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NATIONAL ARCHIVES OVERSIGHT: PROTECTING OUR NATION'S HISTORY FOR FUTURE GENERATIONS

HEARING

BEFORE THE

FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY SUBCOMMITTEE

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

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CONTENTS

	Page
Opening statements:	
Senator Carper	1

WITNESSES

WEDNESDAY MAY 14, 2008

Hon. Benjamin L. Cardin, a U.S. Senator from the State of Maryland	3
Hon. Allen Weinstein, Ninth Archivist of the United States, National Archives and Records Administration, accompanied by Adrienne Thomas, Deputy Archivist of the United States, National Archives and Records Administration	5
Linda Koontz, Director, Information Management Issues, U.S. Government Accountability Office	8
Paul Brachfeld, Inspector General, National Archives and Records Administration	9
Patrice McDermott, Director, OpenTheGovernment.org	25
Thomas Blanton, Director, National Security Archive, George Washington University	28
James S. Henderson, Former State Archivist, State of Maine, representing the Society of American Archivists	30
Martin J. Sherwin, University Professor of History, George Mason University, representing the National Coalition for History (NCH)	32

ALPHABETICAL LIST OF WITNESSES

Blanton, Thomas:	
Testimony	28
Prepared statement	90
Brachfeld, Paul:	
Testimony	9
Prepared statement	76
Cardin, Hon. Benjamin L.:	
Testimony	3
Henderson, James S.:	
Testimony	30
Prepared statement	100
Koontz, Linda:	
Testimony	8
Prepared statement	55
McDermott, Patrice:	
Testimony	25
Prepared statement	83
Sherwin, Martin J.:	
Testimony	32
Prepared statement	104
Weinstein, Hon. Allen:	
Testimony	5
Prepared statement	39

Page

APPENDIX

Questions and Responses for the Record from:
Mr. Brachfeld 112
Ms. McDermott 121
Mr. Blanton 124
Mr. Sherwin 128
Mr. Weinstein 131

NATIONAL ARCHIVES OVERSIGHT: PROTECTING OUR NATION'S HISTORY FOR FUTURE GENERATIONS

WEDNESDAY, MAY 14, 2008

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,
GOVERNMENT INFORMATION, FEDERAL SERVICE,
AND INTERNATIONAL SECURITY,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:23 p.m., in Room SD–342, Dirksen Senate Office Building, Hon. Thomas R. Carper, Chairman of the Subcommittee, presiding.

Present: Senators Carper and Cardin.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. The Subcommittee will come to order. Thanks to our guests for their patience, for being here today. This hearing marks what I hope to be the beginning of this Subcommittee's oversight of the National Archives and Records Administration.

The revolutionary ideas embodied in documents such as the Declaration of Independence and the Constitution of our country are entrusted to one organization, the National Archives. Established by Congress to be the Nation's record keeper, the Archives has the critical mission of storing and protecting our Nation's most valuable and most important documents.

I am told that Thomas Jefferson once said that an educated citizenry will ensure a free society. In fact, if I can paraphrase Jefferson, I think what he said is if the American people know the truth, they will not make a mistake, and it was true then and I think that is true today. I think we can all agree that unhindered access to information about our government and the ideas of the men and women like Jefferson who have made decisions on our behalf is critical to the continued health and vibrancy of our democracy.

The National Archives was established to safeguard and preserve the records of our government, ensuring that the people can discover, use, and learn from this documentary heritage. As I prepared for this hearing, I have to say that some questions were raised in my own mind about whether the Archives is fulfilling this essential mission, at least in some areas. Additionally, I question whether Congress and the President are giving the Archives the re-

sources and the tools that are necessary to do the job that we have tasked them with.

A lot has changed in our country, as we know, due to the evolution of information technology. The ability to create, to search, and to access information from any location in the world has greatly affected the way humans communicate and learn. Every year, billions of documents that shape the decisions that our government makes and the course of human events are never written down with pen and paper. Instead, these records are born digital. They are created electronically and live not in a filing cabinet somewhere, but on computers and on the Internet. The current controversy surrounding the missing White House e-mails highlights the importance of electronic records management.

Due to a lack of Congressional guidance, poor decisionmaking, or just sheer mismanagement, policy discussions involving any number of key issues, including the war in Iraq, may never be seen by historians, by authors, and by the public at large. How can democracy thrive, then, if people cannot hold their government—our government—accountable?

Further, I am troubled by the recent cost overruns on the Electronic Records Archives Project. The system is intended to be the Archives' answer for transferring, preserving and making accessible all Federal and Presidential records. However, we cannot definitively say whether this project will be delivered on time and on budget in preparation for the upcoming Presidential transition.

This reminds me a little of the situation that our country is facing in the Census Bureau with the handheld computer project that had to be canceled because it will not be ready for Census takers to use by the year 2010. So we end up once again largely doing our Nation's 10-year Census using pencil and paper.

Instead of dealing with the problems before they escalated, it seems like agency officials and contractors, just as they did at the Census Bureau, decided to march ahead, assuming that Congress would foot the bill. It is imperative that we make this system work as planned, and it is equally important that we get it done as quickly and as cheaply as we can reasonably hope at this point.

With that said, I have convened this hearing today not to point fingers or to encourage controversy, but to learn how we can help the Archives achieve its core mission of safeguarding and preserving the records of our government. Further, we hope to learn more about how the Archives is changing its business model to bring in the technology necessary to ensure that records born digital are preserved and easily accessible. Finally, I want to determine whether the Archives can improve its services online so that the public can access key historical documents.

We thank the witnesses for appearing before us today and certainly look forward to your testimony. We apologize for starting a bit late. We ended up with a vote just on the eve of starting this hearing, so I apologize we are starting a little bit late.

I am delighted that Senator Cardin—I almost said Congressman Ben Cardin, since he and I both served as Congressmen together—but I am delighted that he was able to join us today. He heard that we are having this hearing and I encouraged him to come by and spend as much time as he would like. You are recognized for any

statements or comments you would like to make. We are delighted that you have come.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Senator Carper, thank you very much. As you pointed out, I don't serve on this Subcommittee, but I do represent the U.S. Senate on the National Historical Publications and Records Commission and attended my first meeting yesterday and I am very impressed by the work that is done by that Commission.

I have always been impressed by Dr. Weinstein and his commitment to our National Archives and the work that he does. Just to tell you a very short story, on the day before I took the oath of office as a U.S. Senator, I took my family to the National Archives because I thought it was an appropriate place to start my career in the U.S. Senate. I must tell you that just about every member of my family that visited the National Archives has been back because there is just so much they can learn from the records and the manner in which those records are kept.

I think, though, you are asking the right question, Mr. Chairman, and it is how should the National Archives serve our modern needs, particularly with new technologies. That is why when I talked to Dr. Weinstein, he was excited about this hearing because he thinks it is important for Congress and the National Archives to work together in partnership to meet these challenges, and I know that is the purpose of this hearing, to see how we can make sure that the important work that needs to be done is supported here in Congress and that we develop a strategy that will provide the best possible access to the records of our country for all users, whether it be a high school student or whether it be a person in academia who is doing important research work.

That is our goal and I think this hearing will help us in meeting those goals, and I thank you for allowing me to stop by. I apologize that I will not be able to stay for the hearing, but I wanted the Subcommittee to know of my interest and I am willing to work with the Subcommittee on this matter.

Senator CARPER. Senator Cardin, thank you so much for coming. We are grateful that you are here and for your interest and we look forward to working with you.

Our first witness today will be the Ninth Archivist of the United States. I have called you "Wine-steen," I have called you "Winestine." Others have probably called you worse names than that. How do you pronounce your name?

Mr. WEINSTEIN. Well, Mr. Chairman, first of all, thank you for holding this hearing. Thank you, Senator Cardin, for being here. It depended on which side of the Grand Concourse you were raised on. [Laughter.]

I am a Bronx kid, and that was the issue, but that is at least within the realm, you call it this or you call it that. A few weeks into being Archivist, I stood up for a speech and the person introducing me turned to me and said, "Now I would like to present to you the Alchemist of the United States, Allen Weinstein." [Laughter.]

Try to get back into a serious mood after that one.

Senator CARPER. Well, I am not going to recognize you yet to testify. I am just trying to get you to correctly pronounce your name for us. Is it "Wine-stine"?

Mr. WEINSTEIN. It was "Wine-stine" on the side of the Grand Concourse——

Senator CARPER. That you grew up in?

Mr. WEINSTEIN. That we could afford. [Laughter.]

Senator CARPER. Just a quick introduction for each of our guests and then I will recognize you for your testimony.

Dr. Weinstein was confirmed by the U.S. Senate about 3 years ago and he has been on the job now for several years. Previously, Dr. Weinstein served as the President for the Center for Democracy, a nonprofit foundation that he created in 1985 to promote and strengthen the democratic process. He has won many international awards, including the United Nations Peace Medal in 1986, the Council of Europe's Silver Medal twice, both in 1990 and 1996, and several fellowships, including two senior Fulbright lectureships. In addition, Dr. Weinstein was a university professor and professor of history at Boston University, a university professor at Georgetown University, and author of a number of books, articles, and essays.

Accompanying Dr. Weinstein today but not giving an opening statement, I am told, is Adrienne Thomas, is that correct?

Ms. THOMAS. That is correct.

Senator CARPER [continuing]. The Deputy Alcherist of the——

Ms. THOMAS. Yes, or Anarchist.

Senator CARPER [continuing]. Anarchist of the United States. We are glad that you both are here.

