched the National Archives Experience in 2004, a more fully developed museum program in Washington, DC. Governor Carlin insisted that expanded museum programs had to be covered by private fundraising. Today, the Foundation for the National Archives and the Presidential

Library foundations raise millions of dollars to fund museum and education programs here in Washington and at locations across the nation.

Under Professor Allen Weinstein's leadership, NARA's mission of access through education programs was specifically highlighted. Recently, NARA has been improving visitor facilities and extending our national touring exhibit programs.

I think it is important to point out that these activities within the National Archives are not happening in isolation. I know for a fact that the library community has been moving to increase its educational engagement for at least two decades. At the New York Public Library, archives and special collections had been generally the territory of faculty only. In recent years, there has been an access priority shift to include students and the general public. Three years after NARA opened the National Archives Experience, the Library of Congress Experience opened its doors. And, of course, Congress has just opened its Capitol Visitors Center (CVC) to provide similar educational and museum services to its visitors. NARA's Center for Legislative Archives was proud to provide significant assistance and documents to the CVC.

Why such an uptick in interest in the educational value of records? I can't speak for the dozens of leaders who have pulled us in this direction, but I can give you my own assessment: 1) the problem of civic literacy is real; 2) access to public records is a part of the solution to the problem; and 3) no one is better positioned to provide access to public records than institutions like the National Archives.

We are much encouraged by this success but believe we can do better. We are studying ways to better utilize our visitor and research spaces because we have found that there are three major gaps in our overall museum program: (1) Our exhibit program is not inclusive of all Americans, particularly minorities and women; (2) the ground level entry to the building remains a source of continuing confusion to our visitors; and, (3) security concerns require segregation of visitors and researchers, preventing our visitors from getting a taste of the research experience.

My predecessor decided more than a year ago to look into ways that we could provide these needed visitor services while not diminishing the service that we provide to researchers. The significant drop in microfilm usage over the years presented the National Archives with an opportunity to make modifications that would benefit both of our constituencies. By reducing the size of the microfilm reading room to the number of stations that are actually in demand, we could expand the exhibit space without diminishing our researcher services.

An aspect of the planning that my new colleagues readily admit was unfortunate was the way in which the plan came to be communicated to research staff and researchers affected by these changes. Management understood that we would need to consolidate space to make room for these changes on the exhibit side of the building. Confident of their ability to accommodate all of the functionality of the current research space in a

smaller envelope, management did a poor job of talking with research staff and researchers and engaging them in solutions to the problem.

In recent weeks there has been a great deal of consternation expressed by some of our researchers about the changes under discussion for the research areas. I am happy to say that we have now brought researchers and staff into our discussions about how to design and equip the research areas. Not surprisingly, both groups had great ideas – not just about how to reallocate space but how to update equipment and systems so that researchers receive more value from every square foot. We are very grateful for their contributions and hope that this will be the beginning of a long-term improvement in communications.

We will also be holding a public forum tomorrow to discuss several alternative proposals. I'm looking forward to participating in the forum so I can learn first-hand what our researchers believe their National Archives should be. I am attending this not only as the Archivist of the United States, but, perhaps more importantly, as one who has spent four decades as a research librarian and has an intimate appreciation of the needs of researchers.

I am committed to improving and extending our communication and outreach efforts with our stakeholders. As one federal agency the National Archives does not stand alone, but exists as part of a complex web of agencies created to carry out the laws passed by Congress and subject to the rulings of the courts. As an archives, we do not stand alone, but exist as part of an intellectual community of archivists and historians. It is our responsibility, our mission, to be a responsible member of those communities, contributing where we can, and adopting the ideas of others when they prove superior.

Every day, thousands of people walk through the doors of the facilities of the National Archives. As the Archivist of the United States, I am committed to the best experience for those who come to research our holdings, and for those who come to visit our exhibits. To achieve that world-class service, we must listen to the communities of scholars and practitioners who are our colleagues. Only through that dialogue will we achieve our mission and our goals.

NARA management culture, which seems to focus more on establishing high-level policies than actually managing and implementing them to affect successful outcomes:

I am certainly aware of this Subcommittee's concerns with NARA's management culture and all I can do today is assure you that I share your concerns and I am looking forward to righting the ship. I will keep an open ear to the ideas that others in the agency would like to put forward.

It seems to me that the area most ripe for reexamination and reform may be the culture's readiness for the digital age. In my previous jobs, I was on the front line as the rapid evolution of information technology redefined the ways in which libraries had operated for generations. My experiences over the past many years have taught me that in order to

successfully embrace and bring about change – and this is particularly true at old, venerable institutions – you have to begin by inspiring a willingness to change the workplace culture.

As I deal with management improvements, I will do it in tandem with my immediate goal of addressing the unacceptably poor survey results we have received in terms of employee job satisfaction. As someone who began his career shelving books, I am committed to creating career opportunities and choices at NARA. All NARA employees, from those operating the forklifts in record storage centers to the most senior archivists, are equally important to the success of our mission. We are not going to build a successful management culture by dealing with managers alone.

Employee job satisfaction is my very highest priority and I am fully committed to investing in NARA's most valuable resource – our staff. Through our Strategic Human Capital Plan, I will be looking at new strategies to recruit, develop and strengthen, and retain the diverse and highly skilled workforce we need to execute the mission that is vital to our Government.

In my experience, the most important factor in improving employee engagement and job satisfaction is commitment "from the top". I am committed to tackling this challenge, and to holding myself and the senior leadership of the National Archives accountable for taking the necessary steps to improve employee engagement and job satisfaction at the National Archives.

Several efforts are already underway in this area, consistent with an agency-wide action plan that was developed this past summer with input from 28 staff focus groups held in NARA locations stretching from California to Massachusetts. Our plan identifies 36 action strategies that we will undertake between now and Fiscal Year 2011 to address four key areas for improvement: 1) Better communication at all levels; 2) Leadership that makes clear the agency's goals and priorities; 3) More diversity in the workplace; and 4) Training for staff to improve their skills and increase their potential.

We are already making progress against this plan. I'd like to highlight a few examples for you:

- We've conducted an all-hands Office of Regional Records Services webinar, with 1000+ employees participating. Employees were able to ask questions directly to the Assistant Archivist for Regional Records Services through a web chat feature. We are posting all of the questions and responses online for all staff to view.

- We're updating our intranet site to incorporate social media tools such as employee blogs to share knowledge across the agency, become more transparent and provide employees with a way to voice their concerns.

- We've sponsored training to managers in the Office of Regional Records Services on how to build and maintain a high performance culture that emphasizes teaming, ongoing operational improvement, and leadership at all levels.

- To evaluate our efforts, we have implemented a quarterly review process that I will use to identify and address any potential barriers to our progress. In addition, we are maintaining our action plan and status updates online for all staff to see what is being done in response to the Federal Human Capital Survey results.

Related to this, we are also striving to enhance our health and wellness programs to improve employee well-being and morale. I value every employee, and we will continue to encourage and support these efforts to make all of NARA a better place to work.

Conclusion

In my very short time as Archivist of the United States, I have become keenly aware of the skill, talent, and spirit that have shaped this unique organization for its first 75 years. I have also become aware of the many challenges that face this agency and, in that regard, I would like to thank you, Mr. Chairman, and the members of this Subcommittee for the fair and honest oversight you provide.

The work done by the National Archives reflects the faith of our fellow citizens that the records of our government shall continue to tell the stories of the people and events that shape our nation . . . and that anyone who wishes should have access to these records.

I would be happy to answer any questions.

Mr. CLAY. Thank you, so much, Mr. Ferriero, for your testimony. Mr. Clough, you may proceed.

STATEMENT OF G. WAYNE CLOUGH

Mr. CLOUGH. Thank you, Chairman Clay, Ranking Member McHenry and the other members of the subcommittee for this opportunity to testify.

I want to extend my congratulations to my new colleague, the Archivist of the United States, David Ferriero, and I offer the Smithsonian's assistance to him in this transition. And it is a pleasure to be here with my colleague, the Librarian of Congress, Dr. James Billington.

Our collective mission is extremely important. The National Archives and the Records Administration preserves the records of the Federal Government. The Library of Congress serves as the largest library in the world. And the Smithsonian Institution preserves the history, arts and sciences, and cultural traditions of our country. We complement each other as we pursue our shared goal of preserving our collections and making them as accessible as possible as fast as we can to researchers, students, teachers, families and the American public.

With 19 museums, 20 libraries, numerous research centers, the National Zoo and more than 137 million objects and specimens in our collections, the Smithsonian stands out as a unique entity. Our archival collection includes scientific documents, records and other media totaling more than 100,000 cubic feet and forms the foundation for research, scholarship, publications, exhibitions and public programs unique to the Smithsonian. This year, nearly 30 million visits were made to the Smithsonian. And we had 188 million visitor sessions on our various Web sites.

To ensure that we bring our resources to the world, we recently embarked on the most inclusive and comprehensive strategic planning exercise in the Smithsonian's history. I have detailed discussion on this in my written testimony. Briefly, our new vision calls for us to shape the future by preserving our heritage, discovering new knowledge and sharing our resources with the world.

Our plan organizes our activities around four focused things, so we will not be doing everything or everybody. One is unlocking the mysteries of the universe, two, understanding and sustaining a biodiverse planet, three, valuing world cultures, and four, understanding the American experience. The plan reaffirms our core values of integrity, responsibility and organizational excellence.

The Nation's growing diversity challenges us to reach new audiences and to use new partners to do to so. And we will do this primarily using digital technology. The newer collections are available virtually, the less these materials are subject to harmful handling and damage. And it also saves additional funds for us because we do not have to process as many applications for use of our materials. But we also want to make sure that our school children, the teachers, the parents and the scholars have access to these extraordinary collections that we have in Washington.

Our first secretary, Joseph Henry, was legally charged with preserving the records of the Smithsonian Institution. The Smithsonian Institution archive holdings constitute the official memory of

the Smithsonian, and document the development of American sciences, arts, culture and technology.

The United States is one of the most advanced countries in the world in terms of providing access, public use for public information. U.S. policies of professional ethics are focused on the widest most equitable openness for archival holdings. However, many of our collections remain inaccessible for a host of reasons: insufficient staff, lack of expertise to work on special formats, or special language materials. In addition, some institutions have large backlogs and uncatalogued or unprocessed material, and we need to work on that.

I look forward to the Smithsonian Institution's collaboration with my colleagues at the Library of Congress and the National Archives. We each play an important role in inspiring the public by engaging them in an exploration of what it means to be an American in today's world.

For 163 years, the Smithsonian Institution has built the national collections, disseminated innovative research, and welcomed millions of visitors to its museums, creating a reputation so strong that the Smithsonian is known as a symbol of America throughout the world.

I am extremely proud of our passionate and dedicated staff and our volunteers, and will continue to work to see that progress is made, is the same as we go forward.

Again, thanks to the Chair and the ranking member for my opportunity to testify.

[The prepared statement of Mr. Clough follows:]

House Subcommittee on Information Policy, Census and National Archives

Testimony of Secretary G. Wayne Clough
Smithsonian Institution

16 December 2009

Thank you for this opportunity to testify before the House Subcommittee on Information Policy, Census and National Archives regarding the mission of the National Archives. I would like to begin by thanking the Chair, the Honorable William Lacy Clay and Ranking Member, the Honorable Patrick McHenry for holding this important hearing. I would also like to extend my congratulations and good wishes to my new colleague, the Archivist of the United States, David Ferriero and to offer the Smithsonian Institution's assistance in his transition. I am pleased to be here with my distinguished colleague, the Librarian of Congress, Dr. James Billington. Our collective mission is extremely important: The National Archives and Records Administration (NARA) preserves the records of the federal government; the Library of Congress (LOC) serves as the largest library of the world; and the Smithsonian Institution preserves the history, arts, sciences and cultural traditions of the United States and the international community. We complement each other as we pursue our shared goal of preserving our collections and making them as accessible as possible to the American public. I look forward to our increased collaboration.

The Smithsonian (www.si.edu/) is a national and world treasure. With 19 museums, 20 libraries, nine research centers and the National Zoo, the Smithsonian stands out as a unique entity, a leader in science, history, art, and culture. Our museums are open 364 days a year, and admission is free – an especially important service to the public during this time of economic stress. Each year we mount close to 100 new exhibits in the interest of serving the public and each one is backed up by our collections, archives and research by our curators. Additionally we conduct extensive research in the public interest related to topics such as astrophysics, biodiversity, invasive species, preservation science, and paleontology and we offer educational programs in a range of areas to teachers and students and life long learners. All of this work depends on our archival collections which have been shaped over time to support the efforts of our museums and research centers. Our archival collection includes a vast quantity of scientific documents and records, along with letters, diaries, films, maps, sketches, photographs, sound recordings, and other special media totaling more than 100,000 cubic feet, and forms the foundation for research, scholarship, publications, exhibitions, public programs, and outreach. These resources are used not only by Smithsonian researchers and curators, but also by thousands of others who have need for them. We are working tirelessly on digitizing not only our archival collections, but also our three dimensional collections, which poses many exciting challenges. For example, in order to be most useful, a digital 3-D object must allow for rotation

and viewing from various angles. We must also include metadata in the file so the viewer has context and relevant information on the object.

As an international institution we offer the world a picture of America and America a picture of the world. From the very inception of the Smithsonian Institution, our mission has been steadfast – the increase and diffusion of knowledge. We believe our vision will shape the future by preserving our heritage, discovering new knowledge, and sharing our resources with the world.

Strategic Plan

The core mission of the Smithsonian, our work related to research, collections, outreach, and public programs, remains strong. This year, thirty million visitors from across the country and around the world came to the Smithsonian. We had 188 million visitor sessions to our various Websites. To ensure that we bring our vast resources to bear in powerful ways on the critical problems of the world, we recently embarked on the most inclusive and comprehensive strategic planning process in our history. The nation's growing diversity challenges us to reach new audiences and ensure that Smithsonian collections, exhibitions, and outreach programs speak to all Americans. We also must remain relevant to visitors who come from around the world. To accomplish this, we have outlined in our strategic plan ways to use new media and social networking tools to deliver information in customized ways and bring our resources to those who cannot visit in person. Digitizing objects, including archives, and making them accessible online are major Institutional priorities, as is exploring next-generation technologies. We will take advantage of a range of interactive, Web-based technologies to reach learners of all ages.

We are currently putting as much effort as possible into the digitization of our collections to ensure that they are available to the public. We will improve their storage and management, substantially expand access to them through digital technologies, and build public/private partnerships that strategically enhance collections care. Making Smithsonian resources accessible to all through the Internet is a vital component of our new strategic plan. Providing access is not in lieu of preservation. In fact, appropriate digitization plays a significant role in increasing the preservation of materials. The cost associated with digitization includes stabilizing the physical materials. Furthermore, the more collections we can digitize and make available virtually, the less these materials are subject to potentially harmful handling and damage due to changing environmental conditions such as light, temperature and relative humidity fluctuations when they are taken out of storage. There are also significant cost savings to researchers who do not need to travel to the archives in order to view materials in our collection.

We want to make sure that school children, their parents, and teachers have access to the extraordinary collections that we have available to us here in Washington, D.C. Like the National Archives and the Library of Congress, we face a huge challenge in making our

materials available to the public, but this is a challenge that we are facing head-on and with great determination. Our success in this endeavor necessitates partnerships and collaboration as a way to broaden opportunities for the American public.

The Smithsonian Institutions Archives

The Smithsonian has a long history of balancing the sometimes competing needs of various constituencies when it comes to issues of access and use of our archival collections.

First, I would like to tell you about the Smithsonian Institution Archives (SIA; www.siarchives.si.edu/). Although the first Smithsonian Secretary, Joseph Henry, was legally charged with preserving the records of the Institution since its creation in 1846, the Smithsonian Institution Archives had its real origins in 1891, when William Jones Rhees, who had been Chief Clerk since 1852, was given the title Keeper of the Archives. The Smithsonian Institution Archives is the institutional memory of a unique American cultural resource and a steward of the national collections. Its holdings constitute the official memory of the Smithsonian and document the development of American science, art, culture, and technology, and the growth of museums in the United States.

In order to ensure institutional accountability and enhance public appreciation of a great national treasure, the SIA is committed to serving the Smithsonian community, scholars, and the general public by engaging in many activities such as 1) evaluating, acquiring, and preserving the records of the Institution and related documentary materials; 2) offering a range of reference, research, and records services; and 3) creating products and services that promote understanding of the Smithsonian and its history.

SIA oversees over 5,500 collections comprising 34,211 cubic feet. These holdings date back to the Smithsonian's founding in 1846 and include Secretarial correspondence, scientific research and original expedition field notes, exhibition records, architectural drawings of Smithsonian buildings, oral and video histories, photographs, film, video, Websites, and a wide variety of records documenting the history of the Smithsonian and the history of scientific discovery, art administration, historical research and museums in the United States and throughout the world. A few highlights include the papers of Nobel Laureate in physics, Riccardo Giacconi (formerly of Smithsonian Astrophysical Observatory (SAO)), the papers of Hirshhorn Museum and Sculpture Gallery founder Joseph Hirshhorn; and a recently acquired collection of over three million photographic images documenting Smithsonian collections and specimens, buildings, events, and staff.

Providing access to the collections is our highest priority. As part of a public trust, SIA is dedicated to providing equitable service to all researchers. Access to its holdings is to the fullest possible extent consistent with personal privacy and Institutional proprietary rights. Currently SIA serves nearly 6,000 researchers each year through use of the SIA Reading Room, email,

mail, and telephone and increasingly through our web presence. SIA makes every effort to provide online access to collection descriptions and detailed finding aids. Seventy-seven percent of unrestricted and minimally restricted holdings have electronically-available and searchable collection guides.

Currently, our most pressing issues are the preservation of electronic records and digital information of all kinds – including large volumes of scientific data collected by our scientists studying the universe or climate change, massive amounts of e-mail, web sites from across the Institution, and a proliferation of digital photography. We are also challenged by the need to preserve all forms of other documentation that are rapidly deteriorating, such as older photographic negatives that require cold storage, video tapes that are nearly unviewable now, and the vast paper records that are also at risk.

Digitization of the collections is a growing challenge as well as an opportunity. As the Web has become ubiquitous, researchers expect greater amounts of original materials to be accessible on the web. Yet, digitization of these materials is mostly done with project funding or on demand, as materials are requested. The percentage of actual materials that are now digitized is a very tiny fraction of our complete holdings. We are working tirelessly to change this.