Our next witness is Linda Koontz, no stranger in these places. Ms. Koontz is Director for Information Management Issues at the U.S. Government Accountability Office. It is nice to see you today. Ms. Koontz is responsible for issues concerning the collection, the use, and dissemination of government information, and recently Ms. Koontz has directed studies concerning records management, privacy, data mining, information access and dissemination, and E–Government. Ms. Koontz is a Spartan, a graduate with a B.A. from Michigan State University? I am an old Buckeye, Ohio State, up here. But better to be a Spartan than one of those Wolverines. [Laughter.]

A certified Government Financial Manager and a certified information privacy professional.

And our final witness today, at least on this panel, is Paul Brachfeld. Did I pronounce it right?

Mr. BRACHFELD. You did very well.

Senator CARPER. All right. Good. He is Inspector General of the National Archives and Records Administration. Mr. Brachfeld oversees the conduct and execution of all audits, investigations, and inspections for the agency. Are you appointed by the National Archives Director?

Mr. BRACHFELD. I am appointed by the Archivist of the United States.

Senator CARPER. OK.

Mr. BRACHFELD. Actually, the former Archivist, John Carlin, selected me. Appointed is not the word.

Senator CARPER. Selected, OK. All right. Fair enough. Thank you. Wasn't he a governor?

Mr. BRACHFELD. Former Governor of Kansas.

Senator CARPER. A former governor. There you go. Mr. Brachfeld's investigative activities include the recovery of hundreds of stolen Archival holdings and related successful prosecutions of identified subjects. Mr. Brachfeld has a B.S. in accounting from the University of Maryland, which makes him a Terrapin.

We thank you for joining us. We thank all of you for joining us, and we will start with opening statements from Dr. Weinstein. Welcome.

TESTIMONY OF HON. ALLEN WEINSTEIN,[1] NINTH ARCHIVIST OF THE UNITED STATES, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, ACCOMPANIED BY ADRIENNE THOMAS, DEPUTY ARCHIVIST OF THE UNITED STATES, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Mr. WEINSTEIN. Thank you, Chairman. Once again, I thank you for holding this hearing today. I am pleased to report on progress at the National Archives and Records Administration (NARA) during my 3-year tenure. There is much to report. I can only touch on the highlights here. However, I will be happy to answer for the record any questions or to provide any supplemental material that you would like.

The stories of this Nation and its people are told in the records and artifacts cared for in the National Archives—we call it NARA's facilities around the country. We want all Americans to be inspired to explore the records of this country, their country. We want every American to have access to the essential documentation of their rights and of the actions of their government. We promote civic education and facilitate historical understanding of our national experience. When we revised our 10-year strategic plan, we made it explicit that promoting civic literacy is essential to our work.

During fiscal year 2007, the National Archives responded to 1.2 million written requests for information, served over 135,000 researchers in Washington and in our almost four dozen facilities across the country, hosted nearly 220,000 people at public programs, and welcomed 2.9 million visitors to exhibits in Washington and in the 12 Presidential libraries, and received 35 million visits to our website.

However, simply allowing access to our holdings is not enough. We are committed to providing opportunities for the public to see, use, and learn from the records of our government. This will develop a greater understanding of the history, cultural values, and ideas that have shaped our Nation. It is vital, Mr. Chairman, that the raw documents and facts we possess, preserve, and store—ten billion pieces of paper and in the future many terabytes of electronic records—that these have meaning for the American people to which they belong.

In Washington, DC, our learning center, the Boeing Learning Center, is now fully open, focusing on NARA's efforts to help teachers make the study of history, civics, and social studies more en-

[1] The prepared statement of Mr. Weinstein appears in the Appendix on page 39.

gaging and important for students through the use of primary documents. The Presidential libraries and regional records centers conduct similar programs for students and teachers. And for nearly 30 years, NARA has conducted summer institutes to instruct teachers in the use of historical documents in the classroom.

The National Archives is a multifaceted organization. The 3,000 employees who work in 20 States, over 40 facilities throughout the country, are dedicated to our mission to preserve democracy by safeguarding and preserving the records of the Federal Government. We house the records, Mr. Chairman, of all three branches of government and respond to literally millions of requests each year from the Executive Branch, the Congress, the courts, and from the citizens who own these records.

Our Center for Legislative Archives holds the records of Congress—at least the institutional ones—and is preparing many of these legislative treasures for display in the Capitol Visitors Center. The Center for Legislative Archives delivers over a million pages of records annually to support the conduct of current Congressional business. It also preserves and makes available to researchers the historical records of the U.S. House of Representatives and the U.S. Senate. The Center uses these historical records to promote a better understanding of Congress and the history of American representative government.

The National Archives manages 12, soon to be 13, Presidential libraries documenting the Administrations from Herbert Hoover to Bill Clinton. President George Bush recently announced that his library will be built on the campus of Southern Methodist University in Dallas. We are actively engaged with the White House in organizing the transfer of the Administration's paper and electronic records from the White House to NARA oversight in Texas and Washington, DC.

One of the greatest challenges to the National Archives is the rapidly growing number of electronic records being created by the Federal Government. These records include text documents, e-mails, web pages, digital images, videotapes, maps, spreadsheets, presentations, databases, satellite images, geographic information systems, and more types of records to be created in the future. Unlike parchment or paper, Mr. Chairman, electronic records can become inaccessible quite easily as time passes and technology advances. The hardware and software used to create these records can become obsolete very quickly, within months or years. This leaves countless important records at risk of being lost forever. But the good news is that the technology for preserving electronic records is finally catching up with the technology for creating them.

The mission of the Electronic Records Archives, ERA as we call it, is clear and simple.

Senator CARPER. Dr. Weinstein, this would just be a request I would make of you and each of the panelists on this panel and subsequent panels. Sometimes folks feel like they have to use acronyms when they testify before us. To the extent you can stay away from them, I would be grateful. Thank you.

Mr. WEINSTEIN. OK.

Senator CARPER. ERA, I don't know if we are talking baseball or Equal Rights Amendment for the Constitution. So the extent that you can actually use the——

Mr. WEINSTEIN. You don't want to talk baseball to me. I am a Yankees fan.

Senator CARPER. You are probably right. [Laughter.]

Mr. WEINSTEIN. The mission of the Electronic Records Archives is clear and simple. It will authenticate, preserve, and make accessible far into the future important electronic records of the Federal Government regardless of the type of hardware or software used to create them or the kind available in the future.

The first phase of our Electronic Records Archives will become operational in June of this year, next month. An early challenge faced by the Electronic Records Archives will occur on January 20, 2009, when the National Archives takes custody of the remaining records of the Bush Administration. Millions of electronic text documents, digital photographs, and e-mails will be among those records. If the past is prologue, the first request for access to those electronic records will also come on January 20, 2009. Electronic Records Archives will ensure that we are prepared to meet those requests.

In 2009, Mr. Chairman, concluding, we will celebrate the 75 anniversary year of the establishment of the National Archives. During the past 75 years, the staff of the National Archives has found itself on the leading edge of change. Almost 30 years before the creation of the Freedom of Information Act, archivists were making available the records of the U.S. Government to the public in National Archives reading rooms. Beginning with President Roosevelt's gift to the Nation and with Congress's help, we shepherded the growth and development of the modern day Presidential library system.

In the 1970s, Mr. Chairman, we heralded the era of archiving electronic records by taking in the most permanent computerized records from government databases. Today, we are taking the lead in archiving digital information with the development of the Electronic Records Archives. We have always embraced these types of challenges as part of our unique and important mission as guardians of the records of government. With your support, the support of Congress, the National Archives will continue to meet the challenges of the present and the future.

Thank you, Mr. Chairman. This concludes my formal remarks and I welcome any questions you and other Members of the Subcommittee might have.

Senator CARPER. Dr. Weinstein, thank you very much.

For this panel of witnesses and for our second panel of witnesses, your entire statement will be made part of the record and if you wish to summarize, please feel free to do so. Normally we ask people to stick within 5 minutes in giving your testimony. If you run a bit longer than that, we are not going to bang the gavel. We will let you go a little while longer.

Ms. Koontz, thank you for joining us and we are happy to see you. You are recognized.

TESTIMONY OF LINDA KOONTZ,[1] DIRECTOR, INFORMATION MANAGEMENT ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. KOONTZ. Thank you, Mr. Chairman. I appreciate the opportunity to participate in today's hearing on challenges and progress in overseeing the preservation of our Nation's historical documents.

As you know, since 2001, the National Archives has been working to develop a modern Electronic Records Archives system. This major information system is intended to preserve and provide access to massive volumes of electronic records of all types and formats. The system is also to automate the Archives' processes for records management in archiving.

However, in 2007, the Archives' contractor acknowledged that it would not be able to meet the planned date for the initial operational capability of the first increment of the system. In response to this delay, the Archives changed its approach to developing the Electronic Records Archives, but uncertainties remain. The program is currently pursuing a two-pronged development strategy.

First, NARA has developed plans to achieve an initial operational capability that will have capabilities that are somewhat reduced from those that had been planned. NARA refers to this initial system as the base system. Initial operational capability for the base system had been planned for September 2007, but is now scheduled for June 2008.

Although recent delivery deadlines have all been met and testing has begun on schedule, NARA has extended some test periods beyond what was originally planned, leaving less time for final security reviews. Although officials remain confident that these schedule changes will not affect the date for the initial operational capability, problems uncovered through testing could lead to delay. According to the officials, they are mitigating the risk of delays by paying close and continuing attention to the testing process through such actions as weekly meetings of the test team.

The second part of the Archives' strategy responds to their need to receive the Presidential records of the Bush Administration in January 2009. These electronic records are estimated to total 100 terabytes of data, which is 50 times more than that of the previous administration. NARA had planned to use the ERA system for this purpose, but the developmental delays in 2007 put this plan at risk.