Providing access to collections through various means of discovery and delivery, preservation – especially preservation of electronic records and digital information - and digitization of massive amounts of archival materials are the biggest issues facing archival collections around the world.

The United States is one of the most advanced countries in terms of providing access to public information for public use. U.S. policies and professional ethics are focused on the widest, most equitable openness to archival holdings. However, many collections remain inaccessible for a host of reasons – for example, insufficient staff, lack of expertise to work with special formats or special language materials. In addition, some institutions may have large backlogs of uncatalogued or unprocessed materials, many of which are in poor condition and in need of conservation treatment prior to allowing their use.

Archives Best Practices

The Association of Research Libraries has as part of its national agenda a program designed to help archives expose their "Hidden Collections." Funding to support these projects is being managed by the Council on Library and Information Resources (CLIR.) SIA in collaboration with the Botany Department of the National Museum of Natural History recently received a $500,000 grant from CLIR to digitize expedition field notebooks along with the botanical specimens gathered on those research trips. The materials span two centuries of fieldwork and cover both terrestrial and marine environments. The collections are significantly strong in their coverage of 19th century expeditions across North America, including the 1820 Long Expedition; the U.S. - Mexican Boundary Survey (1848); Expedition of Maj. J.W. Powell

(1868); Jenny Expedition to the Black Hills (1875); Death Valley Expedition (1890-91); Peary Expedition to Greenland (1897); Harriman Alaska Expedition (1899); and numerous voyages of discovery, such as the North Pacific Exploring Expedition; the HMS Challenger expedition; the US Eclipse Expedition; and the US Steamer Albatross expedition. We will virtually reunite these materials on our website to improve their accessibility to researchers and the general public. This is a good example of the kind of collaboration and interdisciplinary work that we seek in our new strategic plan.

In February 2005, the Archives of American Art (www.aaa.si.edu/) received an award of $3.6 million to dramatically increase the accessibility of its resources on the web. This support is funding a comprehensive, six-year program to digitize and make available on the Archives' website a substantial cross-section of the Archives' most important collections, including the papers of a highly diverse range of artists and arts-related figures from the eighteenth century to today. At the end of the program, scheduled for completion in 2011, an estimated 1.2 million digital files will be available to the public.

Another example of some of the work that we are doing with our archival materials is related to weather data. Recently, we held a conference at the Smithsonian of a group called GEOSS-Global Earth Observation System of Systems. During the conference we were able to show the participants some of the earliest, systematic recordings of weather data collected by the Smithsonian's first Secretary, Joseph Henry. The raw data gathered over those early years are preserved in the SI Archives. This is extremely important because they are the earliest climate observations and a necessary part of the longitudinal studies that are vital to our understanding of climate change. Today, there are enormous amounts of digital data that must be kept and preserved, just as this early data has been preserved.

One example that I am really proud of at the Smithsonian is the work that we have accomplished in the digitization of the botany collection. The Department of Botany began its early efforts to digitize the Type Specimens of the United States National Herbarium in 1970, long before digitizing technology was well-developed. Although initial progress was slow, these efforts took off during the last decade through support from the National Science Foundation and the Andrew Mellon Foundation. To date, over 100,000 Type Specimens, which constitute the most important plant collections at the Smithsonian, have been digitized using high-resolution camera and scanning equipment. All of these images are available for scientists around the world to use via the Department of Botany website (www.nmnh.si.edu/botany). Making the Type Specimens available as high resolution images on the web site has reduced the need for sending these specimens to researchers at other institutions by over 80%, thereby reducing the risk of damage and loss of these valuable specimens.

The Smithsonian also partners with a project called the Encyclopedia of Life (EOL). We are working with the scientific and citizen-science communities to assemble infinitely-expandable

web pages for each of the word's known species. The Biodiversity Heritage Library (BHL), the digitization component of EOL, is a consortium of 12 major natural history museum libraries, botanical libraries, and research institutions organized to digitize, serve, and preserve the legacy literature of biodiversity. Prior to digitization, the resources housed within each BHL institution have existed in isolation, available only to those with physical access to the collections. These collections are of exceptional value because the domain of systematic biology depends – more than any other science – upon its historic literature. To date BHL has scanned more than 26 million pages of biodiversity literature from more than 70,000 volumes. EOL currently serves over 500,000 species pages with links to BHL's rich materials.

Conclusion

I look forward to the Smithsonian Institution's collaboration with my colleagues from the Library of Congress and the National Archives and Records Administration. We each play an important role in inspiring the public by engaging them in an exploration of who they are and the world we live in.

For 163 years, the Smithsonian Institution has built the national collections, disseminated innovative research, and welcomed millions of visitors to its museums, creating a reputation so strong that the Smithsonian is known as a symbol of America throughout the world. I am extremely proud of the work that we have accomplished and the progress that we will continue to make guided by the mission and vision outlined in our new strategic plan.

Again, I would like to thank the Chair and the Ranking Member for holding this important hearing. I look forward to any questions you might have.

Thank you.

Mr. CLAY. Thank you for your testimony, Dr. Clough. Thank you so much for being here.

Dr. Billington, you have 5 minutes.

STATEMENT OF JAMES H. BILLINGTON

Mr. BILLINGTON. Thank you, Mr. Chairman, Mr. McHenry, members of the subcommittee. I appreciate very much being invited to appear before the subcommittee with two such distinguished leaders as the Smithsonian's secretary, Wayne Clough, and the new Archivist of the United States, David Ferriero. We wish Mr. Ferriero well in this new job and look forward to working with him.

The Library of Congress is America's oldest Federal cultural institution and we have had good relations for many years with the Smithsonian and the Archives whose different collections and missions generally complement ours. We all face, however, similar challenges to acquire, preserve and make accessible important primary materials and to serve both researchers and the general public.

Congress, Mr. Chairman, has been the greatest patron of the library in the history of the world, building up for 209 years the world's largest, most comprehensive and multi-formatted library covering some 470 languages stored on more than 650 miles of shelving and relentlessly adding 10,000 new analog items daily.

Our top priority is to serve the research needs of Congress, which we do with our Congressional Research Service, providing objective, comprehensive research and analysis on policy matters, and responding last year to nearly 900,000 research and reference requests from the Congress.

Our law library is the foreign law research arm of Congress. And we serve Congress in other ways, lending books to Members and staff, archiving veterans' oral histories collected through Members' offices, and providing a special Members' reading room and the beautiful Members Room for meetings in the Jefferson Building exclusively for Members' use.

Since we are also the de facto national library of the United States, our second major priority is serving the American people. Last year, we responded to over half a million public reference requests in our 21 reading rooms, circulated 22 million free Braille and recorded books and magazines to disabled patrons all over the country through local libraries, and fielded more than 6.5 billion electronic transactions on the library's free educational Web site, which contains nearly 16 million digital files of American history and culture.

Thousands of researchers visit the library annually to study firsthand our unparalleled collections which include many materials that cannot be found anywhere else, the Unique Copyright Deposit of America and the world's largest collections not just of books and periodicals, but of maps, music and movies.

We do massive preservation work, notably at the library's new Audiovisual Conservation Center in Culpepper, Virginia, and through the congressionally mandated National Digital Information Infrastructure and Preservation Program, which we direct and coordinate with 176 partners, including the Archives and the Smithsonian.

When the library moved out of the Capital and into the new Jefferson Building in 1897, Congress made it clear that the interior space was designed to be not only a library, but a public showcase with exhibitions where visitors could go to be inspired by the quest for knowledge as an essential part of our knowledge-based democracy.

With a recent renovation by Congress of the Jefferson Building, our flagship building, our introduction last year of interactive enhancements in the public spaces and popular exhibits, we have found that important balance, serving both the scholarly community and the general public. The facilities for the scholarly community have actually been expanded with the addition through private funds of our Kluge Center.

The Library of Congress has also been an innovator in the internet age, superimposing new digital collections and services onto to traditional analog ones, reaching out to the young generation and to lifelong learners to stimulate curiosity and creativity wherever they live.

We featured, beginning in the mid-1990's, free digital access to our collections, putting online both our American Memory National Digital Library and THOMAS, our legislative data base. This year, we added a world digital library in 7 languages with some material covering all 192 members of UNESCO. We also provide online resources targeted specifically for K through 12 students and teachers using our primary source documents. Our Web site usage has increased 6,000 percent since 1996.

The library, Mr. Chairman, like America itself, adds the new without discarding the old. We continue to maintain the balance in serving Congress and the scholarly community while welcoming, thanks to the passageway from the New Capitol Visitors Center, visitors both onsite as well as online to this unique storehouse both of the world's knowledge and of America's cultural and intellectual creativity.

Thank you very much for inviting me today and I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Billington follows:]

Statement of Dr. James H. Billington
The Librarian of Congress
before the
Subcommittee on Information Policy, Census and the National Archives
Committee on Oversight and Government Reform
U.S. House of Representatives

December 16, 2009

Mr. Chairman, Mr. McHenry, and Members of the Subcommittee:

Thank you for inviting me to appear before the Subcommittee. It is a pleasure to be here today with Smithsonian Secretary, Wayne Clough, and with the new Archivist, David Ferriero. We wish him well in his new job, look forward to working with him, and have already begun to establish what I am confident will be a good relationship.

The Library of Congress is the oldest of these three institutions represented here today. We have long had a cordial and productive relationship with both the National Archives and Records Administration and the Smithsonian Institution. Their great collections and national missions generally complement ours as taxpayer-funded Federal repositories for different aspects of American history and culture, and stewards of world renowned collections with expert curatorial staffs. We also face similar challenges, which include acquiring and preserving material, making that material accessible and useful, and welcoming both researchers and the general public.

Library of Congress Mission and History

The Library of Congress is America's oldest federal cultural institution. It operates within the legislative branch of government; the first Joint Committee of the House and Senate in 1802 was the Joint Committee on the Library of Congress. The Library's mission is to make its resources available to the Congress and the American people and to sustain and preserve a universal collection of knowledge and creativity for future generations. For more than 200 years, the Library has proven itself adaptable and innovative in accommodating the growing needs of the Congress and of the American people. The Library of Congress uses its strategic plan to guide it in fulfilling its broad mission. We consult frequently with and are responsible to our Congressional oversight and appropriations committees, which provide invaluable counsel and support as we carry out our responsibilities.

Our vast and diverse collections have been built by the Congress around the amazingly rich personal collection of Thomas Jefferson, whose ideal of a universal collection and a knowledge-based democracy has been our guiding philosophy. We owe everything the Library of Congress is today to the people's representatives – the Congress of the United States – the greatest patron of a library in the history of the world.

The Library of Congress has grown into a national institution and a world resource of unrivaled dimensions. The Library of Congress is by far the largest, most comprehensive and multi-formatted library in the world covering some 470 languages, stored on more than 650 miles of shelving and relentlessly adding 10,000 new items daily.

Largely because we are the sole custodians of copyright deposit, the Library of Congress is a unique storehouse of American private sector creativity. Remarkable treasures are found within the Library's collections: we have 4,000-year-old Sumerian clay tablets; the only recording ever made of the world's oldest Christian music from Coptic Africa; the first map ever made of the Western Hemisphere; 15th century illuminated manuscripts; Jefferson's rough draft of the Declaration of Independence with edits by Franklin and Adams; Lincoln's two variant versions of the Gettysburg Address; and the world's largest and most varied collection of music, maps, and movies.

The Subcommittee has asked me to discuss how the Library of Congress meets the needs of its varied constituencies in fulfilling its mission. We have established clear priorities for serving each constituency and I believe we have struck a good balance in meeting our responsibilities.

Serving the Congress

The top priority of the Library of Congress is, and will remain, serving the research needs of the Congress. The Congressional Research Service provides objective and comprehensive research and analysis on policy issues before the Congress. Seven hundred CRS policy specialists and librarians over the last year responded to nearly 900,000 research and reference requests. Our Law Library has unparalleled collections in international and comparative law and serves as the foreign legal research arm of the Congress. Members of Congress and staff have unique borrowing privileges from the Library of Congress and frequently use the Members Room in the Jefferson Building for meetings and conferences.

Serving the American People

The Library of Congress's other major priority is serving the research needs of the American people. Established in 1800 as Congress's library, we also serve a broader constituency. Particularly after the act of Congress to centralize copyright deposit uniquely at the

Library in 1870, we became the *de facto* national library. Last year we: responded to well over half a million public reference requests in our 21 reading rooms; circulated 22 million copies of braille and recorded books and magazines to some 500,000 patrons through our National Library Service for the Blind and Physically Handicapped; hosted 129 leading scholars from around the world at the privately-funded Kluge Center for residential research using the Library's collections; and, recorded well over 6 billion hits on the Library's heavily used educational Web site which contains nearly 16 million digital files of American history and culture.

When the Congress moved its library out of the Capitol into its own new Jefferson Building in 1897, the architecture was designed to be a public showcase projecting American optimism near the turn of the century where visitors could come and be inspired by the quest for knowledge. The original interior design was divided almost equally between space designated for the collections and research centered on the Main Reading Room, and inspirational visitor space, including the Great Hall, and a ring of galleries and pavilions dedicated to exhibits and displays featuring the Library's collections. The Congress was very interested in the plans for the building. Before it opened, the Joint Committee on the Library held hearings about collections and operations of the Library of Congress. Members discussed the plans for gallery space on the second floor dedicated for exhibits of Library materials for the public and toured the building prior to opening to look at these spaces.

When it opened, the Jefferson Building received overwhelming approval from both the Congress and the American public. It is still considered today – particularly after Congress restored it in the 1990's – one of the finest public buildings and most beautiful interior spaces in America. With the introduction in 2008-2009 of large-scale interactive enhancements of the public spaces, and new popular exhibits, the Library has reinvigorated the original use of the building and attracted new visitors through the passageway directly connecting the Jefferson Building and the new Capitol Visitor Center. At the same time, we have modernized facilities for scholars and designated a building entrance solely for the use of researchers.

Even in an increasingly digital age with exponential growth in remote access to the Library's collections, our multiple reading rooms continue to serve researchers with both general information and access to one-of-a-kind primary source materials. One of the most spectacular public spaces in America is the ornate Main Reading Room, the heart of the Library's general research and reference activities and a monument to the written word. Twenty other reading rooms serve a more specialized clientele, with access to rich collections representing specific regions of the world, subject formats, and audio and visual materials which often cannot be accessed anywhere else.

After an initial decline at the start of the Internet age, overall readership in our reading rooms has stabilized, and we have noticed over the past year increased usage of the Manuscript, Music, and American Folklife Center reading rooms, with a trend toward more in-person direct reference service. Just a few weeks ago we opened a new Young Readers Center, a family-friendly space with children's books and internet access where visitors can go to enjoy the

reading experience with their family. Using new interactive technology, we have developed innovative means to engage visitors, particularly youth, in new and more active ways at the Library of Congress.

Our magnificent Thomas Jefferson Building has become an even more popular destination for visitors since we opened new popular exhibitions: Creating the U.S., Jefferson's restored Library; and the Lincoln Bicentennial exhibit – all featuring priceless one-of-a-kind Presidential materials. During the last year, 1.75 million people have either used the Library for on-site research or toured our facilities, including 34,000 Congressional constituents who have taken specifically arranged tours through Members of Congress. Last year's opening of the passageway from the Capitol Visitor Center to the Jefferson Building has significantly increased the number of visitors.

Digital Initiatives

The world is currently experiencing an unprecedented revolution in the generation and communication of creativity, knowledge, and information caused by the explosion of digital material. The Library of Congress is superimposing new digital collections and services onto traditional analog collections, while preserving the human values of the older book culture that helped create the free, open and knowledge-based democracy we serve.

The Library has been a leader in transforming its collections and services into an active archive of digital information and creativity that can be shared electronically throughout the world. We have been an innovator in posting free, high quality content, with clear curatorial explanation, on the Internet. The Library learned how to make digital material accessible early in 1995 with our online American Memory Project, which became part of the National Digital Library; followed by the THOMAS legislative database; and, earlier this year, a World Digital Library with items from all 192 countries in UNESCO.

The Library is also using new social media, including YouTube, FaceBook, Twitter, and Flickr, to attract new audiences both to enjoy and to learn from our collections. With our online resources, students at all levels and teachers can use our primary source documents for educational use.

Cooperation with the National Archives

The National Archives and Records Administration and the Library of Congress have many similarities in organization and mission. Because of its focus on the records of the Federal government, the National Archives is more specialized in its collections than the Library of Congress.

Beginning in 1921, the Library of Congress preserved and displayed for visitors (with a brief interruption during World War II, when they were safeguarded at Ft. Knox) final versions of the two most iconic documents of American history – the Declaration of Independence and the Constitution. Following the establishment of the National Archives in 1934 and the subsequent enactment of the Federal Records Act, the Congress instructed the Library to transfer both documents to the custody of the National Archives, as the repository for official U.S. government records, where they have been since 1952. The Archives and the Library both share custody of presidential papers, with the Library holding on Capitol Hill the papers of 23 presidents and the Archives administering the 13 libraries and museums of recent presidents beginning with Herbert Hoover.

The Library and Archives cooperate on specific projects such as the National Digital Infrastructure Information and Preservation Program (NDIIPP), which was created by the Congress within the Library in 2000, to develop a long term national strategy to collect, preserve, and make accessible the most important material available only in digital form. As part of NDIIPP, the Library leads a federal working group on digitization guidelines and standards with 14 agencies, including NARA and the Smithsonian.

The Library and the Archives collaborate on tapes of House and Senate floor proceedings with the Archives maintaining the preservation copy and the Library retaining a reference copy of the proceedings at our massive new Packard Campus for audio-visual conservation in Culpeper, Virginia.

Cooperation with the Smithsonian Institution

The Smithsonian Institution and Library of Congress enjoy an even longer collaborative relationship dating back to the mid 1800's. Shortly after its founding in 1846, the first methodical attempt at cooperative cataloging ever undertaken was proposed by the Smithsonian and applied to the Library. The Smithsonian originally shared copyright responsibilities before it became an exclusive Library responsibility and the Smithsonian transferred its original library to the Library of Congress in 1866.

Both institutions have good relations and staff communicate frequently about shared collection interests and work closely on preservation issues. We occasionally lend material to each other for exhibitions, frequently cooperate on folklife programs, and the Smithsonian remains one of the Library's largest borrowers of materials for the use of its scholars and researchers.