To address this risk, the Archives and its contractor are pursuing a parallel development of a separate part of the system that is to be dedicated initially to these records. This part of the Electronic Records Archives is referred to as the Executive Office of the President System. This system is being built on a commercial product that provides some of the basic requirements for processing Presidential electronic records, such as rapid ingest of records and ability to search content. This separate development decouples the EOP system from dependence on the development of the base system. However, it is uncertain whether the system will be developed to the point that it can receive the Bush Administration records in January 2009, primarily because the Archives and its contractor

[1] The prepared statement of Ms. Koontz appears in the Appendix on page 55.

are still negotiating the precise scope of work and system requirements.

Finalizing the negotiations is challenging because, among other things, uncertainties remain regarding the exact nature of the Presidential records to be transferred. According to the Archives, although the Archives and Bush Administration officials have held meetings on this topic, the Administration has not yet provided NARA with specific information on the volume and types of records to be transferred. System development is nonetheless proceeding based on the Archives' volume estimates and the information available so far.

According to the Archives, receiving the electronic Presidential records and being able to process, search, and retrieve them immediately after the Presidential transition is critical so that they can respond in a timely fashion to the information requirements of the Congress, the former and incumbent Presidents, and the courts.

Challenges remain for the Electronic Records Archives program in both the near and long term. In the near term, the Archives has to complete the testing of the base system and define the requirements and the scope of the Presidential system and complete its development. In the long term, it also plans to merge the base system and the Presidential systems into an integrated whole. Meeting these challenges will be important to achieving the ultimate aims for the Electronic Records Archives, automating the Archives' records management and archiving lifecycle, and preserving and providing access to all types and formats of electronic records.

Mr. Chairman, that concludes my statement. I would be happy to answer questions at the appropriate time.

Senator CARPER. Ms. Koontz, thank you very much for that statement.

Our last witness on this panel is Paul Brachfeld. Mr. Brachfeld, you are recognized. Thank you very much for coming.

TESTIMONY OF PAUL BRACHFELD,[1] INSPECTOR GENERAL, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Mr. BRACHFELD. Mr. Chairman, I thank you for the opportunity to testify today.

Senator CARPER. Thank you.

Mr. BRACHFELD. NARA represents America's past like no other agency. We hold the treasure troves of our Nation's history. However, as an organization, we must live in the present while preparing for the future that focuses upon electronic records. Today, I will be quite candid in discussing what I and my staff have observed during my tenure as the IG.

Archivist Allen Weinstein has in tangible ways supported my office as well as me personally. However, our work comes at a price. In the wake of certain investigations and significant audits conducted by my office, my staff and I have been met with significant resistance and unfounded challenges. Our audits and investigations have consistently identified challenges in core elements of NARA's operations that we believe by definition constitute material weaknesses.

[1] The prepared statement of Mr. Brachfeld appears in the Appendix on page 76.

While preservation work stations sit empty in our world renown labs due to funding and staffing constraints, contractors siphon funds for projects that are ill-defined, poorly managed, and fail to meet user needs. While millions of dollars flow to the Electronic Records Archives program, which to date is well over budget and has failed to meet deliverable dates and other IT related contracts, archivists struggle under resource constraints to process and preserve the ever-expanding quantities of records arriving at NARA every day. While NARA is exposed to significant frauds and the loss or theft of millions of dollars worth of accountable property, such as laptops, desktops, and servers, Presidential artifacts sit unprocessed and vulnerable due to limited resources.

Finally, the importance of these issues is magnified by the fact that the Archivist and I share the belief that NARA is, by definition, a national security agency, as we hold the vital records of virtually every Federal agency, as well as those of other entities, such as the Warren and 9/11 Commissions.

I will dedicate the balance of my testimony to electronic records issues. I am also available to discuss other audit and investigative work products produced by my office, touching upon areas ranging from the preservation of holdings, processing and accessing Federal records or the recovery of hundreds of stolen Federal records via our highly successful and unique Archival Recovery Team, or ART, concept recently featured in the April edition of *Smithsonian* magazine.

With regard to Electronic Records Archives program, in December 2001, nearly 7 years ago, I first approached the former Archivist about the need for audit coverage of the ERA program by stating resources have not been assigned to the OIG to facilitate our independent analysis of the program and to serve as a basis to report to the Archivist, Congress, and the American people on the status of the ERA program. Stakeholders actively involved in designing, building, and coordinating the deployment of ERA may be blinded from identifying issues that exist and call out for identification.

In subsequent meetings, such as in April 2002, I requested audit positions to support, again, the fledgling ERA program. The former Archivist, John Carlin, told me he could give me 50 people and I still couldn't cover it, so he asked me how I thought I could do it with just two. I responded, I would take the two, but none were received.

Dedicated ERA audit resources sought by the OIG in budget submission after budget submission were not forthcoming, even as I defined the value of independent, dedicated, and skilled oversight over this critical program could not be overstated and the risk of not performing this function unacceptable. GAO Audit Report 03880, issued in August 2003, defined NARA's need to staff key unfilled ERA positions to mitigate the long-term risk to the acquisition. In meetings with the GAO, I urged them to define that one of the key unfilled ERA positions, just one, dedicated to NARA OIG to support independent expert oversight of the program and related contractors, was sorely needed. Regrettably, the GAO did not act upon this request.

Unfortunately, it came as no surprise to my office when on July 27, 2007, NARA issued a Cure Notice to the ERA prime contractor for "failure to make progress in the work so as to endanger performance under the subject contract." Indeed, the impact of delays and cost overruns—and I was told before this meeting by my staff that we are now up to $15 million as of March 2008—is significant and profound. While I do not know if or when ERA will be fully operational, any additional delay will adversely impact other narrow operations, requiring NARA to consume additional scarce dollars to sustain the Archives' research catalog or develop other vehicles that bridge the gap until ERA meets baseline functional requirements.

Finally, in the fall of 2007 with the support of Archivist Weinstein, this office was able to staff a dedicated ERA audit position. One need not have been a visionary or a soothsayer to anticipate the problems that have encumbered the ERA program. We hope that at this late date, the OIG audit support will prove of value.

Changing subjects, in April 2007, an article raised my concern as to the condition of the White House records as under the Presidential Record Act (PRA), Bush 43 Presidential records will accrue to NARA. The ingestion of these records is to be a key and early benchmark in the successful deployment of ERA. Following the April 2007 article, I requested briefings and was informed by key NARA staff members that the Bush 43 Presidential records development and transition to a new and effective recordkeeping system had not been accomplished and that records are being stored in a vulnerable production server environment. After looking into this, I found an internal NARA report for the fourth quarter of 2006 where a NARA official reported that they continue to work on matters related to management of electronic records by the Executive Office of the President, Office of Administration.

The problem for my office is that concerns as to access issues or functionality of White House recordkeeping systems were never directed to my attention by knowledgeable NARA officials prior to press accounts reaching my desk. Thus, I am not afforded the opportunity to address a significant condition which will potentially impact a major NARA program that falls under my statutory jurisdiction.

I am aware of momentum to provide NARA additional authority to ensure Federal agency compliance with records standards, most notably with regard to the internal preservation of electronic records. I believe that such legislation and related funding is required. If NARA does not assume this role, then I ask who will. NARA traditionally has not viewed itself as an enforcement entity, but rather one that focuses upon collegiality and relationships.

I believe that given limited cognizance into agency recordkeeping processes, a void exists in which inappropriate treatment or loss of Federal records may well be occurring. This position may be alien to my peers at NARA, but I come from a dual law enforcement and audit background and believe that additional powers, authority, and resources are needed in this area. The consequences of failed recordkeeping at Federal agencies today will adversely impact our Nation tomorrow.

In terms of personnel and budget, NARA is not large, but its mission surely is. I am an Inspector General. My statement today will most certainly have repercussions, but my candor reflects my statutory duty to this Subcommittee and the American taxpayer. I thank you for the opportunity to testify and I am available to take any questions you may have.

Senator CARPER. Mr. Brachfeld, thank you very much for that testimony.

We will have a number of questions for this panel. Let me just start off, if I could, with Professor Weinstein. Before I begin to ask any questions, I just want to give you an opportunity, if you would like, to comment on some of what Ms. Koontz and Mr. Brachfeld have had to say in their opening statements. You may want to talk a little bit about some of the management challenges that they highlighted and let us know on the Subcommittee how you are dealing with those.

Mr. WEINSTEIN. Sure. Thank you, Mr. Chairman, for this opportunity. The Inspector General's statement is puzzling on a number of counts. First, Mr. Brachfeld points to my support for his office, which is genuine, and for him personally, which was genuine, on a range of issues. He then castigates National Archives staff for throwing up "significant resistance and unfounded challenges." Whether the Inspector General and I agree or disagree, however, final responsibility for maintaining the National Archives rests on my shoulders, and inevitably there will be times when I prefer some other counsel to Mr. Brachfeld's point of view. But let there be no mistake, the Inspector General has no greater friend at NARA than this Archivist, who also respects the work of the Office of Inspector Generals government-wide. I work with Mr. Brachfeld to reduce waste, fraud, and mismanagement on all levels and will continue to do so.

Mr. Brachfeld makes three assertions of fact, however, which need response. First, he concludes that, to date, the Electronic Records Archives has not been properly and thoroughly monitored. I disagree. Linda Koontz is right here and her colleagues at the Government Accountability Office have continually monitored the project. The Office of Management and Budget conducts similar full court press evaluations. The House and Senate Subcommittee members and staff demand monthly—at least monthly, sometimes more than that—reports on the state of progress for the Electronic Records Archives. And finally, our own National Archives Advisory Committee on the Electronic Records Archives, experts from all over the world, meet regularly to evaluate our progress. Time precludes a full outline of oversight to date, but it is considerable.