This year, the Smithsonian and the Library were asked by the Congress to carry out a joint project to collect video and audio recordings of personal histories and testimonials of individuals who participated in the Civil Rights movement.

Conclusion

The United States is unique in its ability to combine extraordinarily stable governing institutions with an amazing capacity for constant innovation in its private sector. Moreover, America has a great capacity to add without subtracting – new people, new ideas, new technologies.

The Library of Congress reflects this notable capacity of Americans constantly to change and adapt to the new, without jettisoning the old. We have embraced a series of new media and technologies to collect and share with ever broader audiences the riches of the world's largest collection of knowledge. We have demonstrated in many ways over the last twenty years, through innovation, technology and our unparalleled collections, how to wisely use tax dollars to reach a new generation of Americans by helping them make their own connections. We must continue in the future to lead by taking an activist approach and use new techniques to share our riches while at the same time balancing this imperative with our traditional artifactual role as America's, and increasingly the world's, storehouse of knowledge.

Thank you for providing me with the opportunity to discuss how the Library of Congress defines and fulfills its mission to serve the Congress and the American people.

Mr. CLAY. Thank you so much, Dr. Billington. During my college days, I also remember the Library of Congress having a pretty good law library. I guess you still do.

Mr. BILLINGTON. Yes, we do.

Mr. CLAY. I thank all of the panel for their testimony.

And now I recognize my friend from Ohio, Mr. Driehaus, to begin the questioning.

Mr. DRIEHAUS. Well, thank you very much, Mr. Chairman, and I want to thank all the witnesses. You represent three of the most important institutions, obviously, in the United States and we appreciate the tremendous work.

And Mr. Ferriero, welcome. I just add my congratulations to everyone else's. This question is to you.

Last week, the Director of the Office of Management and Budget issued an Open Government Directive that requires agencies to take a number of actions to improve access to Government information. Under the directive, each agency must take steps to reduce its backlog of Freedom of Information Act requests by 10 percent each year.

What actions will NARA take to reduce its Freedom of Information Act backlog as required by the Open Government Directive and what other steps does NARA plan to take to implement the directive?

Mr. FERRIERO. Just before I arrived, the agency established OGIS, which is the office that is charged with reducing the, this backlog and working with the agencies, the CIA and the Justice Department especially, to ensure that we are streamlining the process. The point person, Miriam Nesbit, who is going to head up this office, has been in place since the end of September. She is now building a staff and working very closely, especially with the CIA, looking at technological solutions to this problem.

Mr. DRIEHAUS. When you referenced streamlining, can you give specific examples of what is being done to streamline the process?

Mr. FERRIERO. She is in the very beginnings of establishing new processes for speeding up the, these requests.

Mr. DRIEHAUS. Okay.

Mr. FERRIERO. I would be happy to come back when we have something concrete to share.

Mr. DRIEHAUS. My other question gets to this balance between the role of the Archives in collecting information and making that available to the public, and the display. Mr. Billington, the Librarian, was talking about the role of the Library of Congress and the design of the Jefferson Building. In your testimony, you talk about the balance that is struck between storing the materials and also displaying those materials for the public.

Mr. Ferriero, what do you believe is the balance for the Archives? Is it the same as what we are trying to achieve in the Library of Congress or is that balance different? Is the mission significantly different such that we do not do the same type of, we do not have the same type of emphasis on sharing and displaying the information as the Library might have?

Mr. FERRIERO. I think we have similar missions. We have different content that we are talking about. My contents are the records of the United States. And I think we have the same respon-

sibility to provide the museum and educational aspects of our mission as the Library of Congress does. This is the way we excite and interest a whole new generation of people. I am looking especially at the K through 12 community, about learning firsthand about this country, about getting a sense of excitement about our history. And nothing can compare at looking at the physical, the real, original documents. And it is in service of training the next generation of researchers and scholars.

Mr. CLAY. Thank you. The gentleman yields back and I go to my friend from North Carolina, Mr. McHenry.

Mr. MCHENRY. Thank you, Mr. Chairman. And I appreciate your having this hearing, Mr. Chairman. I think this is an important discussion for us to have and for the Congress to be aware of these important documents we have agencies taking care of.

Mr. Ferriero, I certainly appreciate your appointment and the credibility you bring to a very important agency and an agency in much need of strong leadership and certainly appreciate your connection to North Carolina as well, even though it is with Duke. [Laugher.]

But we have discussed in private, discussed my concerns about some systemic issues with NARA. Now, granted, you have only been on the job a few days. But in May, before this committee, the IG, Mr. Brachfeld of NARA, discussed the loss of sensitive data from your College Park location. And his, what he said then was that he saw an agency with complete lack of internal controls, to paraphrase. How are you going to address that?

Mr. FERRIERO. The security of the collections is high on my list of these issues that I have identified and we have started to work on. Security is something that every research collection deals with and it is this tension between providing access to collections and protecting them.

Security is a state, a culture of vigilance that is not a one-off kind of operation. We have come up with a set of recommendations. And you have done security. It is something that you think about every day, every minute of your control of the collections. And that is the kind of urgency that I intend to create within the agency. The Inspector General was correct. The culture has resulted in a sense of laxity around security.

Mr. MCHENRY. And addressing that culture, it seems to me that security, when I think of security, it is when I go into the facility and you see the Constitution under a lot of glass and some serious security. But the concerns that I have are in a warehouse, and the disappearance of many terabytes of information. It is interesting that I learned this year what a terabyte is and the discussions we have about that massive amount of information. And now the story today about finding emails from the Bush administration.

And so there have been some losses. There have been some gains. But I think they show that there is a need of a cultural change and I appreciate your willingness to address that. But what are the substantive steps you will take to change the culture?

Mr. FERRIERO. We have established the Holding Security Task Force. We have hired a person with a security background to head up that team and he has the authority, working with the Inspector

General, to analyze the situation and come up with a whole new set of security procedures and policies.

And I should say that security is not the responsibility of just a few in the organization. Everyone who works for NARA has to have this sense of vigilance around security.

Mr. MCHENRY. Okay, certainly.

Mr. FERRIERO. This is another one of those areas where I would be happy to come back and report to the subcommittee on exactly what we have come up with.

Mr. MCHENRY. We have also had, before your appointment, a discussion about the electronic records and the ongoing changes there. Can you touch on that? It is sort of an open-ended opportunity for you to discuss this because, in terms of these changes in technology, just in the last 5 year. You know, I have a Kindle from Amazon.com. You know, that technology was not available 5 years ago. The BlackBerry today is much more powerful than the BlackBerry was 5 years ago, and on and on and on.

So, how are you going to establish this electronic records system that we can continually update and it makes sense 20 years from now?

Mr. FERRIERO. Well, it is, it is another one of those challenges that is at the top of my list to figure out and get right. This is an initiative that was started many years ago. In the time that NARA launched this process, the technology has changed already. The time line needs to be shortened.

The challenge is that every agency has been allowed to create their own electronic records management system with varying platforms and software packages and they do not talk to each other. So, it is a little more complicated that just ingesting all of these electronic records. It is establishing a set of standards.

But primarily, and philosophically, at heart is the Archives, the Archivist, reassuming his responsibility for ensuring that the agencies are creating these systems and delivering in a way that we can deal with them. And that is something that there has been great laxity in the past. No annual audits.

And, as you and I discussed, in most agencies it is usually a junior person who has responsibility for records, high turnover, not adequate training, and the Archives has not stepped in to, you know, exercise their authority.

Mr. MCHENRY. Well, thank you for your straightforwardness on this and your vigilance and we wish you the best.

Mr. FERRIERO. And I do not want to paint a picture of this is a piece of cake and it is going to be easy to solve. It is not.

Mr. MCHENRY. Well, we are glad you are in charge and I know it certainly is not an easy, it certainly is a challenge and a distinct challenge based on the culture you are walking into and these electronic records, in particular, and what that adds to this whole general challenge.

Thank you. Thank you, Mr. Chairman.

Mr. CLAY. The gentleman's time has expired. The gentleman from Texas, Mr. Cuellar, is recognized.

Mr. CUELLAR. Thank you, Mr. Chairman. I want to welcome all three of you all. We appreciate what you all do and Mr. Ferriero, also welcome.

Let me ask you one question for all of you all. Do you all have a strategic plan for each of your agencies, that is, a strategic plan that has the core mission, that has the goals, that has the indicators, the inputs, and can you all make that available to us? Mr. Ferriero.

Mr. FERRIERO. The Archives does have one. It was recently, it was updated just before I arrived. It is not my strategic plan.

Mr. CUELLAR. Okay.

Mr. FERRIERO. But I will be happy to make it available to you.

Mr. CUELLAR. When you say it is not mine, I assume you are going to make some changes to it?

Mr. FERRIERO. I think a new Archivist needs to establish himself in the agency. And one of the ways of doing that is creating his own strategic plan.

Mr. CUELLAR. And is there a way to measure your results?

Mr. FERRIERO. Every strategic plan should have, should include, evaluative measures. Yes.

Mr. CUELLAR. Thank you. Mr. Clough.

Mr. CLOUGH. At the Smithsonian, you have our plan. I'm sorry. You have our plans and it is in the materials that you have. And it is a plan that we just developed and it took about a year to develop. We had a cultural problem also at the Smithsonian, and so we wanted to make it an inclusive process to get people to buy in to the plan. And we finished that, and we are very pleased with the way the results have come out.

We do, we are required by our Board of Regents to have very explicit goals, and measurables against those goals. And so we have goals that we expect to be measured against over the life of the plan, which is basically 2010 to 2015, but also annual goals. And of the annuals goals, we actually measure our progress toward those goals every quarter.

Mr. CUELLAR. Okay. Good.

Mr. BILLINGTON. We are halfway through our current strategic plan and we are engaged, we have engaged in a virtually year-long process of revising and extending it to 2016. We are nearly finished that exercise. We have been conducting a really thorough review, as well as a review of our management agenda, and it will have some new emphasis and we will get you a copy of this. It is almost complete and we will get it to you as soon as you want it.

However, revision of the basic strategic plan that we have been operating under for 2½ years. That is the normal thing, in mid-course, reexamination of your strategic plan, which is what we have been doing. And we have decided that the changes should be fairly significant and last through 2016.

Mr. CUELLAR. Okay. And I would ask you all, because I heard Mr. Clough what you said. I just got a copy. It was not attached to your testimony. I just got it right now. But there is no measurements and what percentage. Is that in a different document? Because one of the things that I want to see Federal agencies in doing is to have the mission, the goals and then what you are trying to measure, because I am looking at what just got provided to me and I do not see the performance measures. And why would you put them apart from the strategic plan?

Mr. CLOUGH. The plan, the Executive Summary of the Plan speaks to what we will measure, but not exactly what we have measured because we thought it would just be too much detail for the average person. But that is all available in public records. And we have, in fact, what we try to do as we develop the plan was to bring all of our, our stakeholders, meaning not just those of the Smithsonian but those outside the Smithsonian into the process of deciding what we should measure. And so that is available, and we can make that available to you.

Mr. CUELLAR. Yes, sir, thank you. And I appreciate all the work that you all do. Give me an idea, from each of you all, what you all measure?

Mr. CLOUGH. What we measure?

Mr. CUELLAR. Yeah.

Mr. FERRIERO. Okay, let us start with [remarks off mic].

Sorry. How many people come through the door, but more interesting and more valuable are qualitative kinds of measurements. How effective was the visit? Did you get what you need? How qualified are the staff that you interact with? What did you learn from the experience? And then there are measures on resources, use of resources.

Mr. CUELLAR. Right. Mr. Clough.

Mr. CLOUGH. Somewhat similar for us in that, for example, for a museum visit, we survey our visitors and we have a standard to which we aspire for visitors saying this was an excellent visit, or this was a very good visit, or this was informative to me in a particular way. So, we have those kinds of measures. We also look at the number of people who come to our Web sites, how long they stay, what they tell us that they are learning. We are looking for more of a two-way exchange today as opposed to us simply measuring some temperature, but literally letting them tell us what they think. And we look for management expertise, excellence as well.

Mr. CUELLAR. My time is up. But let me just say this. I would ask you all to, one of the things about the measurements is that, I do not want to get caught up in measuring activity or how many pencils you have. I mean, that is a very simplistic idea, example. I would ask your staff that is sitting behind you that we measure the end results, the goals, to do that. Because it is easy to measure activity.

But, once you set your mission and your strategic goals, how do we measure the end results? You know, what are the results? In other words, you can say, how do you improve education? There are certain things you look at by just counting how many teachers you have. So, I would love to sit down with you all because I am a big believer in having Federal agencies to do a lot more on the deeper thinking of strategic planning on this.

But first of all, I just want to again say thank you to all three. We really appreciate the work that you and your staffs are doing.

Thank you.

Mr. CLAY. The gentleman's time has expired. The gentlewoman from the District of Columbia, Ms. Norton, is recognized for 5 minutes.

Ms. NORTON. Thank you very much, Mr. Chairman. And thank you for bringing all three of these kinship agencies before us. They are very important to the District of Columbia, but exquisitely important to the Nation of the 20 million people or so who come to visit the Nation's capitol every year. Many do, in fact, visit all three of these institutions.

I have questions. Let me begin with you, Mr. Ferriero. You are the junior member of the trilogy here, and I welcome you and congratulate you on your appointment. I congratulate you on the work on the exhibits that are up now and on your coming Civil War exhibition, which is much anticipated.

I strongly endorse the transformation that has been underway for some time so that the Archives lose that aura. The word archives sends out the message, not to anybody I know, I was a history major so it would have interested me, but it is unfortunate that it does not fully describe in any sense what the Archives means to anyone even mildly interested in our country.

So, I very much applaud what you are doing. I see the Archives much more as a museum like the Smithsonian Museum, frankly, that if you come here you ought to go to the Archives just the way you go to the Library of Congress to say, this, I have heard all my life about, let me see what really happens in here, let me look at it. The very same thing for the Archives.

Now, I am not suggesting a name change here. But I am suggesting that you are transforming how, and this has been underway for some time. I am not sure Congress has been fully aware of how that transformation, how you keep up with that transformation, because with everybody else it seems to be we are back into the old Archives business, making sure that you do the filing, and that scholars can find what they need. Far be it from me to say that is not important. But the fact is that you serve the entire country.

And there was a question asked by one of my colleagues about the so-called balance. Let me pick out one of the things that you do to ask you whether or not Congress needs to look more carefully at a transformation of its own, perhaps.

If you go before an immigration court, you do not have any rights. I mean, you are not in the country, figuratively speaking, yet you are challenging some kind of order. So, we have immigration court, and you do not have discovery there.

As I understand it, if you want to find out anything about what the Government, the other side who is in court with you, has on you, you have to do a FOIA request. And I understand these requests, which are very important, just as are the kind of requests we had in mind when we passed FOIA, or enacted FOIA, were important. But somebody, whether somebody stays in the country or leaves, whether or not there is false information regarding whether the person has been involved in some activity, terrorist or not, is what Government is relying on, that also is important.

I do not know how you prioritize among the FOIA requests or what, or whether you are in, have any strategy for keeping yourself from being buried in FOIA requests, whether you have asked for a different way to handle FOIA requests, perhaps outside of the Archives, whether you have asked for more funding or staff to handle

it. Or are you just sitting there letting the FOIA requests come in and somebody goes and look when she gets ready to, when she gets down to you?

And of course if they get to the case, and I am not suggesting that all of these cases are full of content, but obviously they have the right to the FOIA because the courts do consider them if they happen to get the information in time. And guess what? If you do not get it in time, since you have no right to discovery, off with your head.

What does the Archives do when it sees, I will not even call it new, but it certainly is not anticipated, use piling in on you? Are there more FOIA requests of this kind than any other FOIA requests? What are you doing about it?

Mr. FERRIERO. You are asking very good questions. And I said, this new OGIS operation that has been set up on the Archives is charged with speeding up and reducing the time to process those kinds of requests.

I do not have concrete information about the nature of requests, but I can get that information and supply it. And this is, you know, we met 3½ weeks ago——

Ms. NORTON. Is it the largest number of FOIA requests?

Mr. FERRIERO. This is the first I have heard about this category of FOIA requests. So, I, at first blush——

Ms. NORTON. Well, I think it, I am suggesting that, you know, you can get all the money you want to. There are certain kinds of things you will never get enough money to handle. I think you ought to have your staff and your counsel looking at whether or not you ought to suggest that either some minimal rights be granted to people before immigration courts, which is in the jurisdiction of the Congress, or that something else be done. Because I do not see a way for you to get on top of what is an ever increasing number, nor do I think that the taxpayers of the United States ought to keep pouring money into something of a kind if there is another way to do it.

I notice your budget has doubled with respect to Presidential Libraries. I wonder if that is getting some kind of preference over the last 10 years, some kind of preference over other kinds of things because, after all, they are presidents. Is that the case? I mean, have you had a doubling of your budget in any other part of what you do?

Mr. FERRIERO. Not that I am aware of. Although the budget has kept up with the increasing volume of material that the Archives is responsible for.

Ms. NORTON. Say that again?

Mr. FERRIERO. Every year, the Archives bring in more and more content and the budget has increased to support that. In terms of the Presidential Libraries, the staff prepared, just before I arrived, and submitted a report on the future of the Presidential Libraries which spells out five different scenarios for investigation. And I would expect that we would have a hearing on that in the New Year to talk about the future of the Presidential Libraries.

Ms. NORTON. I think that requires our attention, Mr. Chairman, because it is another area that can just run away with. After all, these Presidential Libraries are supposed to be supported by their

own foundations as well as the taxpayers here and the Archives do have some responsibility. But it strikes me, it is interesting to me that that budget has grown, has doubled.

Mr. FERRIERO. It is a public private partnership. The libraries are built by private foundations and——

Ms. NORTON. And the foundations have to know that they have to keep working hard. And if they see the Government taking on more and more of it, there will be a disincentive there.

I would like to ask Mr. Clough a question. The last time I looked, 70 percent of the funding of the Smithsonian was from the U.S. Government. Is it about that percentage now?