Second, the Inspector General claims that the Electronic Records Archives system may never be operational. In fact, the first phase of the Electronic Records Archives becomes operational next month. There is no evidence that there is evidence, there is no denying that there have been delays, there have been cost overruns in this extremely important and challenging project. But little is to be gained by exaggerating and panicking. We have confronted the problems which caused these delays and the program is again on schedule and has been for some time.

While I am head of this agency, Congress can count on the fact that we will not paper over problems. We will never paper over problems, but rather we will address them systematically. Electronic Records Archives has been new territory for everyone involved in the project, Chairman. It should not surprise anyone that there have been obstacles to overcome. But turning hills into mountains is no way to solve a problem. Assertion is no substitute for evidence or any window for proof.

Third, the Inspector General takes us to task for failing to anticipate and resolve the problem of the missing White House e-mails. The Presidential Records Act was crafted by Congress with great care to respect the Separation of Powers Clause in the Constitution. I have counseled the White House on its responsibilities under the PRA and the Federal Records Act, not once, but a number of times. However, that counsel has always been given within the bounds of the law and the Constitution.

Finally, I have been a strong and consistent advocate for maximum transparency in the Federal Government. Everyone who knows me knows that. But I think it is a mistake to assign to the National Archives, an independent agency, the role of policing the White House. Thank you, Mr. Chairman.

Senator CARPER. Thank you, Dr. Weinstein.

A member of my staff described this as the 30,000-foot question. I don't know if it is 30 or 20 or 10, but the question deals with adequacy of resources. We all know that the Archives is given an extremely large mission, and some would argue relatively little resources to complete that mission. I would just ask Professor Weinstein and Mr. Brachfeld, as the protectors of our Nation's history and some of our most important artifacts, do you feel that you are given enough resources to fulfill the mission of your agency, and if the answer is no, what more might be needed in terms of staff and resources? And finally, are there any areas that you could shift your priorities at the National Archives to ensure that you are meeting the most important challenges in fulfilling your mission?

Mr. BRACHFELD. Senator, may I have the opportunity to respond——

Senator CARPER. Just briefly, if you will. I don't want to play too much ping-pong here, but just briefly.

Mr. BRACHFELD. I need to clarify a few matters very quickly for the record.

Senator CARPER. Sure.

Mr. BRACHFELD. One, in terms of monitoring the ERA program, I will give you one example. In June 2007, I met with the program director for the ERA program. He told me the program was on schedule. Deliverables were—in fact, the contract was ahead of schedule. My staff was present. In fact, two or three members of my staff.

In July 2007, we issued a Cure Letter for fail to deliver on deliverables. That is the status that was provided to me. We have met with many officials in ERA. We have many sources that come to us. We have been told that the date for delivery of some iteration of ERA, whether it be—the capacity is undefined—would be in 2011. I have read in 2012. I have seen statements of 2015.

There hopefully will be an ERA. I have been a proponent of ERA. I have been begging, literally begging for the resources to engage in ERA to help bring this home. I saw my role as to be a shepherd to assist the agency so the problems that we have unfolded, which I anticipated and stated for the record 7 years ago—and I didn't have to be Nostradamus—7 years ago, I warned of this. Given the resources, we may not be here today discussing this.

Quickly, with the White House e-mails, let me make myself very clear on this. Those e-mails will accrue to the National Archives and Records Administration, to our programs. If our programs will be adversely affected, be it additional staff needed or be it additional resources needed, that affects my turf as an Inspector General. I thought that had I gotten timely notification, and, of course, part of my statutory duties is to protect our programs, I could have made efforts perhaps to address the matter in the early stage.

I have worked with the White House in other matters. They have responded to my inquiries. They have responded to my questions. Given the opportunity, maybe information would have been gained that would have been helpful. Given that failing, perhaps I could have done a management letter to the Archivist, which becomes a public document and the Congress would have been made aware of the situation much earlier. It was just a question of me wanting to be engaged in an issue where I could exercise what I thought my authority. I am not trying to teach or alter constitutional law.

Finally, I just want to make one thing clear. The Archivist and I truly are colleagues. When we meet, it is collegial. He is supportive. He has been a supporter of me. When my position was jeopardized, which it was because certain NARA staff sought to have me removed, he stood by me. So he is a good man and this is not between myself and him, and I will tend to leave it at that.

Now, you asked about—getting back now, I am sorry, budget——

Senator CARPER. Adequacy of resources. Thank you for that——

Mr. BRACHFELD. Adequacy of resources. The National Archives, in my experience, and this is my experience, we have been an agency that is almost afraid to ask for what we need. There have been a number of my audit reports where I have said that we needed to get additional resources. We have a flood of records coming our way that we need to process, a literal flood. We have——

Senator CARPER. Because of the change in Administration?

Mr. BRACHFELD. Well, just records with—we are talking electronic record today, but paper doesn't stop. There is a flood of paper records still coming our way. There is a flood of electronic records coming our way. Our staffing has not really grown. Preservation needs, just like everything else, just like an infrastructure of a city, paper degrades. Film degrades. Mediums degrade. We have a tremendous need for preservation. We have IT security concerns that are very important because of the nature of the material we hold. We have physical concerns over our holdings.

So I have been a proponent of defining our problems clearly and then going to Congress, going to OMB and clearly define what we need. Clearly, it is my belief, based upon our audit findings, and the bedrock of my work is audit, is that we do not have the resources to deploy to address the many challenges that impact NARA. There are many great people doing terrific work. I go to our

preservation labs and I watch our conservators, who are amazingly talented, dedicated people, but I can't help but notice two or three-quarters of the work stations are empty. They are empty. But the documents that are weathering under time, they don't stop weathering under time.

I think that we have strong needs, and in this time of fiscal constraints, everybody said that I understand, but I view National Archives as, A, a national treasure, which is why I am proud to work there, and B, and the Archivist and I discussed this probably the first time we met, I view the Archives as a national security institution. I won't go into public testimony and define what we hold, but I think a lot of people would be shocked if they understood what we hold. So I am concerned about the national security if people got access to the kind of records we hold. And, in fact, my office—taking off my audit hat and putting my investigative hat on, we have had cases very specific to that and have worked very closely with other law enforcement agencies, such as the FBI. So there are security concerns that affect our national security, as well, that need to be addressed. Thank you.

Mr. WEINSTEIN. I will answer that question very quickly.

Senator CARPER. Yes, if you would, please.

Mr. WEINSTEIN. I know you would like to move on. Yes, we need more money, we need more resources. I have gotten more resources for the Inspector General and I will continue to try to get more as he needs them for appropriate projects, and we need them throughout. We need them for new programs and old. We need them to help us with a program on developing civic understanding. We need them to deal with the backlog of materials that we can release to the American public. We just haven't processed them all. We need them to do the Electronic Records Archives. We need them for a variety of purposes.

But let me also say this. When I came to the National Archives over 3 years ago, I made a point at that stage of the game of not trying to bury myself in a bureaucratic life. I have been up here on the Hill, as you well know, talking to your colleagues, your staff—in fact, your staff probably knows that I brought Mr. Brachfeld up here for his first encounter with your staff because I wanted that story to get out. I wanted his story, I wanted my story to get out.

And Congress has been extraordinarily generous and supportive of the National Archives. I am not complaining about levels of support. But you asked about whether we can use more resources. The answer is yes, and I thank you for the resources you have provided thus far.

Senator CARPER. All right. Thank you. This Subcommittee deals a fair amount with IT projects and the ones that we seem to look at the most are the ones that have not gone well. IT projects are naturally a riskier investment than most other projects that are undertaken by our government. We have held several hearings investigating the reasons why so many IT projects are poorly planned and poorly preforming and it seems that many times it is because agencies, and I am thinking of the Census Bureau especially, but agencies have a tough time really defining what they want from the contractor and sticking to what they want.

I understand that the Electronic Records Archives contract with Lockheed is worth more than $317 million and the total expected cost of the system is expected to be around $450 million. I have a couple of questions regarding it.

First of all, how much do you believe, Dr. Weinstein, that poor planning led to the Electronic Records Archives project being over budget and behind schedule? And second, what have you done to make sure that the project will stay on budget and on schedule?

Mr. WEINSTEIN. Mr. Chairman, with your permission, I am going to ask my Deputy Archivist here, Adrienne Thomas, to join me in responding. I will start and she will continue, the reason being that she retains her position also as the head of Administration and Finance at the Archives. This is what she was doing when I got there and she is an incredibly talented person in that regard.

But just a few general comments on such projects. There are scholars in this audience who know the period better than I do. But if you looked at really creative, new, transforming moments in American technology—the atomic bomb, the space shot, the first shot into space, other things of this kind—I doubt that you would see more effective budgetary performance than we have had. These unprecedented projects almost—you have to experiment while you are trying to decide what works. Is your original plan better? You have to adjust that and change it. You can't depend upon established structures of a budget, and this is one of those projects, because if this works as we think it is going to continue working, and it has been working of late, then this is going to help transform in a positive way the work of every agency, not just in the Federal Government, but every agency, public and private, in the country and eventually in many other countries. That is a large claim.

Now getting back to your point. Could there have been——

Senator CARPER. Just to restate my question, what role do you think poor planning played in where we have ended up? And second, just explain to us what you are doing to make sure that we get back on budget and on schedule.

Mr. WEINSTEIN. First of all, I don't think poor planning was a major factor here. I would also point out that we have not—this isn't a situation in which somebody has simply announced we have wasted $300 million and we are putting an end to this. There are other situations in the government where agencies larger and more prominent than ours have just said, that is that. We worked at it. We discovered belatedly that we may not have had the A Team from Lockheed Martin and Lockheed Martin acknowledged that fact. And so we got the A Team and the A Team has been performing effectively.