Mr. CLOUGH. Yes, it is about 65 percent by Federal appropriations and 35 percent by——

Ms. NORTON. I am very concerned with the fund-raising record of the Smithsonian. Here we have the most unusual, I would call it a unique collection, of museums, nothing like it in the world. Any city that had it in its midst would regard it as a treasure trove. I am struck dumb by why the Smithsonian has not been able to raise more private funds from across the United States. I need to know what your fund-raising model is, considering that I do not expect that the U.S. Congress is going to raise the percentage. We can hardly keep up with your backlog of repairs and alterations.

Mr. CLOUGH. Well, we are working hard on getting the message out about the Smithsonian and telling the correct story about the purposes that it serves to the American people and the world. This past year——

Ms. NORTON. What is the fund-raising strategy?

Mr. CLOUGH. I'm sorry?

Ms. NORTON. What is the, is there, you know, if you go to places like New York——

Mr. CLOUGH. Yes.

Ms. NORTON. You know, where you have major museums that have major fund-raising strategies——

Mr. CLOUGH. Yes.

Ms. NORTON. Even though the city of New York supports them. Is there such a strategy there besides telling people, this is, you know, let them know the kinds of things they can see? That is not going to raise funds.

Mr. CLOUGH. We are very close to having all the pieces in place. The first part was to develop our strategic plan, which we did, and that is now public. And then from that, we build what we call our case statement, which is that we have goals that we think that the American people and Members of Congress support for us. And then we try to identify the target for people who, corporations, foundations and so forth, who would support us.

And this past year, we were pleasantly surprised. We had a goal of $120 million in private philanthropy and we raised $127 million. So, we did better than we expected on that side. We think with the strategic plan in place and with a definite, concerted effort to reach out to the American people, we will do better.

And our goal is to have a national campaign. And you all know from having your university experience that that takes a structure which we have not had. We are in the process of working with our Regents to put that in place. And by the end of the year, we should

have not only the ideas, but also the structure in place to actually get this done. So I think you can look for better results from us shortly.

Mr. CLAY. The gentlewoman's time has expired and perhaps that is the subject of another hearing.

Ms. NORTON. I think so, Mr. Chairman. If I may request a fund-raising hearing on the private fund-raising on all three, but especially the Smithsonian. And the words national campaign were uttered. And you come from the academic——

Mr. CLAY. Staff will work with you on that.

Ms. NORTON. Exactly, Mr. Chairman, if I may so. Otherwise, the pressure is going to be on us to do something which we will not do.

Mr. CLAY. Okay.

Ms. NORTON. We already are charging to get into the so-called butterfly exhibit. The Congress of the United States, 20 million people come here are our constituents. We pay for this whole array. And the notion of charging to get in any part of it is anathema to us. So, I regard the butterfly exhibit as——

Mr. CLAY. We will examine those issues——

Ms. NORTON [continuing]. As an outrage and ask that we get private funds for that as well.

Mr. CLAY. Thank you. Thank you.

Let me ask Dr. Clough, what can Congress do to support the work of our three great cultural institutions in fulfilling what you describe in your testimony as our, as your collective mission? What can we do to be of help?

Mr. CLOUGH. Well, I think it is a joint effort, a collective partnership between yourselves and us and the American people to fulfill our missions, which I think are fundamental and very important to our history and to the generations that will follow.

I think, as was indicated by Dr. Ferriero, that Congress does a good job in terms of supporting our missions financially. Obviously, we could use additional funds because it is a struggle to find that balance between, if you will, the security and the access type of the equation and we deal with that every day. But we are very appreciative of the support we do get from Congress. This past year, in fiscal year 2010, for example, we got $2 million in addition to the funds that we had before to help us with collections care and security of our collections. And we very much appreciated that.

But I think working collectively together, thinking together about the future of these institutions and making sure we are all headed in the right direction, is a powerful way to go forward.

Mr. CLAY. Thank you for that response.

Dr. Billington, you write in your statement that the Library of Congress, the Smithsonian and the National Archives complement each other. In your opinion, is there room for more cooperation between these three institutions, especially in leveraging each one's inherent strengths, but organizationally and in your collections?

Mr. BILLINGTON. Yes, Mr. Chairman, I think there is. I think that there are fundamental, clear, fairly clear lines in the sense that the official record of the U.S. Government is in the Archives, the Smithsonian has a vast array of things, but generally speaking, covering many of the areas that we do but in a different way. I

mean, they tend to have three dimensional objects for exhibition. We tend to have two dimensional records, whether it is films, well, they have films, too. There is some duplication, but there is room. There is a fairly distinct division of labor which I think we all more or less honor.

And so, but I think there is room for more collaboration. We all report to different committees, of course. I mean, you were mentioning, in terms of private fund-raising, we never even had a development office before I became Librarian. We get donations but our staff is very small. We have no Board of Governors, so there is no Board to help us in this regard.

But we have two major donations, one from Mr. Kluge to set up a Kluge Center that is really a great additional boon to bring major scholars here for their work. And we also got this unprecedented gift from the Packard Humanities Institute that has enabled us to create this Audiovisual Conservation Center which has been able to bring back the world's largest collection of recorded sound and films, all in one place. They have been scattered. But that is a consolidation.

And I think there is additional work that we can do and I would hope that we will have more conversations among ourselves to see if we cannot work together even more specifically than we have in the past.

Mr. CLAY. Thank you for that response.

And Dr. Ferriero, along the same lines as Ms. Norton's questions, Presidential Libraries now make up about one-third of NARA's budget. And yet the backlog of FOIA requests at the libraries are years long and growing every year. It is estimated that it will take 100 years to process just the Reagan Library materials and the Bush and Clinton Libraries are facing similar issues.

NARA continues to renovate not only aging buildings, but relatively young, permanent museum exhibits and educational programs, including using cutting edge technology and design. Is the Presidential Library System focused on the right priorities?

Mr. FERRIERO. Well, as I said, this is the subject of, I think, a future hearing. I can tell you in terms of resources the museum aspect of Presidential Libraries is about 4 percent of the budgets of the Presidential Libraries. So, in terms of resource allocation, it is the appropriate balance.

The issue around maintenance and upkeep is one of the big issues in terms of the long-term future of the Presidential Library System. These are facilities that, with any decentralized system, over time require maintenance and upkeep. And there are soon to be 13 of more than 40 facilities that I am responsible for around the country.

Mr. CLAY. Let me ask you about the FOIA requests. Last week, the Director of the Office of Management and Budget issued an Open Government Directive that requires agencies to take a number of actions to improve access to Government information.

Under the directive, each agency must take steps to reduce its backlog of FOIA requests by 10 percent each year. What actions will NARA take to reduce its FOIA backlog as required by the Open Government Directive? And what other steps does NARA plan to take to implement the directive?

Mr. FERRIERO. Well, as I said, this new office that we have set up is charged with specifically looking at that and making a set of recommendations about how we can reduce that backlog.

Mr. CLAY. Okay. All right. Well, I look forward to working with you in that capacity and all of the responsibilities of NARA. Welcome aboard.

Mr. FERRIERO. Thank you.

Mr. CLAY. Let me thank the entire panel for their testimony and you are dismissed. And we will call forward the second panel. Thank you.

It is the policy of the subcommittee to swear in all witnesses. Would you please stand and raise your right hands.

[Witnesses sworn.]

Mr. CLAY. Thank you and you may be seated. Let the record reflect that the witnesses answered in the affirmative.

Let me find my page. I would now like to introduce our second panel. Our first witness will be Anne L. Weismann, Chief Counsel for Citizens for Responsibility in Ethics in Washington [CREW], a non-profit organization dedicated to promoting transparency and accountability in government and public life.

Ms. Weismann earlier served as Deputy Chief of the Enforcement Bureau of the Federal Communications Commission and prior to that as Assistant Branch Director of the Civil Division of the Department of Justice. She has supervisory responsibility over litigation on the FOIA, the Privacy Act, the Federal Advisory Committee Act, and statutes governing Federal and Presidential records.

Ms. Weismann received her B.A., magna cum laude, from Brown University and a J.D. from George Washington University's National Law Center.

Welcome to the subcommittee.

Our next witness is Janet A. Alpert, president of the National Genealogical Society, a service organization that leads and educates the national genealogical community and promotes access to, and preservation of, genealogical records. Ms. Alpert is an amateur genealogist who has been researching her family for almost 30 years. In 2004, she retired from a 35 year career in the title insurance industry.

She received a B.A. degree in political science from the University of California at Santa Barbara and an MBA from the University of Connecticut.

Thank you for being here.

Our next witness will be Kevin Goldberg, legal counsel, American Society of News Editors. Mr. Goldberg's expertise is in First Amendment, copyright and trademark issues and he regularly advocates issues involving freedom of speech on behalf of press organizations. In 2006, he was inducted into the National Freedom of Information Hall of Fame for his continued and superlative service in pursuit of open government.

Mr. Goldberg earned a B.A. degree from James Madison University and graduated with high honors from George Washington University Law School.

Thank you for being here, Mr. Goldberg.

And our final witness will be Mr. Carl Malamud, president and founder of Public.Resource.Org, a non-profit corporation that makes government information more broadly available on the Internet, including over 90 million pages of documents and 1,000 videos. The organization has been leading a national effort called Law.Gov to make America's primary legal material more broadly available.

Mr. Malamud previously served as Chief Technology Officer at the Center for American Progress. In the 1990's, he ran the first radio station on the internet and was responsible for putting the SEC, EDGAR and Patented data bases online. He is the author of eight professional reference books and numerous articles and has been a visiting professor at the MIT Media Lab and Keele University.

And I thank all of our witnesses for appearing today and look forward to the testimony.

Ms. Weismann, we will start with you.

STATEMENTS OF ANNE L. WEISMANN, CHIEF COUNSEL, CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON; JANET A. ALPERT, PRESIDENT, NATIONAL GENEALOGICAL SOCIETY; KEVIN M. GOLDBERG, LEGAL COUNSEL, AMERICAN SOCIETY OF NEWS EDITORS; AND CARL MALAMUD, PRESIDENT AND FOUNDER, PUBLIC.RESOURCES.ORG

STATEMENT OF ANNE L. WEISMANN

Ms. WEISMANN. Thank you.

Mr. Chairman, Ranking Member McHenry and members of the subcommittee, thank you for the opportunity to testify today about the mission of the National Archives and Records Administration at this critical juncture.

As Chief Counsel for CREW, we have been pushing NARA for years to assume the leadership role Congress envisioned for the agency through the Federal Records Act. Today, NARA must make some key decisions. The appointment of Dr. Ferriero as the new Archivist and the administration's dedication to a transparent and accountable government present NARA with unique opportunities to reexamine its mission and priorities and establish a new roadmap for how to achieve them.

Most importantly, the Archivist must decide whether NARA will continue to elevate its role as the museum of the Nation's history over its role as a records access agency, the question this committee has posed. This juncture also affords Congress an opportunity to reexamine the laws that govern recordkeeping in the executive branch.

First, the dismal state of electronic recordkeeping across nearly all agencies in the Federal Government cries out for a new direction from NARA. As documented in a report we issued in April 2008, and the periodic reports from the GAO, to date NARA has failed to affirmatively and effectively assist agencies in developing and implementing effective records management policies.

The GAO's June 2008 report notes specifically that NARA's failure to conduct inspections of agency record management programs since 2000 leaves us with limited assurances that agencies are ap-

propriately managing the records in their custody and that important records are not lost.

We at CREW are confronted with this problem all the time as agencies tell us repeatedly in response to our FOIA requests that they simply have no way to access and search their electronic email records. Although this failure has now reached a crisis point, NARA continues to abdicate its statutory responsibilities and fails to recognize the urgency of the situation, opting instead, time and again, for a more passive role that avoids any direct conflict with the agencies it oversees.

NARA justifies its failure to take on a more active role as resulting from the limited enforcement authority that the FRA confers on it. But we strenuously disagree and urge Mr. Ferriero to reevaluate the need for additional legislative authority only after NARA exercises the full authority it already has.

Second, we urge NARA to conduct an independent audit of the Electronic Records Archive or ERA, including an analysis of its status, functionality and feasibility. Launched in 2001, the ERA has been promised as the answer to the long-term preservation of electronic records. But, in the intervening years, we have seen huge cost overruns, multiple instances of contractor mismanagement, and growing doubt about whether the ERA is capable of delivering on this promise. And just as critically, NARA has yet to tackle the issue of public access to records once they make their way into the system.

Such an audit also has to consider the actions of the contractor Lockheed Martin and answer questions about its conduct. Why, for example, has Lockheed Martin applied for numerous patents related to the ERA despite the fact that the project is entirely federally funded?

Even more fundamentally, should NARA even continue with the ERA given its problem to date? We ask the new Archivist to take a clear-eyed look at this question and, if necessary, have the courage to abandon the project if it cannot deliver on its promises.

Third, NARA suffers from a culture of passivity that has prevented it from becoming an effective leader in the management and preservation of our Nation's history. And I am pleased that Dr. Ferriero recognizes these problems. With each day, month and year that goes by without effective management, we lose another slice of our history.

President Obama has promised an unprecedented level of transparency and accountability. But this promise cannot be fulfilled if agencies fail to preserve agency records.

In short, the status quo is unacceptable. We ask NARA now to reinvigorate and redefine itself as part of the solution, not the problem. We also ask that Congress consider legislative amendments that I have outlined in my written testimony that would add a measure of accountability and provisions that would better ensure compliance.

We welcome the opportunity to work with this committee and the new leadership at NARA. I am happy to answer your questions. Thank you.

[The prepared statement of Ms. Weismann follows:]

Mr. Chairman, Ranking Member McHenry, and Members of the Subcommittee, thank you for the opportunity to testify today about the mission of the National Archives and Records Administration (NARA) at this critical time.

I am Chief Counsel for Citizens for Responsibility and Ethics in Washington (CREW), a non-profit, non-partisan organization. Through a combined approach of research, advocacy, public education, and litigation, CREW seeks to protect the rights of citizens to be informed about the activities of government officials and to ensure the integrity of those officials. Many of CREW's actions flow from the principles that transparency is a cornerstone of our democracy and government accountability is achieved through government transparency. Because proper record preservation and management lie at the heart of achieving these principles, CREW has been pushing NARA for years to assume the leadership role the Federal Records Act (FRA) envisions for the agency and to elevate government-wide the importance of proper record-keeping for all government records.

Today NARA is at a critical juncture. The appointment of a new archivist, David Ferriero, and the dedication of the administration to a transparent and accountable executive branch present NARA with unique opportunities to re-examine its mission and priorities and establish a new roadmap for how to achieve them. Most importantly, the archivist must decide whether NARA will continue to elevate its role as a museum of the nation's history over its role as a records access agency. We at CREW hope the answer to the question posed by this Committee is that NARA will become a records access agency first, a role it has ignored for far too long by placing undue emphasis and resources on its museum functions. This juncture also affords Congress an opportunity to re-examine the laws that govern record-keeping in the executive branch and whether the archivist needs additional legislative authority.

Let me turn to the priorities and roles CREW believes NARA and Mr. Ferriero should adopt and the changes to the culture at NARA that will be required.

First, the most pressing issue NARA faces is the dismal state of electronic record keeping across nearly all agencies in the federal government. In April 2008, CREW issued a report: *Record Chaos: The Deplorable State of Electronic Record Keeping in the Federal Government*,[1] documenting the federal government's severe mismanagement of its federal records and the failure of NARA to affirmatively and effectively assist agencies in developing and implementing effective records management policies. Two months later, the U.S. Government Accountability Office (GAO) issued a report, *National Archives and Selected Agencies Need to Strengthen E-Mail Management*,[2] echoing CREW's findings. Specifically, the GAO reported that despite the responsibility NARA has for overseeing agency records and records management programs and practices, it has performed only limited oversight activities. NARA has not, for example, conducted inspections of agency records management programs since 2000, or performed any other kind of comprehensive evaluations of agency records management. As a result, according

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[1] This report is available at http://www.citizensforethics.org/recordchaos.

[2] This report is available at http://www.gao.gov/items/d08742.pdf.

to the GAO, "NARA has limited assurance that agencies are appropriately managing the records in their custody and that important records are not lost."[3]

Unfortunately federal agencies still have not measurably improved how they manage their electronic records, and their ever-increasing dependence on electronic media – from emails to social networking – presents an exponentially higher risk of losing important records. The vast majority of agencies have yet to implement management systems that preserve and allow ready access to electronic records, most particularly emails. As a frequent Freedom of Information Act (FOIA) requester, CREW all too often is told by a wide range of agencies, from the Department of Homeland Security to the Department of Education, they have no way to identify potentially responsive emails, much less produce them in response to CREW's requests.

The GAO has been prodding NARA for years to take on the enforcement mantle conferred by Congress. For example, in a June 2002 report, the GAO criticized NARA's decision to replace agency evaluations with more targeted assistance, concluding this approach was no substitute for systematic inspections and evaluations of federal records programs. As the GAO pointed out, NARA's preferred approach of "targeted assistance" meant NARA was evaluating only those agencies that already appreciated the importance of records management.[4] In a follow-up report issued in July 2003, the GAO documented NARA's continued refusal to "fully address[] the need to assess and improve agency records management programs, and develop an implementation plan . . ."[5] Absent the "revitalized inspection program" urged by the GAO, NARA lacks the critical information it needs "to improve its guidance and to support its redesign of federal records management." *Id.* Five years later, the GAO reported once again on NARA's continued failure to conduct comprehensive agency records management evaluations,[6] a failure that continues to pose an unacceptable risk that important federal records will be lost forever.

Although these electronic record keeping failures have reached a crisis point, NARA continues to abdicate its statutory responsibilities and fails to recognize the urgency of the situation. Charged by Congress with assisting federal agencies to maintain adequate and proper documentation of their policies and transactions, including conducting inspections of their records management programs and practices, NARA has opted time and again for a more passive

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[3] *Id.* at p. 3.

[4] *See* U.S. General Accounting Office, *Information Management: Challenges in Managing and Preserving Electronic Records*, June 2002, available at http://www.gao.gov/new.items/d02586.pdf.

[5] U.S. General Accounting Office, *Electronic Records: Management and Preservation Pose Challenges*, July 8, 2003, available at http://www.gao.gov/new.items/d03936t.pdf.

[6] U.S. General Accounting Office, *Federal Records: National Archives and Selected Agencies Need to Strengthen E-Mail Management*, June 2008.

role that avoids any direct conflict with the agencies it oversees. Even today NARA's response is to continue studying the problem; its latest approach to its inspection responsibilities is the development of an agency self-reporting scheme that is many months away from providing useful information, much less leading to any needed reforms. We urge the new archivist to re-invigorate NARA's invaluable role in this area. Years studying the problem is no substitute for the active oversight responsibility Congress imposed on NARA through the FRA.