Senator CARPER. When did you finally get the A Team?

Ms. THOMAS. Basically, we were concerned about the development of the system long before Lockheed Martin admitted that they weren't going to make the deadlines and so forth. But until they reached the first point of deliverable, you don't have any proof that they are or are not going to deliver. When they finally did admit it, then we talked to the highest levels of the company and they realized that indeed they didn't have the best professional support that was needed for this contract, and at that point they

basically said, we are going to replace these people. We are going to give you the highest level of professional support for this team.

That is why the IOC slipped from September, which was the first deliverable that they were going to deliver, and we also wanted to make sure that this team was going—the second team was going to produce, so we restructured the contract.

Senator CARPER. Excuse me. Is this a cost-plus contract?

Ms. THOMAS. Yes, it is.

Senator CARPER. Has it been from the outset?

Ms. THOMAS. Yes.

Senator CARPER. Is it still?

Ms. THOMAS. Yes. However——

Senator CARPER. Is that smart?

Ms. THOMAS. It is really necessary for a development contract where you can't put into concrete exactly what every piece of requirement is. I mean, I think we did a very good up-front planning effort, but development of IT contracts are still a back-and-forth iterative process to get the right sort of system in place, and that is what a cost-plus contract is for, basically, when you can't define every requirement down to the last nut and bolt.

Senator CARPER. Dr. Weinstein.

Mr. WEINSTEIN. Let me just add one point to this issue, not on the cost-plus issue, but on what we are doing now to prevent repetitions, if you will. Anyone who knows me knows that the one thing I am not is a technologist or a scientist, but I know how to read a budget and I kept a small organization alive for 16 years on relatively little money. And one of the things that I am doing and that everybody else of consequence in our program at the National Archives is doing and that we are making certain Lockheed Martin is doing is we are monitoring this process. Is it working? Is it on time? Is it going according to the specs? Is it going according to the financial specs?

We are monitoring this day by day by day, hour by hour by hour. There will be no slippage. If there is slippage at all, this Subcommittee and all of our other committees on the Hill will hear about it before these people leave for work that day, whoever is responsible, because there is no substitute whatsoever, as far as I can tell, for constant monitoring of the sort that Dr. Koontz and her colleagues do, for which we are very grateful.

Senator CARPER. All right. Thanks. Ms. Thomas, did you finish your thought, because I want to go to Ms. Koontz and ask her comment, as well——

Ms. THOMAS. The only thing I wanted to add is that we restructured the contract so that we took and basically created smaller deliverables and said that at the point that a deliverable was presented to us, that we would present it, and if it passed, then we would go forward with the next piece of the contract. But that was a drop-dead point where we could decide, that is all. So I think having done that and having now under our belt three different what we call drops of software that have passed the test, and the final test will be the testing that is going on now and IOC next month, and we think that is going to be the proof that we have got the A Team going and we have got a more strict monitoring approach in place.

Senator CARPER. All right. Does the Archives have, if you will, a back-up plan in place to turn to in case the Electronic Records Archives is not fully functional when this President leaves office?

Ms. THOMAS. We are fairly confident at this point that it is, but there is a back-up plan and that is the system that we used with the Clinton papers, a system called PERL. We don't think we are going to have to need it, but it worked for the Clinton papers, not—I would have to say in sort of a clunky way in that the Executive Office of the President (EOP) system that we are developing, will allow searching across all of the records. The PERL system that we used for President Clinton basically was applied to each one of the many different systems that we inherited from the White House and you have to search each one locally. So it is a clunky system, but it will work. It works for Clinton.

Senator CARPER. All right. Thank you. Ms. Koontz, let us hear from you on some of these issues, please.

Ms. KOONTZ. First of all, I will say that we have been following the Electronic Records Archives since about 2001 and have worked really closely with NARA in terms of their planning as they have moved forward. One thing that I would like to say is about NARA's oversight to date. I think that they have been on top of the situation with the contractor. I think they detected early warning signs in the schedule. They took decisive action by issuing a Cure Notice when they thought that the contractor's failure to perform was threatening the performance of the contract.

They have revised their strategy. They have come up with, as Ms. Thomas talked about, incremental deliverables, which is a proven way of doing system development, small increments, build a little, test a little, build a little, test a little. This is a very good approach. And I think we also saw as they moved forward working with the contractor that they always did independent analyses of things like the schedule so that they did not accept what the contractor proposed as the schedule unless they themselves were really convinced that it was realistic.

I would say that I think they do face some risks with the Presidential system. We can't ignore the history that we have had some performance problems. We have had overruns. We have had schedule delays. And while I think NARA has taken some action to get things back on track, I think we have to recognize that we have a very tight schedule. We have a fixed end date, which is the Presidential transition. We don't know what all of the requirements are for the Presidential records because the NARA does not yet have all that information from the Executive Office of the President. And the milestones are generally being met by the contractor, but slightly late. So for that reason, I think this is a system still at risk.

I would agree, too, with the need for a mitigation plan and that I know that NARA has a high-level plan for what they will do if they do not meet the date—if the contractor doesn't meet the date for delivery later this year, but I think that a more robust risk mitigation plan would be in order here.

Senator CARPER. Let me just ask, and I will direct this initially to Dr. Weinstein and Ms. Thomas, but has anyone at Archives been held accountable for poorly managing the contract?

Mr. WEINSTEIN. Would you repeat that?

Senator CARPER. Yes. Has anyone at Archives been held accountable for poorly managing this contract?

Ms. THOMAS. I think we disagree that the contract was poorly managed. As Ms. Koontz said, we from the beginning monitored what Lockheed Martin was doing. We had our own engineers testing behind their engineers. We were convinced that there were problems, but until you reach the first deliverable where they either put up or shut up in terms of whether they were going to produce something that was going to work or not, we really couldn't prove it. At the point that they missed their deliverable——

Senator CARPER. And when was that?

Ms. THOMAS. May or June 2007, and we can provide the precise date for the record.

Senator CARPER. And when they missed——

Ms. THOMAS. At that point, then we said—we took the problem to the president of the company. We got OMB involved. We got the E–Government person at the White House involved. We got their attention. They admitted that there was a problem with the team with the development. They replaced almost all of the team with much higher-level, sophisticated IT developers than had been on the team. We restructured the contract. I mean, I think we did everything that we could to manage the contract appropriately.

Senator CARPER. Dr. Weinstein, and then Mr. Brachfeld, if you have a comment. Go ahead.

Mr. WEINSTEIN. Let me personalize the answer to your question.

Senator CARPER. OK.

Mr. WEINSTEIN. I was brought into the—one of the things that—obviously, neither my deputy or I are there for everything that happens in the course of a day's work any more than you are there for everything that happens in the course of a Congressional day's work. Once the first indications came through that we were significantly behind schedule, I think it is fair to say that we both hit the ceiling and began immediately addressing the issues.

In my case, I said there is only one way to address it. I have got to talk to Mr. Stevens, the head of Lockheed Martin, or I have got to just conclude this agreement.

Senator CARPER. Is he the CEO?

Mr. WEINSTEIN. Yes. And basically, that communication went through to him, and the point that it made was that any residual attitude that Lockheed Martin that they knew better than we knew what we wanted and what we needed was at an end. It is a very daunting thing. Congress brings in a Google or a Microsoft, whatever, and you are dealing with folks at the top of their game and there is a sort of a reluctance to necessarily challenge them on things they say they know, that they understand that they are doing. We discovered that Lockheed Martin could do it better, and they had been doing it better.

Now, did they—so punishment No. 1, they came close to sudden death in terms of this contract. A very deep embarrassment had happened, given the fact that Lockheed Martin has talked about the effectiveness of this new technology.

Punishment No. 2, no bonuses, no special supplements, no everything, all despite the fact that these cost-plus contracts have them built in. None of that went out. None of that money went out.

Punishment No. 3, it is not the most comfortable feeling in the world for a major agency like ours to be snarling at this mega-corporation and saying, now we want you to perform at your best because you haven't been performing at your best. It was humiliating. It is humiliating. But that is what they have to live with. They have been on trial, and as head of the Archives, it is my responsibility for making certain that we get the fullest measure, the best of the best from them for every last day that they are under contract.

You mentioned some figures. I can't comment on those because I don't know where you got them.

Senator CARPER. All right. Thanks. Mr. Brachfeld, the last word and we will go on to one more question and then we will turn to our next panel. But any comments on this exchange——

Mr. BRACHFELD. Real quickly. There is a lyric of a song that I talk about when I talk about contractors. It goes, "a man who feels the space begins to need the walls." Contractors that don't feel walls, don't feel that they are getting tight oversight, sometimes bleed into space. They need to be looked at. There is no substitute for skilled IG oversight. That is why Congress created us. That is why the President signed into law the creation of Inspector Generals. That is why the Senate is moving, and I support this, into strengthening Inspector Generals. I think that our resource needed environment would have been helpful.

I also want to note that up—again, this came as no surprise to me, the problems at Lockheed Martin. I had sources come to me. I often have both contractors and NARA staff come to me voicing significant concerns about the progress of ERA, and I had gone, as I frequently meet with senior management, specifically the Archivist and his senior staff, and I had conveyed concerns that I had heard. But again, I had not been given the resources, and a lot of this predates—some of this predates the current Archivist and he has worked to support my office. He has a limited deck of cards. He has a limited number of resources. I don't blame him.