NARA has justified its failure to take a more active role as the result of the limited enforcement authority the FRA confers on it, suggesting the problem and solution lie with Congress, not the agency. We most strenuously disagree. NARA has ample statutory authority, including quite specifically the obligation to inspect and survey the records management programs and practices of and between federal agencies. *See* 44 U.S.C. § 2904. NARA alone bears the blame for failing to exercise the statutory authority and responsibilities it already has. We urge Mr. Ferriero to re-evaluate the need for additional authority only after exercising the full authority NARA currently has.

Second, we urge NARA to conduct an independent audit of the Electronic Records Archives (ERA) project, including an analysis of its status, functionality, and feasability. Launched in 2001, the ERA has been touted as the answer to the long-term preservation of electronic records of all formats, notwithstanding the varying operating systems, software, and hardware agencies use to create and access records. In the intervening years we have seen huge cost overruns, multiple instances of contractor mismanagement, if not fraud, and growing doubt about whether the ERA is capable of delivering on its promise to be the answer to the government's long-term preservation needs. Morever, even if the ERA performs as advertised – of which there is considerable doubt – NARA has yet to tackle the issue of public access to the records preserved in the ERA. For the ERA to be successful, it must afford the public access to its records that is straight-forward, effective, and efficient. Development of this critical public access function, however, remains in the early planning phase.

NARA's steadfast refusal to acknowledge the full extent of the problems with the ERA, the ERA's known limitations, and the extent to which what is ultimately delivered differs fundamentally from what NARA initially promised all point to one conclusion: there must be an outside, independent and thorough audit of the ERA and all steps taken to date. Such an audit must include the actions of Lockheed Martin, the primary contractor for the ERA. Why, for example, has Lockheed Martin applied for numerous patents related to the ERA, despite the fact the project is entirely federally funded? What accounts for the multiple cost overruns, and has NARA effectively and appropriately managed its relationship with the contractor? Although NARA's Inspector General has tried to answer these questions and his public reports document problems he uncovered, we understand NARA has resisted his efforts to obtain more in-depth information. The public and Congress deserve answers to these and myriad other questions that ultimately will answer the critical question: should NARA continue with or abandon the ERA? We ask the Archivist to take a clear-eyed look at this question and, if necessary, have the courage to abandon the ERA project if it cannot deliver on its promises.

Third, NARA suffers from a culture of passivity and indifference that must change if NARA is to emerge as an effective leader in the management and preservation of our nation's history. NARA's failure to assume a leadership role in this arena reflects a failure to appreciate the urgency of the situation. With each day, month, and year that goes by without effective records management in place we lose another slice of our nation's history. President Obama has promised an unprecedented level of transparency and accountability in our government, but this promise cannot be fulfilled if agencies fail to preserve agency records. NARA is the only federal entity with preservation as its central mission, yet NARA has been sitting on the sidelines while the White House and other agencies begin the process of transforming out government into one of transparency. Use of new technology that the administration has embraced presents new and perplexing questions and concerns. For example, how should we manage blog posts tweets, and preserve posts on facebook and all the other evolving methods of? NARA must lead the way in answering these questions and guiding agencies toward full and effective electronic record keeping.

In short, the status quo at NARA is unacceptable. The advent of a new paradigm of transparency and a new archivist provide NARA with an opportunity to re-invigorate and re-define itself as part of the solution, not the problem, to the management and preservation of our federal records. Toward that end, NARA must shift its emphasis from being a history museum to a records access agency. This shift will also require a change in funding emphasis from presidential libraries to efforts that will make all of our governmental records publicly accessible. From Fiscal Year (FY) 1998 to FY 2009, NARA's budget went from $219 million to $486 million. At the same time, the presidential libraries' share of that budget increased from 15% to 32% (a figure that does not take into account contributions the libraries receive from trust funds and foundations), meaning that presidential libraries now consume one-third of NARA's budget. Even with this disproportionate share, presidential libraries continue to maintain unacceptable backlogs with little or no increase in their levels of services or efficiency.

Congress, too, has an important role to play to bring our government into the 21st century. As a starting point, Congress should amend both the FRA and the Presidential Records Act (PRA) to better address these government-wide problems. The Electronic Communications Preservation Act, Congress's most recent attempt to improve the FRA, fails to provide any effective enforcement mechanisms for noncompliance, adding no new penalties for an agency's failure to implement electronic record keeping requirements. The proposal gives agencies an overlong period of four years in which to implement effective electronic record management, failing to take into account currently available software. Also missing from the proposed legislation are comprehensive benchmarks for agencies to meet, especially with respect to training, education, and compliance, even though these are three major deficiencies in agencies' current records practices. And with this proposal Congress missed an opportunity to mandate a more active role for NARA in ensuring government-wide compliance with electronic record keeping.

That same bill would amend the PRA to require the archivist to establish standards for records management of presidential records. In light of recent experience with the Bush White

House's gross mismanagement of its electronic records, which resulted in the disappearance of millions of emails from White House servers, amendments to the PRA are long overdue. Still missing, however, are any effective enforcement mechanisms, including a private right of action, and the proposal contains no penalties for a president's non-compliance or a government official's deliberate destruction of records. Nor does the bill enhance the archivist's very limited role in ensuring a president's compliance with the PRA, a critical change if we want to ensure adequate protection for presidential records. On both the FRA and PRA fronts, we urge Congress to enact more effective and muscular legislation that will better protect the treasure trove of historical documents held by both the president and federal agencies.

CREW welcomes the opportunity to work with this Committee and the new leadership at NARA to address these very important issues. I am happy to answer your questions.

Mr. CLAY. Thank you, Ms. Weismann. We look forward to working with CREW.

Ms. Alpert, you may proceed for 5 minutes.

STAEMENT OF JANET A. ALPERT

Ms. ALPERT. Good afternoon Chairman Clay and members of the subcommittee. Thank you for the invitation to testify before the subcommittee today.

My name is Janet A. Alpert and I am the president of the National Genealogical Society. Our members range from family history researchers to professional genealogists. The genealogical community is well represented in this room today.

The following points are more fully described in my written statement which has been presented to the subcommittee. Additional statements of support and concern from other genealogy groups are available on our Web site at www.ngsgenealogy.com.

The National Archives and Records Administration is a very important source of original records for the genealogical community. As a result, we are their largest research user group. The National Genealogical Society supports the mission of NARA, but we are concerned that the two most important priorities, to safeguard and preserve the records of our government and to ensure the continuing access to the essential documentation, are becoming secondary to the third tenant of the mission, to promote civic education and historical understanding of our national experience.

Several examples support our position. NARA has a backlog of documents which have not been processed and many more records which will be coming to NARA for processing and safeguarding over the next few years. We are not aware of any plans to accommodate the increasing volume of records. It is important for the major collections to stay at the National Archives Building in Washington, DC, because people who travel here to do research need easy access to the other collections at the Library of Congress, the Smithsonian and the DAR Library.

Second, the extensive record groups at NARA require skilled experts to assist researchers. Due to budget cutbacks, staff reductions and retirements, we believe the skill level of the staff is diminishing rather than increasing.

Three, plans are underway to reduce the research area so the museum and exhibit area can be expanded. Continued access to microfilm and adequate research space is necessary until more of the records are digitized and available online.

Four, NARA has shown leadership in developing partnerships with third parties to digitize many records which are very valuable to genealogists. However, we are not aware of plans to make these digitized records available to the public for free over the NARA Web site at the end of the 5-year contract period.

So, as to the question, history museum or records access agency, from what we have heard, some of the planned exhibits will duplicate records already available on line through local libraries and they may misrepresent the complexity of the research process.

We support civic education and we think it can best be accomplished at the national and regional archives through hands-on workshops with student groups and teacher training on using docu-

mentary sources in the classroom. We believe it would be more cost effective to spend the money building interactive learning and exhibits online which would reach the broader public, not just people who visit the National Archives in Washington, DC.

There are already many wonderful museums among the Capitol Mall. Yet, there is only unique collection of original records at the National Archives.

In summary, we recommend that the new U.S. Archivist, David Ferriero, take both appropriate short-term action and establish long-term strategies that support the priorities of records preservation and access.

We also hope you will include genealogists in the planning process. The genealogical community stands ready to support the Archivist in building a world class research facility and model for emerging democracies around the world.

Thank you.

[The prepared statement of Ms. Alpert follows:]

Statement of Janet A. Alpert, President
National Genealogical Society

Before the Subcommittee on
Information Policy, Census and National Archives
of the
House Committee on Oversight and Government Reform Committee

"History Museum or Records Access Agency?
Defining and Fulfilling the Mission of the
National Archives and Records Administration"

Chairman Clay, Ranking Member McHenry and members of the Information Policy, Census and National Archives Subcommittee, I want to thank you for the opportunity to testify at today's hearing on behalf of the National Genealogical Society.

The National Genealogical Society supports the mission of the National Archives and Records Administration (NARA), which is a very important source of original records for the genealogical community. We greatly appreciate the opportunity to present our written statement to the subcommittee and to David S. Ferriero, Archivist of the United States.

NARA's Mission Statement

The National Archives and Records Administration serves American democracy by safeguarding and preserving the records of our Government, ensuring that the people can discover, use and learn from this documentary heritage. We ensure continuing access to the essential documentation of the rights of American citizens and the actions of their government. We support democracy, promote civic education, and facilitate historical understanding of our national experience.

1. Safeguard and preserve the records

We concur that the primary mission of NARA is to **safeguard and preserve the records** of the United States government. The National Archives has done an exceptional job in preserving documents for over seventy-five years despite fires,

floods and vermin. Every time I have held an original document at the National Archives I have been awed at NARA's ability to not only preserve the document but to have it cataloged and available for retrieval in a few hours.

However, we are concerned about the backlog of documents in the possession of NARA that have not been processed, as well as the many additional records that will be sent to NARA over the next few years. We believe the current dialog about expanding the exhibit and museum space is ignoring NARA's highest priority of records preservation. Strategic plans need to provide adequate space and staff for processing and safeguarding new records.

2. Discover, use and learn

NARA's mission also ensures "that the people can **discover, use and learn** from this documentary heritage." NARA's finding aids and publications greatly facilitate the discovery and use of the documents and it is important that these research tools continue to be produced and supported by NARA. Equally important are the experienced staff who are available to help researchers find the records they need. Because the National Archives contains so many different record groups it is impossible for the average researcher to navigate the records without assistance. These same NARA experts have also been lecturers at genealogy workshops at the National Archives in Washington, DC, the Regional Archives, the National Institute on Genealogical Research (NIGR), and the annual conferences of the National Genealogical Society and the Federation of Genealogical Societies. It is important that the National Archives continue to support these educational programs that help the more serious researchers expand their understanding and use of the NARA records. We are also concerned that with budget cutbacks, staff reductions, and retirements, the skill level of the staff is diminishing. NARA needs to continue to invest in the future by hiring and training in-depth specialists who can guide researchers through the intricacies of key record groups.

3. Access to essential documentation

To genealogists the next part of NARA's mission is our area of greatest concern and opportunity. NARA ensures "continuing **access to the essential documentation** of the rights of American citizens and the actions of their government." The National Archives contains many unique documents about

our ancestors that are available nowhere else because they have not been microfilmed or digitized. It is important that the National Archives and the Regional Archives continue to be open in the evening and on Saturday so people who work full time have access to the records. Although I am retired now, the first twenty-five years of my research were done visiting the National Archives on Saturdays. Researchers need the ability to have records pulled on Saturday morning for use on Saturday afternoon. To genealogists access also means user access to the microfilm, a sufficient number of microfilm readers and expert archival assistance to the many documents not available on microfilm.

The location of "Archives-I" in downtown Washington, D.C. is also important to the genealogical community. Many group research trips are planned each year to Washington, D.C., which usually include stops at the National Archives, Library of Congress and Daughters of the American Revolution Library, all conveniently located in the capital area. If the records were moved to the College Park "Archives-II" facility, researchers would not be able to accomplish as much research during their stay. Genealogists who are able to research different collections over a short period of time, can often make breakthroughs in a family history not otherwise possible.

The vision of the National Archives is also an important statement because it reveals the future possibilities.

> **NARA's Vision Statement**
>
> *As the nation's record keeper, it is our vision that all Americans will understand the vital role records play in a democracy, and their own personal stake in the National Archives. Our holdings and diverse programs will be available to more people than ever before through modern technology and dynamic partnerships. The stories of our nation and our people are told in the records and artifacts cared for in NARA facilities around the country. We want all Americans to be inspired to explore the records of their country.*

Modern technology and dynamic partnerships

The genealogical community fully supports plans for increased **technology and dynamic partnerships**. We support the partnerships because they make it possible for more records at the National Archives to be digitized. However, the NARA records that have been digitized by the partners, are currently accessible

for free at the National Archives facilities. At the end of five years, which is fast approaching, the digitized records would be available for NARA to post on its website. We believe the best way to increase access to the National Archives' records is to make the digitized records available on the NARA website after the initial five years so researchers can access them without having to pay a subscription fee. In the long term the Internet will enable the National Archives to reach many more people each day than will personally visit its facilities.

The National Genealogical Society also supports the Electronic Records Archives (ERA) effort by NARA. We believe it offers a hope for future family historians to be able to have broad access to the massive amounts of digital records currently being created by various government agencies. We are also pleased that a representative of the genealogical community is included on the Advisory Committee (ACERA) and hope that the new archivist, Mr. David S. Ferriero will continue the long-standing relationship with leaders in the genealogical community in regard to records preservation and access.

History Museum or Records Access Agency?

We understand that the National Archives has plans under consideration to increase the museum exhibits on the Constitution Avenue side of the facility. Although we support the role of bringing awareness of available government records to the attention of a greater number of people, we do not think NARA should duplicate records already available at Ellis Island or its website www.ellisisland.org or online from Ancestry.com at many of the local public libraries. There is already a false public perception that all one has to do is go online and in a few minutes someone can discover his or her ancestry. We support exhibits that display examples of the records available in the National Archives collection and convey the excitement of holding an original document that tells part of the story of an ancestor's life. The exhibits should say that although one can begin the search on the Internet, a family history is built over many years, one fact at a time.

The NARA website has done an excellent job in presenting examples of documents which are available for review and further study. We think the best way to reach student groups are through hands on workshops using textual records both at the National Archives and the Regional Archives. Also teachers need more training on using documentary sources in their classrooms, which would be possible if the digitized documents were available over the NARA website. Some of the real treasures are the many affidavits filed by soldiers, their

widows and their acquaintances when they applied for military pensions or bounty land. History comes alive when a student can read a document about an ancestor's military service.

Washington, D.C. already has many outstanding museums along the capital Mall, while there is only one National Archives with its unique military, land, immigration and naturalization records. **Our vision for the National Archives is a world-class research facility and a model for the emerging democracies around the world.**

If you have additional questions, I can be reached by mail, email or phone:

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703 525-0050 phone
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Information about the National Genealogical Society

The National Genealogical Society (NGS), founded in 1903, includes a broad spectrum of family history researchers from those who have just begun to research their family history to those who may have been researching their family for decades. Membership in the society also includes professional genealogists, many of whom write articles for our publications and provide lectures at our national conferences. We also have more than 650 organizational subscribers including libraries, archives and genealogical societies, who purchase our publications for their repositories. In addition more than 100 exhibitors participate each year at our national conference including other non-profit societies and for-profit providers of genealogical databases, software, books, and maps. The National Genealogical Society reaches several hundred thousand individuals each year with its genealogical publications, conferences and educational courses.

The **mission** of the National Genealogical Society *is to serve and grow the genealogical community by providing education and training, fostering increased quality and standards, and promoting access to and preservation of genealogical records.*

The genealogical community works together through The Records Preservation and Access Committee (RPAC), which today includes The National Genealogical Society (NGS), the Federation of Genealogical Societies (FGS) and the International Association of Jewish Genealogical Societies (IAJGS) as voting members. The Association of Professional Genealogists (APG), the Board for Certification of Genealogists (BCG), the American Society of Genealogists (ASG) and Ancestry.com serve as participating members. RPAC meets monthly, and more often if needed, to advise the genealogical and historical communities, as well as other interested parties, on ensuring proper access to vital records, on means to effect legislation, and on supporting strong records preservation policies and practices. Additional statements of support and concern from these organizations can be accessed at http://www.ngsgenealogy.org.

All officers and directors of the National Genealogical Society receive no compensation. They serve because they are passionate about family history research.

Officers

Janet A. Alpert, President, Holland, Michigan

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Bob Velke, Columbia, Maryland

Mr. CLAY. Thank you so much, Ms. Alpert, for that testimony.

Mr. Goldberg, you are recognized for 5 minutes.

STATEMENT OF KEVIN M. GOLDBERG

Mr. GOLDBERG. Thank you.

Chairman Clay, Ranking Member McHenry and members of the subcommittee, I want to thank you for the opportunity to testify today on behalf of the Sunshine in Government Initiative, a coalition of nine media organizations that includes the American Society of News Editors.

Mr. Chairman, as you know, SGI and ASNE have a long history of working with this subcommittee on issues relating to the proper management and distribution of government information. We are here today to define the challenges facing the National Archives and Records Administration in fulfilling its mission in this area.

NARA's mission mandates that the agency ensures that the people can discover, use and learn from America's documentary heritage. The democracy, civic education and historical understanding functions of the agency's mission statement are impossible without public access to records created not just decades ago but on a continuing basis.

Now, a much-quoted visionary for government transparency, former Supreme Court Justice Louis Brandeis, saw an active and informed public as critical to a healthy democracy. Those who won our independence, Brandeis wrote, believed that public discussion is a political duty and that this should be a fundamental principle of American government.

Having previously declared that sunlight is said to be the best of disinfectants, Justice Brandeis also clearly saw access to government information as democracy's oxygen. You cut off its supply, democracy dies.

Ensuring access to information is central to SGI's mission. It is one of ASNE's core values. But 43 years after FOIA's passage, obtaining government information in a speedy or low-cost fashion can still be difficult, if not impossible, for a reporter from a major daily newspaper, let alone the average citizen.

That is why today's hearing is so important. Ensuring NARA's dedication to distributing its own records and its newly vested ability to assess other executive branch agencies' disclosure decisions is vital to our democracy.