But I do state that there were indications of problems. I wish I could have been there. I wish I could have been more vigilant. I wish I could have caught this earlier on because there were ruminations. There was smoke and my staff was aware of that. Thank you.

Senator CARPER. Say that again, that lyric that you began with. What was it?

Mr. BRACHFELD. I am sorry, Senator?

Senator CARPER. You said you use a lyric from a song——

Mr. BRACHFELD. A man who feels the space begins to need the walls. What I mean about that—it is just like that. I have had 30 years in government service. I started off in the Secret Service. In the Secret Service, the entire computer room was staffed by Secret Service employees. Now the government has contractors. Many times the contractors possess skill sets that the government does not have. They can use their knowledge, their positions, to compel modifications to contracts, alterations to contracts, etc.

It is not just this. It is not just NARA. I came from the FCC before this and what we had going on there was pretty substantial, too. And I talk to my peers. This is the nature of the business and that is why you need a strong audit and oversight presence.

Let me just say real quickly——

Senator CARPER. Real quickly.

Mr. BRACHFELD [continuing]. That one of the things that I have tried to do more than anything else is strengthen our compliance with OMB Circular A–130, Clinger-Cohen, etc. I want us—not just ERA—we have many other contracts. I want us to do contracting right on major IT systems from the beginning because if you don't have a foundation, you go askew and awry. So I have been there for this agency pushing that, and the agency has made strides. Thank you.

Senator CARPER. All right. Thank you.

Mr. WEINSTEIN. Mr. Chairman, 90 seconds?

Senator CARPER. Thirty seconds and then I want to get one more question in——

Mr. WEINSTEIN. OK.

Senator CARPER [continuing]. And then turn to our next panel.

Mr. WEINSTEIN. Mr. Brachfeld likes the song metaphors. I prefer speech metaphors. There is a famous Lincoln one that applies in this instance and it is the story of—Lincoln tells the story about coming across the road and there is somebody beating a mule over the head with a two-by-four and it was screaming, but it is not moving. And the stranger comes along and says, "Farmer, you can't move the mule that way. That is idiotic." The farmer says, "I know that, you jerk. I am not trying to move him. I am trying to get his attention." We got Lockheed Martin's attention in this process and we have had its attention constantly since then.

Senator CARPER. That is a little wisdom from Abraham Lincoln, and I don't know if it was Dave Matthews or not, but——

Mr. BRACHFELD. Do you really want to know?

Senator CARPER. No. Thank you, though.

Last question for this panel is to switch topics a little bit. I understand—this will be actually more for you, Dr. Weinstein, but I understand that the Archives recently released a report requested by Congress that discusses how the papers written by the Founding Fathers of our Nation can be completed in a timely fashion and published online. Some of the entities working on these papers have been receiving both public and, I believe, private funds for over a half a century but aren't expected to complete their work for some time to come. Could you tell us just briefly how the Archives expects to accomplish this, and further, how much can Congress expect this project to cost?

Mr. WEINSTEIN. Let me take the first. Apparently you don't have a copy. I will make certain that you——

Senator CARPER. OK. Thank you.

Mr. WEINSTEIN. I will get copies for the rest of the Subcommittee.

Senator CARPER. There are really three questions. Let me just restate the questions and you can take them up. First, could you tell us briefly how the Archives expects to accomplish what we are talking about here? Second, how much can the Congress expect this

project to cost? And the third question is, what is the benefit of publishing these papers online to the public?

Mr. WEINSTEIN. Well, Mr. Chairman, there are two ways in which people take a look at the writings of the Founders these days. They can look at them in these published, elegant, scholarly editions, there are hundreds of them now, 218 is the figure that I have been given at the moment, and these, of course, will not be looked at by the ordinary person who does not necessarily want six pages of footnotes for every reference of Thomas Jefferson's or George Washington's at the time.

Then there is the possibility of putting all of these papers online. In fact, this whole concept, the current perception of it began in the office of one of your colleagues, Senator Leahy, who hosted David McCullough and myself and various other folks and we testified before Senator Leahy on this several months back. That is when we received the instruction that the Congress wanted a report.

It is possible, and I think we have spelled out all the details, to have a situation not more than a few years from now in which every one of the papers of the major Founders of the country will be online in basic editions, without the entire textual apparatus—while the work goes on to complete those textual editions. At the same time, we can also put online at the same time those editions which are not completed yet but for which there is material that people may want to use, students, scholars, etc. All of that can be done so that what you are getting, then, at relatively little cost is free access, virtually free access to the entire corpus of the Founders. And it is about time, Chairman. It is about time.

Now, how much will it cost? We are doing calculations now. Obviously, as soon as those are through, this Subcommittee and others will be the first to learn of it. But we have been under enormous time pressures to get this report done, and I should add that this report has been supported in large measure by the scholars who are involved, by those working on the existing editions of the papers of the Founders, but OMB has reviewed the report and has released it or else I wouldn't be here talking about it. So it is fairly close to a consensus document and the time has come, I think, to move forward on that.

Have I left anything out, Ms. Thomas?

Ms. THOMAS. That is the main points. We think that this is a perfect example of something that should continue to be a public-private partnership and we think that with the goals and the methods that we have laid out in the report, that we will indeed engage many of the people who are in the business of giving private money to be much more interested in supporting this kind of an effort.

Senator CARPER. I understand that these private sources, I don't know if they are private foundations or not, but I understand they provide up to maybe half the total funding for these projects. How are the private foundations involved in the planning process?

Mr. WEINSTEIN. Well, private foundations have been involved in supporting these projects, Mr. Chairman, since the projects began in the 1930s and 1940s. Private foundations have always provided an underpinning, either through universities or through foundations or whatever it would be like. Congress has also supported

these projects through the NHPRC and through the National Historical Publications and Records Commission (NHPRC)—I apologize for using an acronym—and also the National Endowment for the Humanities has funded some of this. It has been funded from a variety of sources. But for the first time, there would be a clear focal point for the funding.

There now, by the count that I have been given, are 218 volumes of these papers of the Founders that are already online and we would have another 125 volumes to go and the job would be done. So I urge you to support the process in Congress.

I should add that Senator Cardin, who was with us yesterday—I don't want to speak for him, but he seems to be very supportive and enthusiastic about it. Congressman Larsen from the House was there, same, as well. So this has been a process that has involved Congress from the get-go and it has been in partnership with the private sector that we can get this job done.

Senator CARPER. All right. And before you all leave the witness table, let me just thank you very much for being here and for your testimony and for responding to our questions.

I used to be State Treasurer of Delaware for about 6 years and we were audited every year by an independently elected official, the State Auditor, and every now and then, the State Auditor would offer a criticism. However, this was not something that would be shared with us internally as they went through their audit, but sort of after the fact. In addition, the way it was offered was not always well appreciated, and finally, the auditor and I actually just spent some time together and talked things through. We would try to maintain a good personal relationship and have a more constructive auditing process where we would be more inclined to take the recommendations of the audit to heart.

It seems pretty clear to me that, Dr. Weinstein, you and Mr. Brachfeld have what seems to be a respectful personal relationship and I would just ask that you build on that and spend some time together talking more about the issues raised today. Maybe you will both feel better about the work that you are doing on behalf of our citizens.

With that having been said, I want to thank each of you for coming today, for your stewardship, and for your testimony. We look forward to working with you to help give you the resources and the support and the direction that you need to make us all proud. Thank you very much.

Mr. WEINSTEIN. Thank you very much, Chairman.

[Pause.]

Senator CARPER. All right. Welcome to our second panel of witnesses. We will hopefully not be interrupted by votes and we will be able to march forward to completion of our hearing. Thank you for joining us today and for your patience with us.

Our lead-off witness in the second panel is Dr. Patrice McDermott.

I understand you are the Director of OpenTheGovernment.org, is that correct?

Ms. MCDERMOTT. Yes, sir.

Senator CARPER. I understand you assumed your current position after more than 4 years as the Deputy Director of the Office of Gov-

ernment Relations at the American Library Association. My office today was stormed by librarians from all over Delaware.

Ms. MCDERMOTT. It is Library Legislative Day.

Senator CARPER. They have literally taken over Capitol Hill.

Ms. MCDERMOTT. Yes. A good cause.

Senator CARPER. A great cause. Ms. McDermott was awarded her doctorate from the University of Arizona in political science and has an M.A. in political science from Brown University, and received a degree in library and information management from Emory University.

Ms. MCDERMOTT. Right, and my undergraduate was at Florida State.

Senator CARPER. You have moved around.

Ms. MCDERMOTT. Yes.

Senator CARPER. But we are glad you are here today.

Our next witness is Thomas Blanton, Director of the National Security Archive. I understand, Mr. Blanton, that you have directed the Archives since 1992 and previously served as the organization's first Director of Planning and Research, starting in 1986. We are told, Mr. Blanton, that you are a series editor of the Archives online and print documentary publications and that you are a graduate of Harvard College, which is right down the road from where my oldest boy goes to school.

Mr. BLANTON. Yes, and I am almost up there with Ms. McDermott because I came there from Bogalusa, Louisiana, so it was a nice migration northward, traditional Southern activity.

Senator CARPER. I used to serve with a Congressman from Louisiana who later became governor and he went to school at Harvard, as well. But when he ran for Governor of Louisiana, he tried not to let people know where he went to college. [Laughter.]

Mr. BLANTON. When I used to say that is where I wanted to go to school, they would say, yes, Auburn, that is a very good school. [Laughter.]

Senator CARPER. Our third witness is Dr. Jim Henderson, who is representing the Society of American Archivists. Dr. Henderson served as Director of the Maine State Archives from 1987 to 2007. In that capacity, he authored several papers relating to the proper implementation and management of electronic records. Have you ever been to Delaware to visit us in Dover?

Mr. HENDERSON. I know Tim Slavin very well, if that helps. I have not been, though, to your archives.

Senator CARPER. Mr. Slavin is not only our Director of State Archives, but he is also a member of the Dover City Council, so he has a couple of interesting jobs.

Dr. Henderson holds a bachelor's degree in international relations from the University of Maine and a master's and doctoral degree in political science also from Emory University. Did you two know each other at that time?

Ms. MCDERMOTT. No.

Senator CARPER. All right. You traveled a lot of different paths in your life and today you come together here at this table.

Our final witness is Dr. Martin Sherwin, University Professor of History at George Mason University. Previously, I understand, sir, that you were the Walter S. Dixon Professor of English and Amer-

ican History at Tufts University for 27 years, another school that my youngest one visited and liked a whole lot.

Dr. Sherwin's recent biography of J. Robert Oppenheimer won a 2006 Pulitzer Price for biography, the National Book Critics Circle Award for Biography, and the English Speaking Union Book Award. Congratulations on all those counts.

We welcome you all. We thank you for joining us. Your entire testimonies will be made a part of the record. If you would like to summarize, feel free, but thank you for coming.

Dr. McDermott, why don't you lead us off.

TESTIMONY OF PATRICE MCDERMOTT,[1] DIRECTOR, OPENTHEGOVERNMENT.ORG

Ms. MCDERMOTT. Thank you, Chairman Carper, for the opportunity to speak today on the role of the National Archives and Records Administration in protecting our Nation's history, and thank you for holding this oversight hearing on the critical issues facing our government in the area of preserving and providing access to our history.

In my testimony today, I want to discuss a number of roles that NARA has traditionally held and new ones it is being called to take on. It is critical, I think, that the Subcommittee fully realize, as you do, that NARA is probably the only agency in the Executive Branch that has, and is seen by the public to have, access to government information as its primary mission.

While that mission has been understood to encompass primarily information that, for a variety of reasons, is deemed historically significant, NARA is increasingly being looked to as a site to locate new initiatives and offices pertaining to public access to contemporaneous government information. These include the newly mandated Office of Government Information Services, created by the Open Government Act, and an office that will have responsibility for implementing the Memorandum on Designation and Sharing of Controlled Unclassified Information, better known as sensitive but unclassified (SBU) information. This latter office will have the task of bringing order to the multiplicity of control markings, such as SBU, FOUO (for official use only), across the government that are meant to safeguard information that is not classifiable but information that is arguably not for immediate public disclosure.

The Open Government Act established the Office of Government Information Services specifically at NARA. A number of other venues were considered and they were all dismissed and we were all agreed that NARA was the best home for this because of its mission of providing access to public information. There is more in my written testimony, but I just want to say today that we urge your support of NARA's ability to create and sustain this new office and to make it function for the benefit of public access to Federal records within a contemporaneous time frame. That is going to take some funding, and I know that is not the purview of this Subcommittee but it is a major issue.

The Controlled Unclassified Information Implementation Office is also to be housed at NARA, and the new CUI framework will

[1] The prepared statement of Ms. McDermott appears in the Appendix on page 83.

continue to affect the media's ability to keep the public informed and the public's ability to press government action to improve safety and security. As laid out in the White House memorandum, this new framework contains no opportunities for public engagement or possibilities of review of marked information. For those of us who care about ensuring limitations on control markings that foreclose public access to unknown volumes of government information, NARA is seen as a good home. Again, this is not part of its traditional mission. This is contemporaneous information and it will need the necessary funds to make this work and ongoing Congressional oversight and encouragement to make sure that it is working properly for the benefit of the public, not just for the benefit of government, as the structure laid out by the White House does not lend itself to the benefit of the public. It is not anywhere considered in the White House framework.

I want to turn now to records and e-records management. In 1982, the Committee on Records of Government proclaimed that the United States is in danger of losing its memory. They were talking about paper records. Our memory is at much greater risk now, and of course this is not just the loss of our family photos, as it were, but of that information necessary for accountability. Across the Federal Government, we do not know with any certainty that all of the documents and information that we need to write our history, to understand policy development and implementation, to trace who knew what, read and edited what document, are being preserved.

Why is our memory in danger? Because, as you noted, the vast majority, if not all, of our documentary and information history is being created electronically, but not necessarily well managed and preserved electronically. The various reasons given for not preserving it are ones that we have all heard before. The volume is too great. We don't have the resources to manage all this. It is not of importance to the leadership of our agency.

Another reason, frankly, is that Congress has been lax in holding agencies accountable and for ensuring that records management is seen as part of the mission critical components of every department and agency. While Congress is rightfully alarmed at the loss of documents and information through a system breach, it and the Executive Branch have turned a blind eye to their loss through indifference. The end result is the same, except with a difference or intentional failure to preserve, we will not necessarily know what has been taken from us and will not be able to restore our history to its previous status.

In a report that we cooperated in with the Citizens for Responsibility and Ethics in Washington, we exposed a number of major problems in this regard. First, there is a lack of consistent policies, as evidenced by the fact in the study that many respondents used multiple techniques to preserve e-mail records at their agencies.

Second, as you have documented, movement toward electronic records systems have been unacceptably slow. Most agencies do not have an electronic records management system and they are getting no real pressure from NARA to institute them.

Third, agencies lack training and compliance monitoring, two problems that could easily be cured by reforming agency policy and

increased NARA involvement. The blame in terms of compliance falls most squarely on NARA, which has a statutory obligation to promulgate standards, procedures, and guidelines and to conduct inspections or surveys of the records and records management programs and practices within Federal agencies. NARA has elected, however, to limit its role to providing guidance only, with little or no agency follow-through, and it has abandoned its practice of conducting annual audits of agency compliance.

At a symposium last fall, NARA was told by agency personnel that the failure to audit meant a failure of records management. I am therefore not surprised at the testimony of Mr. Brachfeld in this regard. NARA's approach has to change and it is clear that this will not happen without Congressional pressure.

A couple other things very quickly. Many of the partners in OpenTheGovernment.org have serious concerns about the decision of NARA not to capture a snapshot of agency websites at the end of this administration. They are going to continue to do them for the White House. They are going to continue to do them for a change of Congress. We feel that these are important point-in-time documentations of our policy and political history. NARA did it at the end of the Clinton administration. It has proved valuable, and we think it will prove of ongoing value in looking from administration to administration at how things change.

And finally, in terms of public access to the records of our government, NARA has taken the lead to provide digital access to non-digital records. They have also been a leader in looking for private sector providers for digitization of records that were created and preserved in a non-digital format. Their practice in this area has gradually improved, but they are also an example of a more general problem across the Federal Government. The government is not willing to pay for the digitization of its non-digital records or to explore non-commercial models, such as consortia of libraries and others, for the provision of this service.

And what happens then is that agreements are made with commercial providers who do this for free, but the public has very restricted access. They have to pay for it for 5 to 7 or more years, or they have to go to a facility of the entity, such as NARA, that has turned over its records to this private entity. They also are not in accordance with the Paperwork Reduction Act—no other entity is allowed to come in and digitize those documents. OMB did a study or did a survey in 2006 looking at these and we ask you to ask for that information and conduct oversight.

Thank you for the opportunity to speak to you. I am happy to answer any questions. I apologize for going over.

Senator CARPER. Dr. McDermott, thank you very much.

Mr. Blanton, you are recognized. Please proceed. Thank you.

TESTIMONY OF THOMAS BLANTON,[1] DIRECTOR, NATIONAL SECURITY ARCHIVES, GEORGE WASHINGTON UNIVERSITY

Mr. BLANTON. Mr. Chairman, thank you very much for holding this hearing. You have my written statement and I would just like to summarize and make five points.

First is to say where I am coming from. We file Freedom of Information requests. We do research. We are a nongovernmental organization. We have worked in every National Archives facility except maybe the Herbert Hoover Library, and we brought the lawsuit that saved 40 million White House e-mail from the Reagan, Bush I, and Clinton Administrations.

I have to say, just commenting on the earlier panel, 20 million of the Clinton e-mail were Presidential records, but 12 million of them were Federal records. So the idea that there is a constitutional bar against the National Archives getting involved in the White House recordkeeping practices is absurd. It is really a red herring. The National Archives has chosen or been too intimidated to get involved. I just want to make that point. That is where we are coming from.

Senator CARPER. Say that again. The National Archives——

Mr. BLANTON. The National Archives has been intimidated or too shy to push the envelope. It was shy against the Reagan White House, against the Bush I White House, against the Clinton White House, and it is shy today. That is a kind word, I think, for its behavior in this regard.

Senator CARPER. I understand. We use code words, too.

Mr. BLANTON. We use code words, too. I am trying to be nice because I remember a Louisiana Congressman named Joe Waggoner who said to Jack Kennedy on the campaign trail something like, "Do you need me to come out for you or against you, whatever would help the most." [Laughter.]

So I am here to help.

The second point I want to make is just the big picture. The National Archives fundamentally is almost completely overwhelmed, drowning in two rising tides, one electronic records, one the classified and declassified records. I just want to say it is a tiny agency with an enormous mission and a level of resources—its total proposed budget is the equivalent of one of the Marine One helicopters. They are asking for a fleet of 28 of them to shuttle the President around, $400 million each.

So this crisis, and this is my third point, electronic records, there are lots of data out there about it and what I am saying about electronic records in my prepared testimony is not new. It really comes from the National Academy of Sciences, the National Research Council, which basically said about the Electronic Records Archives that you heard about, cleaning up after the fact is going to leave the National Archives behind the curve permanently unless Congress and the Archives require the agencies to build in archiving when they build their systems.