First, NARA must perfect its own access policies and activities. The agency, like so many others, has significant processing backlogs. NARA issued a FOIA Improvement Plan on October 16, 2006 in which it claimed it responded to 76 percent of all FOIA requests within the statutorily mandated 20 day response period. Well, Mr. Chairman, that falls into the C range on a 100 point rating scale. That is satisfactory, but I was not treated too kindly by my parents when I brought home Cs.

NARA rightly notes that resources to address FOIA were reduced as FOIA requests increased. But part of the problem is that the agency does not appear to have fully implemented its own recommendations made in 2006. There are several links to NARA reference guides and to archival research catalogs. But the legally

mandated access to actual records via NARA's electronic reading room appears limited and unimproved since 2006.

The need for NARA to get its own house in order is more significant now that Congress has entrusted the agency with a new office designed to deal with the public and other agencies to make FOIA work better. NARA must lead by example as the Office of Government Information Services becomes a key contact point for the public on FOIA and reviews other agencies' compliance with FOIA.

For this hearing, I want to emphasize that for OGIS to be effective, the Archivist must embrace OGIS' active engagement with other agencies and the public. OGIS can first help unburden agencies from their FOIA requests by pushing agencies to put more information online without waiting for a request. More information online means fewer burdensome requests.

As requesters understand that they have an ally in this new office, they will reach out to OGIS for assistance and education. This should result in faster processing as OGIS quickly resolves imprecise or misconstrued requests.

Finally, OGIS intervention should be able to head off litigation when parties are simply at an impasse.

But OGIS effectiveness in making FOIA work better for Federal agencies and the public will ultimately hinge on whether the office receives the proper support from the National Archives as a whole. This support rests on two key components: funding and independence.

OGIS was appropriated $1 million in fiscal year 2009 and a budget of $1.4 million for fiscal year 2010. That money has allowed the office to hire a total of six employees. The office will eventually need more staff to accomplish its goals. This is why the Congressional Budget Office estimated OGIS would require a budget of $3 million in its first year and about $6 million each thereafter to be fully functional.

As important as proper funding is a commitment to OGIS independence. The combination of independence and recordkeeping acumen is the main reason Congress has the office within the National Archives. We hope that OGIS Director Miriam Nesbit and her staff will be given the trust and leeway needed to develop OGIS.

We thank you for the opportunity to present our views on the future of the National Archives and the importance of this new OGIS office to the agency's mission.

I welcome your questions.

[The prepared statement of Mr. Goldberg follows:]

Chairman Clay, Ranking Member McHenry and Members of the Subcommittee on Information Policy, Census and National Archives of the Committee on Oversight and Government Reform, I want to thank you for the opportunity to testify today on behalf of the Sunshine in Government Initiative ("SGI"), a coalition of nine media organizations dedicated to promoting policies that ensure government is accessible, accountable and open.

I am especially proud to be here as Legal Counsel to one of those organizations, the American Society of News Editors ("ASNE"). With some 600 members, ASNE is an organization that includes directing editors of daily news entities throughout the Americas. Founded in 1922, as the American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and credibility of newspapers.

ASNE members and other journalists are affected by the work of the National Archives and Records Administration ("NARA") in many ways, from their need to directly access records in NARA's possession, to the declassification work of the Information Security Oversight Office ("ISOO"), to NARA's implementation of the Presidential Records Act. We hope that these journalists also will be among those who will reap the benefits of the important new Office of Government Information Services ("OGIS") which has recently been created within NARA.

Mr. Chairman, as you well know, SGI and ASNE have a long history of working with this Subcommittee, and the full Committee, on issues relating to the proper management and distribution of government information. In 2007, ASNE member Clark Hoyt testified before this

Subcommittee at one of the earliest hearings on a bill that eventually would be enacted into law as the Open Government Act of 2007. That bill began its House journey in your Subcommittee, Mr. Chairman. We owe you a debt of gratitude for your help.

We are here today to define the challenges facing NARA in fulfilling its mission. The timing of this hearing could not be more apt. Long viewed as the main repository of government information, the agency is clearly one which distributes those records. The agency estimated in 2006 that it "has up to 9 billion pages of textual records among its holdings." In Fiscal Year 2005, it answered 1,124,066 written non-FOIA reference requests for access to archival and operational records and 9,494 FOIA requests for records housed at the main NARA repository, at regional facilities. at non-NARA repositories, and at the eleven Presidential Libraries.

NARA's website describes the agency as "the nation's record keeper", a designation that suggests NARA views itself primarily as another museum on the Mall. But what purpose is served by keeping records if those records never see the light of day? Even a museum exists primarily to display its acquisitions. So NARA must equally be considered the "nation's record distributor".

NARA's mission mandates that the agency "ensur[es] that the people can discover, use, and learn from this documentary heritage." The democracy, civic education and historical understanding functions that the mission statement also sets forth are impossible without the information contained in records created not just decades ago, but on a continuing basis.

A much quoted visionary for government transparency, Justice Louis Brandeis, saw an active and informed public as critical to a healthy democracy. "Those who won our independence," Brandeis wrote, "believed that public discussion is a political duty; and that this should be a fundamental principle of the American government." Having previously declared that "Sunlight is said to be the best of disinfectants", he also clearly saw access to government information as "democracy's oxygen"; cut off its supply and democracy dies.

The roles of keepers and disseminators of history have long been discussed. Safeguarding access to information is central to SGI's mission. It is one of ASNE's core values. Harold Cross, one of my predecessors as ASNE Legal Counsel, once wrote of access to government information:

> It is not enough merely to recognize philosophically or to pay lip service to the important political justification for freedom of information. It is not enough that by virtue of official grace and incentive some information, even in large aggregate volume, does somehow become available. It is not enough that, thanks to the industry and resourcefulness of newsmen, information of governmental activity becomes available to the people speedily, in volume and at low cost.

Mr. Cross wrote these words in a book called The People's Right to Know. It was published in 1953, some thirteen years before FOIA's enactment. That book is largely credited as the genesis of the federal FOIA movement. But fifty-six years later -- and forty-three years after FOIA was passed -- his words still ring true. If anything, the situation might be worse. For the "newsmen" (and newswomen) comprising the membership of ASNE and the other SGI organizations, obtaining government information in any manner resembling a speedy or low cost fashion can still be difficult, if not impossible. And if a reporter from a major daily newspaper invokes the Freedom of Information Act and cannot obtain this information in a timely fashion, what chances does the average citizen have?

That is why today's hearing is so important. NARA now has a dual role in record distribution. The agency holds an enormous amount of records which are sought by journalists, researchers and the public, but it appears to be falling short of desired goals for the distribution of this information. There is also the agency's newly-vested ability to judge other executive branch agencies' to disclosure decisions, ensuring NARA's dedication to both is vital to our democracy.

NARA needs to perfect its own access policies and activities. The agency, like many others, has significant processing backlogs.

In response to Executive Order 13,392 ("Improving Agency Disclosure of Information"), NARA issued a "FOIA Improvement Plan" on October 16, 2006 in which it claimed that it responded to 76% of all FOIA requests within the statutorily-mandated twenty day response period. While that represented a fifteen percent improvement over the agency's FOIA processing in Fiscal Year 2004, it still falls into what most people would consider the "C" range on a 100 point grading scale. Furthermore, the 76% "success" rate was based on the total of 9,494 FOIA requests mentioned above. That is a relatively small amount of FOIA requests for an agency handling so many records. The bulk of the agency's interaction with the public -- ten times the amount of FOIA requests -- come for reference requests to "archival and operational records" that are much easier to process because they are already publicly available. One would expect that an agency with that much experience in handling and distributing government records would be able to handle that volume of FOIA requests much more efficiently.

Part of the problem is that the agency does not appear to have implemented its own recommendations that emphasize nine practices: affirmative disclosures; proactive disclosure of information; improvements of agency's FOIA Reference Guide; multi-track processing; forms of communication with requesters; acknowledgment letters; a system of handling referrals; additional training; backlog reduction; automated processing; and expedited processing.

One stark example lies in the lack of implementation of the 1996 "EFOIA" amendments which require that requests which "because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records" are affirmatively posted online. There are several links to reference guides and to the "Archival Research Catalog", but direct access to actual records via NARA's "electronic reading room" is somewhat limited. Links exist to highly requested records relating to the JFK Assassination Records Collection Database, Holocaust Era Assets, UFOs and a Letter from the 9/11 Commission Report, as well as some of the agency's own spending records. Unfortunately, these are the same records that were identified in the 2006 FOIA Improvement Plan as the records being proactively disclosed by the agency.[1]

It is important to clarify that NARA is not entirely to blame. The agency identified a lack of resources as a key problem in 2006, noting that "the number of FOIA requests NARA receives for archival records increases each year, while our staffing levels are decreasing. There is no

[1] Causing particular pain to ASNE and other SGI members is NARA web page with information for press or journalists, which consists of nothing more than a series of press releases that offer little to no real insight on the agency's activities.

expectation that NARA will receive additional resources designated for FOIA processing of our archival records."[2]

But it is still troubling that, given the room for improvement and an acknowledgment that "we will continue to look toward revising our processes to ensure maximum efficiency in light of current priorities", the self-reflection appears to have stopped in 2006. The release of the required FOIA improvement plan on October 16, 2006 is the most recent evidence of any internal review by NARA of its FOIA policies and processing.

The need for NARA to get its own house in order is more significant now that Congress has entrusted the agency with a new office designed to deal with the public and other agencies to make the Freedom of Information Act work better. NARA must lead by example as OGIS becomes the public face of FOIA and the main point of contact for a member of the press or public that has a FOIA-related problem, and as OGIS review other agencies' FOIA compliance.

OGIS faces challenges in fulfilling its mandate to evaluate agency compliance with FOIA and media disputes between requesters and agencies. At best, it will help the public obtain information from government (or help reassure wary requesters that an agency denying a request is acting properly) and help agencies fulfill their FOIA obligations. There is equal potential that

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[2] The need for maximum funding of FOIA is not limited to NARA. FOIA processing problems government-wide will be reduced through the dedication of additional funds to allow agencies to hire more FOIA-specific employees, purchase better processing software and, ideally, digitize records which currently exist in paper format. This final part of the puzzle will reap longer term benefits as digital records are easier to search and produce than paper records. In other words, an investment of funding now is likely to save time and money for years to come.

it simply becomes another layer of bureaucracy, adding to the problem it is intended to solve. We hope today's hearing and the Archivist's future efforts will help ensure this office's success.

We also believe the challenges facing the Archivist and the OGIS staff to make OGIS work are challenges the entire National Archives and Records Administration faces in fulfilling its mission. Like OGIS, NARA has two significant stakeholders: other agencies and the public. OGIS will have to work effectively with other agencies, none more than the Department of Justice's Office of Information Policy ("OIP"), which helps administrations create and implement FOIA policy.[3] OGIS ensures these FOIA policies and activities conform to and improve the law.

The task of reviewing the policies and procedures of administrative agencies will require significant OGIS engagement with agencies. To mediate disputes between requesters and agencies, OGIS will have to make itself highly visible to agencies and FOIA requesters, build a reputation as an independent, credible broker of the Freedom of Information Act, and have the resources necessary to do the job. For OGIS to be effective, the Archivist of the United States must embrace OGIS's active engagement with other agencies and the public.

NARA has faced these challenges before. In some respects, the Information Security Oversight Office, about which I will say more in a moment, is charged with managing the classification system across the executive branch, is a model for how well OGIS could work. ISOO works

[3] The Department of Justice serves as the government's lawyer when an adverse FOIA decision is appealed to federal court. OIP, as a part of the Department of Justice, is therefore not an unquestionably independent overseer of FOIA policy. OGIS, on the other hand, is the only entity within government that can properly serve as the policeman that ensures agency compliance with Congressionally stated goals for FOIA. Only OGIS can forcefully and credibly say when an agency is falling short of its mandate.

with other agencies to ensure those agencies are complying with their classification requirements and consider public requests for declassification of documents.

OGIS was originally conceived to unburden the entire system of FOIA processing by enhancing requester understanding of the FOIA process, creating uniformity among the agencies, and serving as a valuable alternative to litigation.

OGIS can first help unburden agencies from their FOIA requests by pushing agencies to place more information online without waiting for a request, as the law has required for more than a decade. More information online means fewer burdensome requests. Yet, a review of various agency websites makes one thing clear: NARA is not the only agency falling short in compliance with this requirement, nor is there any clarity in the implementation of this requirement.

As requesters understand they have an ally, they will reach out to OGIS for assistance and education. This will result in better requests. A more informal mediatory role by OGIS will quickly resolve impediments to access and speed up processing by resolving imprecise or misconstrued requests. OGIS can ensure that an agency does not repeatedly deny requests for similar records or that agencies do not reach disparate conclusions regarding the release of the same or similar records.

OGIS may also be able to head off litigation when the parties are simply at an impasse. Clark Hoyt's testimony representing the Sunshine in Government Initiative before this committee almost three years ago recounted the trials and travails of Knight Ridder in extracting valuable documents from the Veterans Administration. He described the many hurdles that Knight

Ridder was forced to overcome in publishing a series of news stories which led to important reforms in the distribution of veterans' benefits. This portion has always stuck with me:

> As for Knight Ridder, in addition to the awards and the satisfaction of knowing we did our duty by persevering in the quest to examine the performance of a federal agency that affects millions of Americans, we got legal bills that totaled more than $100,000.

Very few major news organizations can pursue an adverse FOIA decision to the federal courts. Most FOIA requesters don't even consider litigation a possibility. That's why the stick of an increased likelihood of attorney fees had to be paired with the carrot of avoiding litigation altogether. The 2007 amendments to FOIA made it easier for requesters to recover attorney fees when they prevail and created an alternative to litigation with OGIS.

OGIS' effectiveness in making FOIA work better for federal agencies and the public will hinge in the short term and the long term on whether the office receives the proper support from the National Archive as a whole. That support rests on two key components: funding and independence.

OGIS was appropriated $ 1 million in Fiscal Year 2009 to get the office started and a budget of $ 1.4 million for Fiscal Year 2010 that has yet to be approved by Congress. That money has allowed the office to hire a total of 6 employees. We are skeptical that OGIS can achieve the ambitious set of goals and tasks we describe above without more employees and more resources. The office will eventually need more staff to adequately review and synthesize information across ninety-plus agencies, mediate disputes through the use of technology for dispute resolution, interact with the Chief FOIA Officer of each agency and, ideally, assist in the creation and maintenance of proper online "reading rooms" containing frequently requested information.

By contrast, the state of Connecticut's equivalent to OGIS has more than twenty full-time equivalent positions; Pennsylvania's new office has 10. This is why the Congressional Budget Office estimated OGIS would require a budget of $ 3 million in its first year to set up the office and about $ 6 million thereafter to be fully functional.[4]

As important as proper funding is a commitment to OGIS independence. As I noted earlier, Miriam Nisbet reports directly to the Archivist himself (for that reason, we also need to find away to move this office from College Park to the downtown NARA location).

The combination of independence and record-keeping acumen is the reason Congress housed this office within the National Archive. The success of the Information Security Oversight Office ("ISOO") influenced this choice. ISOO is considered by the requester community to be highly successful at balancing record maintenance and record distribution functions. ISOO is seen as the independent voice needed to improve the classification system by ensuring that classification rules were being followed, forcing secrecy to be an exception rather than the rule, and leading declassification efforts. Many of the same characteristics driving ISOO's success can be found in the early stages of OGIS.

ISOO is acknowledged as an efficient office that balances the interests of the government and information seekers. Its success was driven by the strong leadership of Steven Garfinkel from 1980-2002 and William Leonard, who was ISOO director from 2002-2008.

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We believe the hiring of Miriam Nisbet as OGIS Director is best described as a "coup" (her first Attorney Advisor Corinna Zarek -- formerly the Director of the Freedom of Information Service Center for the Reporters Committee for Freedom of the Press, an SGI member -- is another great addition to the OGIS team). We hope that Ms. Nisbet and her staff will be given the same trust and leeway as the ISOO directors in developing OGIS.

We thank you for the opportunity to present our views on the future of the National Archives and the importance of the new OGIS office to the agency's mission. FOIA is clearly at a crossroads as it moves into its forties.

While it receives periodic checkups and treatment through Congressional oversight and fixes such as the Open Government Act, it is sorely lacking in day-to-day attention. As part of its mission, NARA, through OGIS, will help strengthen FOIA and deliver more information to the public, including the media.

Thank you.

Mr. CLAY. Thank you so much, Mr. Goldberg.

Mr. Malamud, you are up for 5 minutes.

STATEMENT OF CARL MALAMUD

Mr. MALAMUD. Thank you Chairman Clay and members of the subcommittee. I am particularly honored to be here today, following not only our dynamic new Archivist but also the secretary of the Smithsonian and the Librarian of Congress.

Your invitation to testify asked me to discuss NARA's mission to preserve and ensure access to records, and asked if I believe the agency's efforts in exhibits and other programs influence that performance.

When President Hoover laid the cornerstone for the National Archives Building, he stated there will be aggregated here the most sacred documents of our history, the originals of the Declaration of Independence and of the Constitution of the United States. The display of the Declaration of Independence and of the Constitution are certainly a visible symbol of our National Archives. But they are merely a symbol. It is the preservation of records and the corollary processes of gathering those records from the agencies and making them available to the public that are the core challenges of this unique institution.

The Electronic Records Archives are certainly the biggest challenge facing the Archivist. This $551 million computer system has had a long history of false starts. Just last month, both the GAO and NARA's own Inspector General testified to this committee they have no idea what the system does, how it works, and where the money went.

We do know that after $237 million spent to date, the system has no back-up and restore capabilities. We do know that public access to ERA is an afterthought. And we do know that the contractor, Lockheed Martin, has taken out 15 patent applications on the system. With a half a billion dollars in taxpayer money on the line, it goes without saying that the software should be open source so that any State archivist could run the same system.

The ERA system is so complex because of the incoming deluge of electronic records. When the National Archives was being created, Archivist Connor faced a similar situation. At first, the Archives were simply unable to keep up. Archivist Connor instituted a series of changes, moving examiners closer to the source and providing better guidance and standardized forms and schedules to the agencies.

For many years now, records management has been sorely neglected. Guidance has been limited to telling agencies to print and save, and a recent survey shows no agency-wide policies for important archives such as electronic mail. It was heartening to hear Archivist Ferriero list this area as one of his key concerns, stating that he would reinstitute agency inspections and that NARA should play a leadership role.

In addition to electronic records, one of the key challenges facing NARA is digitization of older materials. Looking back again at Archivist Connor, we see that NARA dealt with an incoming deluge of paper records by pioneering an important set of technical advances, including the development of microfilm. Digitization of

paper and other materials should be a key priority for NARA, as well as the Smithsonian, the Library of Congress and the Government Printing Office.

In 1935, NARA secured President Roosevelt's support to get WPA funding to employ white collar workers to survey Federal archives. Recovery.gov shows no stimulus funding for NARA and, in the midst of the current depression, there is a tremendous opportunity to put people to work by creating public works for the digital age, an opportunity France seized just this Monday, announcing $1.1 billion in stimulus funding to scan their national library.

Instead of viewing digitization of materials as an opportunity, the Archives has declared the task to be out of scope and has created as an alternative a series of public-private partnerships with organizations such as Amazon.com. It is my understanding from NARA officials that a similar arrangement may be in the works in which a large number of congressional hearings would be scanned by LexisNexis and made available on that retail information system.

In his opening statement at his confirmation, Archivist Ferriero also quoted Archivist Connor and his observation that 45 percent of the records he surveyed were infested with vermin and insects and that records mingled higgledy-piggledy with empty whiskey bottles. This was a defining moment for the new institution and I think the National Archives faces another defining moment today.

Thank you.

[The prepared statement of Mr. Malamud follows:]

Prepared Statement
Of
Carl Malamud
Public.Resource.Org

U.S. House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Information Policy, Census, and National Archives
Honorable William Lacy Clay, Chairman

Hearings On:
"History Museum or Records Access Agency?
Defining and Fulfilling the Mission of
the National Archives and Records Administration"

Wednesday, December 16, 2009
2154 Rayburn House Office Building
2:00 p.m.

Chairman Clay, Ranking Member McHenry, Members of the Subcommittee:

Thank you for your invitation to testify before you on the National Archives and Record Administration (NARA) and the proper balance between the agency's core mission of record management, preservation and access, and its creation and management of museum exhibits, educational and public programs, and other outreach efforts.

My name is Carl Malamud and I am the Founder and President of Public.Resource.Org, a 501(c)(3) nonprofit corporation with a charter of making government information more accessible. We are responsible for placing over 90 million pages of government documents on the Internet that were not previously available, including almost all the opinions of the U.S. Courts of Appeals,[1] 20 million pages of U.S. District Court documents,[2] and the building, fire, electrical, plumbing and other public safety codes for most of the country.[3] From 1993-1995, when I ran the Internet Multicasting Service, I was responsible for placing the U.S. Securities

[1] John Markoff, A Quest to Get More Court Rulings Online, and Free, New York Times, August 20, 2007.

[2] John Schwartz, An Effort to Upgrade a Court Archive System to Free and Easy, New York Times, February 12, 2009.

[3] Noam Cohen, Who Owns the Law? Arguments May Ensue, New York Times, September 28, 2008.

and Exchange Commission and Patent databases online. As part of running the first radio station on the Internet, I was a member of the U.S. House and Senate Radio-TV Galleries, where we connected the floors of the U.S. House of Representatives and Senate to the Internet as live webcasts.

In addition to placing new information online, Public.Resource.Org has been active in finding and redacting Social Security numbers and other Protected Personal Information (PPI), including the removal of approximately 500,000 Social Security numbers of military officers from government and commercial copies of the Congressional Record,[4] and an audit of 30 U.S. District Courts that found significant privacy violations and resulted in the recent changes in procedures to better protect privacy recently instituted by the Judicial Conference.[5]

Public.Resource.Org also runs the FedFlix program, a joint venture with the National Technical Information Service (NTIS). In this program, NTIS and other agencies send us video tapes, which we digitize, then return the tapes and a disk drive to the agency. In addition to giving the agency a digital copy, we upload all these videos to YouTube and the Internet Archive, and also make them available in bulk on our systems where they serve as a public domain stock footage library. No money changes hands in this program and the only cost to the government is to ship the tapes to us.

FedFlix is one of the most popular government channels on YouTube and has received more channel views than the Smithsonian and NARA channels combined. A successful pilot of FedFlix with the House of Representatives was conducted with 4 committees, including the Committee on Oversight and Government Reform,[6] and the pilot received the support of Speaker Pelosi, who called it a "wonderful program."[7] We are hopeful that in 2010, the House Broadcast Studio will be able to begin to loan us tapes of committees that choose to make their archives more broadly available.

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[4] Charlie Reed, Military lags in safeguarding officers' identities, Stars and Stripes, November 2, 2009.

[5] Henry Wigglesworth and Heather Williams, Social Security Numbers in District Court Case Files, Administrative Office of the U.S. Courts, August 24, 2009.

[6] Committee on Oversight and Government Reform, Hearings on Political Interference with Climate Science, U.S. House of Representatives, March 19, 2007.

[7] Speaker Nancy Pelosi, Letter to Public.Resource.Org, April 11, 2008.

A Mission of Preservation, Administration, and Access

Your invitation to testify asked me to discuss NARA's mission to preserve and ensure access to records, and asked if I believe the agency's efforts in exhibits, civic education and public programs influence that performance. When President Herbert Hoover laid the cornerstone for the National Archives Building, he stated:

> *"The building which is rising here will house the name and record of every patriot who bore arms for our country in the Revolutionary War, as well as those of all later wars. Further, there will be aggregated here the most sacred documents of our history, the originals of the Declaration of Independence and of the Constitution of the United States. Here will be preserved all the other records that bind State to State and the hearts of all our people in an indissoluble union."*[8]

The display of the Declaration of Independence and of the Constitution are certainly a visible symbol of our National Archives, but they are merely a symbol. It is the preservation of records, and the corollary processes of gathering those records from the agencies and making them available to the public that are the core mission of this unique institution. To the extent that the National Archives has a role to play that is more than incidental in exhibitions, I believe that role is primarily with the Presidential Libraries.

In a world of infinite resources, one cannot object to the National Archives competing with organizations such as the Smithsonian Institution that are "in the business" of being a museum, but the sad truth is that NARA faces significant challenges in the areas it must work in and must focus intently on overcoming those challenges. In this testimony, I will address some of those challenges, including the Electronic Records Archives (ERA), electronic records management, digitization of the archives, public access to the archives, and the role of public-private partnerships.

Electronic Records Archives (ERA)

NARA is in the process of launching a highly ambitious ERA system for the ingestion and preservation of electronic records. Last month, David A. Powner of the Government Accountability Office appeared before this Subcommittee and testified that through FY2008, NARA has spent $237 million on the ERA system including $112 million in disbursements to

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[8] Herbert Hoover, Remarks Upon Laying the Cornerstone of the National Archives Building, February 20, 1933.

the contractor, Lockheed Martin. The total life cycle cost for the system is $551.4 million, of which $317 million will go to Lockheed Martin.[9] These are breathtaking numbers for a computer system, even by the standards of federal government procurement.

It was thus very disturbing to read that the GAO cannot figure out what the system does. Mr. Powner stated:

> *"NARA's plans for ERA lacked sufficient detail to, for example, clearly show what functions had been delivered to date or were to be included in future increments and at what cost."*

The GAO testimony went on to explain that the system included no backup and restore capability despite $237 million already spent, and that the backup and restore capabilities would only be included in the so-called Increment 4, which is currently in the "early planning, analysis, and design" stages and is not slated to be completed until 2012. Of the 10 mandated activities for any agency doing contingency planning and continuity of operations, all 10 were deficient.[10]

It is not only the General Accountability Office that is mystified. NARA's own Inspector General testified in that same hearing that he has no idea what the system does:

> *"As engaged as I have been, I do not know what capabilities and capacity will reside in ERA when the contractor throws another party, turns in their badges, shakes hands, and exits the door. Such a statement should be viewed as troubling."*[11]

Despite a continuing series of incidents, including a Cure Letter sent to the contractor, the Acting Archivist reported in that same hearing that things were back on track, but then went on to state that "the subcommittee should also know that the start of Increment 3 development has not been as smooth as desired ... We believe that this is part of the normal

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[9] David A. Powner, Progress and Risks in Implementing its Electronic Records Archive Initiative, Government Accountability Office, November 5, 2009 (GAO-10-222T).

[10] See National Institute of Standards and Technology, Recommended Security Controls for Federal Information Systems, Special Publication 800-53 Revision 2 (Gaithersburg, MD: December 2007). Note that GAO used Revision 1 (December 2006) for their audit and that there is a Revision 3 about to be finalized.

[11] Paul Brachfeld, Prepared Statement of the NARA Inspector General, Information Policy, Census, and National Archives Subcommittee, November 5, 2009.

give and take between the agency and its contractor that occurs with any large-scale contract."[12]

After a thorough review of all the minutes of the Advisory Committee on ERA (ACERA), interviews with some of its members, examination of all available presentation materials, GAO reports, IG reports, and further research, I must say I share the mystification of GAO and the Inspector General. I have no idea what the system does. In the world of complex computer systems, one expects summary information that give some indication of scope, such as the number of processors, the amount of disk space, the programming languages being used, or the number of programmers. Likewise, one expects financial metrics such as how much money is being spent on Oracle or Documentum licenses, the brands and models of hardware, and the cost of Internet transit, colocation space, or support services. None of that information seems readily available.

What I did find in the ACERA meeting minutes was particularly disturbing. For example, on November 16, 2008, NARA staff presented the Findings of the Online Public Access (OPA) Integrated Product Team (IPT) but cautioned that even at that late date the findings "had not been fully vetted by NARA."[13] The presentation consisted of a series of mockups of web pages, and Best Current Practices for web site design such as wireframe diagrams or an information architecture were not presented. Most importantly, there was no mention at all of an Application Programming Interface (API) for access to the ERA system. Best Current Practice for design of public access to government data is to start with bulk access, then an API, then finally worrying about issues such as web site design, colors, and fonts.[14] Public access seems to be an afterthought and is not being pursued with any degree of rigor.

An examination of the ACERA minutes yields some even more disturbing information. While there is no contingency planning for Continuity of Operations, there is contingency planning by NARA for an alternative architecture that would replace the ERA system in 2011, when NARA will be recompeting the contract.[15] In other words, it appears that there is a contingency plan to simply throw away the current system. Even more shocking, it appears

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[12] Adrienne Thomas, Prepared Statement of the NARA Acting Archivist, Information Policy, Census, and National Archives Subcommittee, November 5, 2009.

[13] Final Minutes of the Advisory Committee on the Electronic Records Archives, November 6, 2008. See also Pamela Wright, Update on Online Public Access for ACERA, April 30, 2009.

[14] See Robinson et. al., Government Data and the Invisible Hand, Yale Journal of Law & Technology, Vol. 11, p. 160, 2009.

[15] Final Minutes of the Advisory Committee on Electronic Records Archives, November 5, 2008.

that Lockheed Martin has also put some time to thinking about the future of ERA as they have taken out 15 patent applications on the system, and it is unclear if the government will have full rights in the case of a vendor change.[16]

Even if the federal government has full rights, it is clear that any state archivist wishing to use this half-billion-dollar computer system developed at taxpayer expense will have to pay dearly to Lockheed Martin for those rights. It seems obvious that if the taxpayers fork over that much money, the people should have the rights to use the resulting code. (I would go so far as to say that any nonprofit corporation or government agency that develops software should make it open source as a precondition of their use of taxpayer dollars.)

What can one do about the ERA system? It is my worry that Lockheed Martin and NARA, in the development of this system over many years, perhaps did not anticipate recent radical decrease in the cost of disk space or changes in paradigms for enterprise computing, such as large arrays of commodity computers based largely on open source software used in systems such as Amazon or Google.

A good hard look this system is clearly in order. One option would be to bring in a "tiger team" to scrub this system from top to bottom and make recommendations as to which parts of the system might yield useful results and which might perhaps be thrown away as a lost effort that needs to be restarted. This is perhaps drastic action, but it is clear from testimony to the congress over several years, and a history of GAO and IG bafflement, that a strong and forceful audit is necessary.[17]

Electronic Records Management

One of the reasons that the ERA system is so complex is because of the incoming deluge of electronic records. It is useful to remember that in the period 1935-1939 when the National Archives was being created, Archivist Connor faced a similar challenge. At first, the archives were simply unable to keep up. In 1936, 9,178 series of records were submitted by agencies to the special examiners charged with the "Survey of Useless Records," but they were able to

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[16] Final Minutes of the Advisory Committee on Electronic Records Archives, May 1, 2008. See U.S. Patent Application 11/797,278, Systems and methods for establishing authenticity of electronic records in an archives system (Filed May 2, 2007); U.S. Patent Application 11/797,567, System and method for preservation of digital records (Filed May 4, 2007); U.S. Patent Application 11/797,644, System and method for managing records through establishing semantic coherence of related digital components (Filed May 4, 2007).

[17] Government Accountability Office, National Archives and Records Administration's Acquisition of Major System Faces Risks, GAO-03-880, August, 2003.

examine only 2,484 series. In 1937, they received 27,873 record series, and were able to examine only 3,237.[18]

Archivist Connor instituted a series of changes, moving the examiners closer to the source and providing better guidance and standardized forms and schedule to the agencies. Not only did these changes reduce the backlog for his agency, these contributions to archival science spread to archives in the states and other countries.

For many years, records management has been sorely neglected.[19] The Archivist is charged by law to "promulgate standards, procedures, and guidelines with respect to records management and the conduct of records management studies."[20] But, guidance has been limited to telling agencies to "print and save" documents, and a recent survey shows no agency-wide policies for important archives such as electronic mail.[21]

It was heartening to hear Archivist Ferriero list this area as one of his key concerns, stating that he would reinstitute agency inspections and that "NARA should play a leadership role."[22] While NARA should indeed play a leadership role, it will require the active participation of the entire government. Archivist Connor had a similar issue, when he needed government-wide cooperation. He formed a National Archives Council, and the initial meeting was hosted by President Roosevelt in the Cabinet Room. Secretary of State Cordell Hull was named Chairman of the Council. This established the issue of records management as one of great import, and in the second meeting of the Council a resolution was passed that specified how agencies should maintain their records and which should be sent over to the Archives and when.[23]

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[18] Donald R. McCoy, The National Archives: America's Ministry of Documents 1934–1968, University of North Carolina Press (Chapel Hill: 1978), pp. 62–63.

[19] Government Accountability Office, Federal Records Management: A History of Neglect, PLRD-81-2, February 24, 1981.

[20] General responsibilities for record management, 44 U.S.C. § 2904.

[21] Statement of Patrice McDermott, Subcommittee on Federal Financial Management, Government Information, Federal Services, and Internal Security, U.S. Senate Committee on Homeland Security and Government Affairs, May 14, 2008. See also Citizens for Responsibility and Ethics in Washington, Record Chaos: The Deplorable State of Electronic Record Keeping in the Federal Government, April 16, 2008.

[22] U.S. Senate Committee on Homeland Security and Governmental Affairs, Pre-Hearing Questionnaire for the Nomination of David Ferriero to be Archivist of the United States, September 16, 2009.

[23] Donald R. McCoy, National Archives, *op. cit.*, p. 67.

After that second meeting of the Council, attendance was no longer the agency heads and delegates began to attend in their place. Later the National Archives Council was replaced with a Federal Records Council. However, that initial summit established the importance of the area and insured the cooperation of all agencies in the development of their records schedules. As he examines the area of records management, perhaps the Archivist will consider a similar summit, perhaps calling on the support and assistance of the White House, particularly the Federal CIO, the Federal CTO, and the OIRA Administrator.

One more aspect of records management needs to be raised, and that is the conscious decision of NARA not to crawl and archive web sites on a regular basis.[24] NARA has outsourced this important function to the well-respected Internet Archive, but has only provided very limited funds and has snapshots taken every two years for congressional sites and every four years for the executive branch. The results of these crawls are returned to NARA on tape, and NARA does not make these crawls available for public access. While the Executive Office of the President has been aggressively pursuing a goal of archiving not only the web site but also social media such as Facebook and Twitter,[25] there is no evidence NARA is considering this. NARA should archive all social media, and should perform regular crawls and operate or contract out to have operated a "Wayback Machine" for government.

Digitization and Public Access

In addition to access to electronic records, one of the key challenges facing NARA today is digitization of older materials. Looking back again at Archivist Connor, we see that NARA dealt with an incoming deluge of paper records by pioneering an important set of technical advances, including the development of microfilm, invention of the airbrush for cleaning paper records, and invention of the laminating machine to protect paper.[26] The microfilm effort was such a success that space needs were reduced by 95 percent!

Digitization of paper, audio tapes, video tapes, and other materials should be a key priority for NARA, as well as the Smithsonian Institution, the Library of Congress, and the Government Printing Office. The current state of the art for mass scans of paper is about 10 cents per page, a figure that has been mentioned by players such as the Internet Archive and

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[24] Paul M. Wester, Jr., Memorandum to Federal Agency Contacts: End-of-Administration web snapshot, NARA Memorandum NWM 13.2008, March 27, 2008.

[25] Executive Office of the President, Solicitation for a Web Archive, Federal Business Opportunities Solicitation WHO-S-09-0003, August 21, 2009.

[26] *Ibid.*, p. 76.

Google Book Search. However, it is clear that these costs could decrease dramatically at larger scale, and that there would be additional savings in reduced storage space for those items where it is not necessary to keep the original (although it is important to note that the originals should always be kept on the most important items).

All the agencies would benefit from a dramatic increase in the pace of scanning older materials, and it is instructive to look once again to the birth of NARA, an institution that was born in the middle of the last depression. One of the startup challenges Archivist Connor faced was a survey of what records actually existed. He went to Harry Hopkins, and with the support of President Roosevelt, was able to secure $1,176,000 for WPA Sponsored Project No. 4, which employed white-collar workers to survey federal archives in the states. This program put 3,171 people to work in 1,057 communities, and the project continued until 1942 when the Works Project Administration was terminated. This work produced the Historical Records Survey and the Inventory of Federal Archives, reference aids still in use today.[27]

A search of recovery.gov shows no entries for the National Archives or the Library of Congress, and only a single $25 million grant to the Smithsonian for fixing buildings.[28] In the midst of the most severe economic downturn since the last great depression, there is a tremendous opportunity to advance the state of the art for scanning on a massive scale, while putting people to work.

Instead of viewing digitization of materials as an opportunity, the National Archives has declared the task as out of scope and has created as an alternative a series of "public-private partnerships" with organizations such as Footnote.Com and Amazon.Com. These partnerships are very disturbing as they place a lien on the public domain. While the agreements in theory are non-exclusive,[29] in practice they give these companies exclusive access to key NARA holdings for periods of 5 years or even longer.

An example of such a partnership is the agreement with Amazon whereby the company is able to sell public domain DVDs on its web site. It is of course wonderful that Amazon is making these DVDs available for sale on their web site. But, this deal came at a very high

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[27] Record Group 69.4.5, Records of the Division of Professional and Service Projects, Records of the Works Project Administration, National Archives.

[28] Smithsonian Institution, Facilities Capital Recovery Plan, Recovery.Gov, last accessed December 12, 2009.

[29] NARA, Plan for Digitizing Archival Materials for Public Access: 2007-2016, September 10, 2007. See in particular Appendix A: NARA Principles for Partnerships to Digitize Archival Materials.

price for NARA. If you look on the government web site and search the Archival Research Catalog for digital copies of motion pictures, almost every item that comes up in search results contain a 2-minute preview of the video, and a government advertisement encouraging users to purchase the item from "our partner, Amazon.Com."

An examination of the sole-source contract NARA signed with Amazon shows a large number of restrictions on the government. While NARA gets back a "proof copy" and is able to allow people to view these films in a few NARA locations, it is prohibited from posting the videos for the public to view for at least 5 years. It is unclear if NARA gets back the full-resolution digital copies of the videos, and may instead just get back the consumer DVDs at lower resolution.[30]

At last count, there were 1,899 of these DVDs listed on the Amazon.Com web site, with retail prices starting at $10.95.[31] There are three potential benefits to NARA from this deal. The first is revenue, where NARA receives 20% of total Amazon.Com revenue, minus "ingestion fees" of $35/tape and $150/film. To date, total NARA revenue on this agreement has been $3,273.66.[32] The second benefit to NARA is making inexpensive copies of the videos available to a mass audience, however neither the prices nor the total revenue seem to indicate that this video has been broadly distributed. (Even if all ingestion fees are included as offsets, I estimate a maximum possible gross revenue of $110,000 and a more likely gross revenue well under $50,000, indicating total unit sales of 5,000–11,000 units at $10/DVD.) The third benefit is that NARA will get "free" digitization services for its video, however the contract indicates that NARA gets right to use these copies only for those videos where Amazon has made a profit.[33]

To Amazon's credit, they have not asserted copyright on any of these DVDs. As an experiment, Public.Resource.Org spent $691.49 and posted 47 of these videos to YouTube and to the Internet Archive.[34] In less than a week, we reached a greater audience than all the

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[30] NARA, Distribution Services Agreement with Amazon.Com, July 1, 2007.

[31] Amazon.Com, Films from the Vaults of the National Archives, last accessed December 12, 2009.

[32] Electronic mail from the Chief of Staff, National Archives, December 11, 2009.

[33] ArchivesNext, Follow up on terms of NARA-Amazon agreement, December 7, 2009.

[34] Boing Boing, Watch America's public domain video treasures, rescue the public domain from paywalls, December 4, 2009 and Boing Boing, Watch the 1967 Bob Hope special, save America's public domain videos, December 13, 2009.

1,899 DVDs combined, and we are confident that if all 1,899 DVDs had been posted by the government, viewership would be even higher.

After the videos were posted, we received mail within two days about one of the films, "Up In Flames, A History of Fire Fighting in the Forest." It turns out NARA and Amazon had incorrectly characterized this as a work of the government,[35] whereas the film had in fact been created by the Forest History Society and was being used without permission. Needless to say, we promptly removed this video and the Forest History Society has contacted both Amazon and NARA about this situation.

The reason usually given for government not to scan these materials is that it is too difficult and too expensive. The equipment I use for the FedFlix program costs less than $10,000, including a $4,000 video encoder, a $350 Component to SDI converter, a $100 terabyte disk drive, and a $2,000 used Betacam deck. I estimate that two government employees with less than $30,000 in hardware could crank out 2,500 videos in a year and make available a huge stash of Betacam, U-matic, and VHS materials. Even digitizing film has become easier.

Even if digitizing video, microfilm, photographs, or other materials is hard, the way NARA has gone about it is quite disturbing. Each deal has been a back-room, sole-source negotiation. No solicitations are conducted, the public is not given a chance to comment on the deals before they are finalized, and there is no indication that NARA has been examining nonprofit partners in addition to the .Coms they have so ardently pursued.

These "no cost to the government" deals are not just at NARA and they are not just for executive branch materials. The Government Accountability Office entered into a similar arrangement with Thomson West for digitizing 60 million pages of federal legislative histories. At great expense to the government, these materials were packed up and sent to Thomson West, who digitize the materials and then return them to the GAO.[36] What Thomson West does not return is a digital copy of the data. GAO employees were given "free" access to the Thomson West product, but that was all they got. If members of Congress wish to consult these materials on-line, they must get a commercial account with Thomson West. Meanwhile, Thomson West boasts that "thanks to an exclusive contract with the U.S.

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[35] Amazon.Com, Up in Flames: A History of Fire Fighting in the Forest, 1984, ASIN B000XQ1P28, ARC Locator 13516.

[36] Government Accountability Office, Contract with Thomson West, GAO-70230025, obtained under FOIA Request by Public.Resource.Org, GAO PRI-08-081, February 27, 2008.

Government Accountability Office (GAO), Westlaw now offers you hundreds of federal legislative histories compiled by GAO law librarians."[37]

It is my understanding from NARA officials that a similar arrangement may be in the works, in which a large number of congressional hearings would be scanned by LexisNexis and made available on that retail information service. It is my hope that this committee would carefully examine any such arrangement, as it is vital that the proceedings of the U.S. Congress be available to all citizens, not just those with a healthy expense account.

In a recent report submitted on the future of the presidential library system, NARA suggested that more rigorous guidelines governing the public-private partnership between the presidential library foundations and the government were in order.[38] If more rigor is required in these partnerships with nonprofit corporations formed by former presidents, it goes without saying that even more attention should be paid to the relationship with .Com companies and retail information providers.

At the very least, any such arrangements must ensure that the government receives back a full-resolution, high-quality scan and that there are no limitations on use. Any such partnerships should be available for public comment, and NARA should consider relationships with nonprofits, foundations, and universities as well as commercial providers.

Opportunities, Not Obstacles

In the 1930s and 1940s, the National Archives and Records Administration leapt into uncharted territory, facing daunting challenges and meeting them by creating, defining, and professionalizing records management and the science of archiving. This was all new, and Archivist Connors was quick to say that he and his staff were "amateurs at our jobs."[39]

In his opening statement in his confirmation hearing, Archivist Ferriero also quoted Connors and his observation that 45 percent of the records he surveyed were infested with vermin and insects and that records "mingled higgledy-piggledy with empty whiskey bottles." This was a defining moment for the new institution. Archivist Ferriero said NARA

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[37] Thomson West, U.S. GAO Federal Legislative Histories on Westlaw® (FED-LH), February 19, 2008.

[38] NARA, Report on Alternative Models for Presidential Libraries, Mandated by the Presidential Historical Records Preservation Act of 2008 (PL 110-404), September 254, 2009.

[39] Donald R. McCoy, National Archives, *op. cit.*, p. 106.

faces a similar defining moment, with "vermin and insects replaced by a variety of software packages, platforms, and old technologies."[40]

It is always difficult to reconcile the many missions and the varied stakeholders an institution such as NARA faces. Perhaps the Archivist can learn from the experience of the other institutions represented in the first panel of this hearing. The Smithsonian has long balanced its primary roles as a museum and a research institution, and the Library of Congress has experience going back to its formation in 1800 in balancing its primary mission to the Congress with service to the public and other stakeholders.[41]

What is clear is that NARA faces immense challenges, and must focus on the job at hand and not be distracted. This message has been repeatedly delivered to NARA by stakeholders and to the Congress in testimony. In May, Dr. Thomas Battle of the Society of Archivists told this committee "our stories are preserved and our destiny is recorded in the archives of the United States. It is within the archives that we document our democracy, our liberty, our opportunities, and most importantly, the hope of our nation's people."[42]

Most of all, NARA must reinvent itself to deal with a new set of challenges. To do so it must heed the words of Franklin Roosevelt and believe in its capacity to change:

"To bring together the records of the past and to house them in buildings where they will be preserved for the use of men and women in the future, a Nation must believe in three things.

It must believe in the past.

It must believe in the future.

It must, above all, believe in the capacity of its own people so to learn from the past that they can gain in judgement in creating their own future."[43]

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[40] David S. Ferriero, Opening Statement on Hearing on Nomination to be Archivist of the United States, U.S. Senate Committee on Homeland Security and Governmental Affairs, October 1, 2009.

[41] See Charles A. Goodrum, The Library of Congress, Praeger Library of U.S. Government Departments and Agencies (New York: 1974) and Library of Congress, The Mission and Strategic Priorities of the Library of Congress, September 20, 1999.

[42] Thomas Battle, Prepared Statement, Information Policy, Census, and National Archives Subcommittee, May 21, 2009.

[43] Franklin D. Roosevelt, Remarks on the Dedication of the Roosevelt Presidential Library, June 30, 1941.

Mr. CLAY. Thank you so much for that testimony.

Let me start with Ms. Weismann. In your testimony, Mr. Malamud mentioned it also, you bring up the fact that NARA's ERA contractor, Lockheed Martin, has applied for 15 patents related to the program, which is taxpayer-funded. Now, can you please explain your concern that you have with the contractor applying for patents?

Ms. WEISMAN. Well, I share Mr. Malamud's concern that this should be open source material. It is just inexplicable to me why it is that it is the subject of private patents. And if it were patentable, why the Government does not hold those patents and not a contractor. We are not talking about a system that has been built with commercial off-the-shelf software. It is being developed and built entirely with Federal funds.

And I think it speaks to the larger concern I alluded to, which is NARA's failure to effectively oversee the contractor. And I know that the Inspector General at NARA, who I guess has testified before this committee, has also written some reports. And I think they detail his concerns as well.

It is hard to really get to the bottom of it except that, at a minimum, it appears, at least to CREW, that NARA just does not have the technical and other know-how to effectively and adequately supervise this contract. And I think that is why here we are, these many years later and these many, many millions of dollars later, raising a question about whether we should even continue or abandon this project.

Mr. CLAY. Mr. Malamud, did you have anything to add?

Mr. MALAMUD. Very quickly. I think the National Archives has a role to play in managing not only its own archives but in leadership to the archives in the 50 States and throughout the world.

When they invented the microfilm and lamination and the airbrush in the 1930's, they did not patent those and their contractors did not and it spread throughout our archival science. The ERA system is something that any State archive should be able to run. And most importantly, by making it open source, we can see how the system functions, make sure it is secure, and make sure that it does the job that it is supposed to do. After all, it is our money as taxpayers that helped pay for this.

Mr. CLAY. Thank you. Thank you for that response.

Going back to Ms. Weismann. In your written testimony, you urged the new Archivist to reevaluate the need for additional legislative authority only after exercising the full authority NARA currently has. Can you briefly explain what you meant by that statement?

Ms. WEISMANN. Yes. Time and again, when we have gone to NARA and urged it to take a stronger leadership role, they have suggested that they are limited because they have very limited statutory authority. One of the provisions of the Federal Records Act that we have had an ongoing dispute with them about on this issue is the obligation to conduct inspections. They do not do that. And agencies know that they are not going to be inspected for records compliance and we have massive non-compliance.

And NARA has suggested, time and again, that it does not have the statutory authority to do anything more than it is already

doing. If you look at the law, I think it is very clear. Congress envisioned, not only envisioned but commanded the Archivist to conduct inspections. And I think this is yet one of any number of examples where they have taken a very narrow view of their statutory authority.

It is kind of remarkable really because sometimes we are dealing with runaway agencies that have a very expansive view. But NARA seemingly does not want to take on these responsibilities. And, frankly, it has seemed very risk adverse. It does not want to be in conflict.

But we really welcome the new Archivist because it is our understanding that he shares the view that the problem is not a lack of statutory authority, it is a lack of will in exercising the authority they already have.

Mr. CLAY. Thank you for that response.

Ms. Alpert, how has the practice of genealogical research changed and has NARA kept up with the needs of researchers in terms of resources, staffing and records processing?

Ms. ALPERT. Well, I think it is a continuation of this discussion about electronic records. NARA was a leader, as one of the other panelists said, in the 1930's. And now, so many of the records are going to be electronic. The new records are coming in electronically.

And there are many, many records behind the scenes that are still in paper format and they are actually, if you are talking about pension records, they are actually in folders that are hundreds of years old.

So, I think the real challenge for the Archivist is how he takes NARA to the next generation and how he keeps up with this electronic challenge that he has.

Mr. CLAY. And I think Mr. Malamud made a great suggestion as far as directing some of the stimulus money toward modernizing archivists' records.

Ms. ALPERT. As genealogists, the WPA work that was done exists on every county in the United States and we use it often because they characterized a lot of the records that existed. So, the work that was done in the 1930's is still being used today. It was extremely valuable.

Mr. CLAY. Thank you for that response. And let me say that, before I ask Mr. Goldberg a question, is that we asked for the stakeholder community to let you offer suggestions to Dr. Ferriero and his staff so that there can be a better working relationship between the two entities, I mean, between several entities. And so, I do not want this to appear to be adversarial in any way, but suggestions to the new Archivist as he enters his first phase in his new position.

Mr. Goldberg, in your testimony, you discussed the challenges facing the new Office of Government Information Services or OGIS. What actions do you believe the new Archivist can take immediately and in the long run for OGIS to help meet its goals?

Mr. GOLDBERG. Well, actually this is a particularly apt question coming on your previous comments about an adversarial role. I actually think we have had, our members of SGI, have had a wonderful relationship, not only with the new OGIS office, but with the National Archives as a whole. We worked very well with the prior

Archivist and hope that that continues. We have every reason to expect that it will continue.

In the short term, I think that the Archivist must place his trust in this new office. There are some very talented people there. We know Miriam, both from her work in Government and out of Government. We know she is going to do the job. She is extremely knowledgeable about these issues. So, one of the things he can actually do is let her do that job.

In terms of supporting her in that job, and her staff, I think that comes in two areas. One, they really have to be championing the funding. This office is drastically under-funded. Even State offices have more money and more employees allocated to them than this office has. Pennsylvania has about 10 full-time employees, Connecticut about 20, to accomplish the same tasks on a much smaller scale.

I also think it is going to be important, if they can do it, to get this office back downtown. It is a wonderful facility in College Park. But these folks are going to have to meet with other agencies. There was just discussion in the prior panel about meetings with the CIA. Well, that means you have to get from College Park to Langley. Anyone who has ever done that in rush hour traffic knows that it is almost impossible to get things done. You waste half your day doing it. So, I think that could really help them accomplish the mission if they have more accessibility to their agencies.

Mr. CLAY. Thank you for that answer.

Mr. Goldberg, why is it important that NARA immediately address their processing backlog? What is the practical impact of the backlog on transparency in open government?

Mr. GOLDBERG. Well, for our members, primarily journalists and authors, it simply means that information does not get out to the public. It means that waiting for necessary information will either result in the short-cutting of deadlines, or the short-cutting of publication, or the missing of deadlines outright. In either case, the public is the one that loses out as they lose viable information that they would be reading in stories.

I have another more indirect effect and that is that for journalists and authors, they are going to now need to go more often to secondary sources to obtain information. Some of those people may not want to talk on the record. That really does our members a disservice in not being able to put the most credible publication forward, but also, of course, has led to other problems that we have seen in other areas, you know, needing the passage of a Federal shield law, things like that, to protect journalists that are covering Government.

I think that we could help all of these problems out by ensuring that more of the direct, primary source information gets out to the public immediately.

Mr. CLAY. Thank you for that response.

Mr. Malamud, a key item in several of these partnerships is that while NARA may not provide free online access to the digitized records for a period of several years, they may provide free access to their NARA facilities. We have heard from researchers that

NARA may not be providing enough space and resources within their facility. But is there a larger problem here?

Mr. MALAMUD. Well, Mr. Chairman, let me first reiterate your thoughts about working with NARA. There are no criticisms here. I have been very impressed by the new Archivist's openness and frankness.

When you think about the NARA facilities, I think there is one every 10,000 square miles in the United States if you look at the total area. And if you look at the internet, NARA is everywhere on the internet. And today, public means online.

If we are going to make materials available, we have to make them available on the internet. And that is the problem I have when we put a 5-year lien on the public domain materials, such as the deal with Amazon.

Mr. CLAY. You wrote in your testimony that the cost of scanning paper records would decrease dramatically on a larger scale. What are your thoughts on establishing such large scanning projects and what would be the costs and benefits?

Mr. MALAMUD. Well, scanning is something that has several effects. First of all, it does provide public access. It also means that the storage requirements are significantly less. The state-of-the-art today is about 10 cents a page for paper documents to scan them, run through a CR and make them available. I believe if NARA and the Library of Congress and others were to engage in large scale scanning, that cost per page could get down to a nickel, maybe even lower.

And it is something that would have a tremendous benefit and it would be, as I said before in my testimony, an enduring public work for our digital age. It is something that needs to be done and I hope that the new Archivist will embrace that challenge rather than looking at it as something that just cannot be done.

Mr. CLAY. In your comments you talk about there is one NARA facility for every 10,000 square miles in the United States. You really concern me because both of them, both facilities that were mentioned today, I have an attachment to one, being a Maryland Terrapin and having the facility in College Park I am very fond of that; and two, St. Louis houses the Personnel Records Center, so we also founded that. So, I guess it is just the nature of the beast. But you, Mr. Goldberg, really raise concerns there to talk about eliminating those.

Let me thank the panel for their testimony today. And when staff initially proposed this hearing, I figured it would just be another boring hearing, especially with the subject matter. But having a new Archivist on board, we certainly welcomed him and we are all inspired by the future of the Archives because of who is heading it now.

And also, this panel raised some very interesting issues that you made me aware of and educated this committee on. So, we are appreciative of that.

And on that note, this hearing is concluded.

[Whereupon, at 3:57 p.m., the subcommittee was adjourned.]

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