Look at the White House e-mail example, the current White House. They junked their archiving system when they moved from one e-mail base, Lotus, to a Microsoft system. They junked

[1] The prepared statement of Mr. Blanton appears in the Appendix on page 90.

archiving, built a new e-mail system. Everybody started to use it. Some of the people started to use the Republican National Committee e-mail system, as well. Nobody required them to have an archiving system. The National Archives kept having meetings, but nobody went to them and said, you have got to live up to the law. As soon as they junked that archiving system, the White House was breaking the law, the Federal Records Act and the Presidential Records Act. But what we get from the National Archives is a list of the series of meetings they had talking about the problem.

The National Archives can hardly even deal with the existing backlogs—this is my fourth point—of classified and declassified records. On declassified records, President Clinton's Executive Order, continued by President Bush, resulted in the release of more—declassification, I should say—of more than a billion pages of historically valuable, 25 years old or older, records that belong to the American public, essential to our history, essential to Marty Sherwin's work and his Pulitzer Prize and to all of our accountability of our government.

And yet out of that more than a billion, 400 million pages, while they are declassified, haven't even been put on the shelves for us to use because National Archives is so backlogged, doesn't have the resources or the staff. At the Ford Presidential Library, the CIA put in money to scan a bunch of documents that had intelligence information in them, took 90,000 documents, processed them, and sent them back to the Ford Library. Only 19,000 of those have gotten onto the shelves. A huge backlog. The National Archives is totally behind the curve.

The only way out, I think, is for Congress to mandate, to change the standards, to put a statutory basis for the classification system, change the front end. Just like you engineer an IT system so it has archiving in it, you have got to engineer a classification system so you actually have real cost-benefit analysis and real disincentives for that very first stamp that says, "Secret," because that generates a stream of costs all the way down the road.

Congress also, I think, needs to do something about historical records and mandate—the way Congress moved on the Nazi war crimes or the Kennedy assassination, huge successes and major declassifications. They had new standards for the review. They put in independent review boards and they said the presumption is release. We have got to do that for everything that is more than 25 years old or we are going to be sitting there with 400 million more pages, or 800 million more pages as a backlog a few years hence.

And the final point I just want to make, because I am running down to my last seven seconds, is that right now, the National Archives is drowning. And to totally push the metaphor, there has got to be a sea change in the Archives' role. You heard the IG down here sitting where Mr. Sherwin is sitting today saying, we are an agency that has been historically afraid to ask for the resources we really need. Well, the National Archives is also an agency that has been historically afraid to ask other agencies to obey the law, especially the White House, and Congress is going to have to do the backbone transplant.

The National Archives has the authority, the legal authority under the Federal Records Act, to tell the White House how to keep

its e-mail, but it is not doing it. Congress needs to go in there, mandate those standards, mandate the archiving standards to the agencies. They spend $68 billion on IT purchases per year. The Electronic Records Archives entire annual budget for next year is only $67 million, a drop in the bucket. Clean up after the fact.

On the classification system, agencies spend $8 billion minimum, probably more, on classifying and keeping the record, only $44 million on release. Congress has got to tell them they have got to do better. Take 5 percent of your total cost and do your clean-up, and that is the only way we are going to get out of the mess.

Thank you, Mr. Chairman.

Senator CARPER. Thank you for your testimony and the helpful way you constructed and presented it. Thank you very much.

Dr. Henderson, welcome. Thank you for joining us.

TESTIMONY OF JAMES S. HENDERSON,[1] FORMER STATE ARCHIVIST, STATE OF MAINE, REPRESENTING THE SOCIETY OF AMERICAN ARCHIVISTS

Mr. HENDERSON. Thank you, Chairman Carper. As you mentioned, I served as the Director of the Maine State Archives and I have got similar anecdotes that unfortunately would——

Senator CARPER. Who appointed you?

Mr. HENDERSON. I was appointed by the Secretary of State in a very interesting fashion, and nominated by the Secretary of State, confirmed by the State Senate, and the salary has to be approved by the Governor, so it is in all kinds of "don't mess with this guy." And a 6-year term, by the way.

Senator CARPER. A 6-year term, OK. Thank you.

Mr. HENDERSON. Yes. well, I wasn't afraid to ask a lot of times, but I didn't get the answers that we wanted much of the time. But for now, I have maintained my contents with the archival community since last year and today I am representing the Society of American Archivists.

Just a bit about them. They were founded in 1936 and the Society is the largest organization of professional archivists, with 5,200 members in the United States and abroad. Just specifically, archivists ensure authenticity, integrity, preservation of and access to historical records, and authenticity means is this really a Jefferson paper or not and make sure you keep that information.

We believe that this important oversight hearing is long overdue. The National Archives and Records Administration and the National Historical Publications and Records Commission are essential to ensuring government accountability and documentation of our history. They have been overlooked and underfunded for far too long, in our opinion.

I touch briefly on three key areas: The challenge of managing Federal electronic records, the importance of, if I may, NHPRC, and the connection between records management and freedom of information.

NARA and others have struggled for decades with the challenges of managing electronic records. In fact, just as an aside, the NHPRC funded a retreat for archivists in the 1990s that attempted

[1] The prepared statement of Mr. Henderson appears in the Appendix on page 100.

to educate us about just what was coming down the pike and also shortly thereafter we had the demonstration of *Armstrong v. The Executive Office of the President* by the National Security Archives, saying these things really are records. But we had to bring those things back to our States.

NARA's Electronic Records Archives project stems from years of basic research such as this, including how to even define records in the new environment and keep them accessible over hundreds of years. Many records will remain outside the Electronic Records Archives and be lost if agencies fail at least to follow NARA's guidance. This will not be a priority unless Congress mandates it and provides necessary funding. NARA is no match for a huge agency serving substantial political constituencies with little regard to records management, and here is true confession No. 1 on my life.

In the bureaucracy before becoming the State Archivist, I was in the Secretary of State's office as a Deputy Secretary of State and this nice lady came by one day to help me schedule my records and organize those things and, wait a minute, I had elections to run and corporations to file and I really did not understand what I should have understood, but somebody should have rapped me on the head at that point. But that is the problem. It is not a priority for many of these agencies.

Slowing the loss of these records requires close scrutiny by Congress, some tolerance for uneven progress, and adequate funding of the Electronic Records Archives.

Now to the National Historical Publications and Records Commission. NHPRC helps Archives preserve and provide access to historical records. It is the only Federal program that concentrates on archival records that convey, among other things, a shared national experience from generation to generation, something that we need especially in these days of increased migration and the more complexity of our own population. Documenting personal rights is another element of these records, and providing evidence to hold governments accountable.

Since 1964, NHPRC has awarded over $175 million to 4,300 projects in 50 States. It has helped State archives preserve a detailed record of State-operated Federal programs and supported regrant projects in local communities, with $5.8 million matched by State funds of $8.4 million and additional funds by the local groups themselves. Regrant is something where NHPRC gives a State money to then grant these smaller institutions.

Today, community record repositories, however, these smaller institutions, receive electronic equivalents of the old Civil War letter, the business journal, or the community photographs. Digital photos, spreadsheets, even e-mails often literally sit on a shelf or on a hard drive in an aging computer. Without attention, they die.

Two electronic records grants were crucial to Maine. One produced a strategic grant for managing electronic records, providing the guidance needed to educate the State's information technology agencies about the preservation challenges. The second supported the Maine Geoarchives that now captures, appraises, and preserves Geographic Information System records. Both of these provided the credibility and expertise of the Archives to become a lead agency for planning a well-managed e-mail system which should improve

retention, speed retrieval for legal discovery and Freedom of Information requests, and enhance agency efficiencies.

But for the fourth consecutive year, the President has proposed no funding. The Society of American Archivists strongly objects and asks Congress to appropriate the fiscal year 2009 funding at the fully authorized level of $10 million for the grants and $2 million for administration.

H.R. 5582 would reauthorize the NHPRC at an annual level of $20 million for the years 2010 through 2014. We urge you to introduce and speed passage of the companion bill.

Finally, on Freedom of Information, I was and continue to be a member of Maine's Freedom of Information Coalition, which includes news media and public interest groups. An effective archives and records management program is inseparable, I believe—we believe—from an effective Freedom of Information policy. Without the requirements to retain the records, Freedom of Information requests and Congressional requests would return very little useful information. The Society of American Archivists supports sufficient funding for the Office of Government Information Services and its Freedom of Information Act ombudsman within NARA.

Finally, archival institutions have looked to NARA as a model for records management and preservation. Its work has been vital to develop needed standards, policies, and legislation. We hope you will continue these oversight hearings, recognizing the critical importance of NARA and the work of the NHPRC, and will provide the funding to get that job done well.

Thank you for the opportunity.

Senator CARPER. Dr. Henderson, thank you very much.

Our last witness on this panel and this day is Dr. Martin Sherwin. Dr. Sherwin, please proceed. Thank you.

TESTIMONY OF MARTIN SHERWIN,[1] UNIVERSITY PROFESSOR OF HISTORY, GEORGE MASON UNIVERSITY, REPRESEING THE NATIONAL COALITION FOR HISTORY

Mr. SHERWIN. Thank you, Senator Carper. I appear here today representing the National Coalition for History (NCH), a consortium of over 60 historically-oriented organizations under the capable leadership of Lee White.

My full written testimony covers many issues critical to our concerns today, including, first, the serious need to expand the financial and human resources allotted to the National Archives and Presidential libraries.

Second, the benefits of creating and passing a Senate companion bill to H.R. 5582, to reauthorize the National Historical Publications and Records Commission.

Third, funding for the repair and restoration of many of the older Presidential libraries.

Fourth, the need to support the transfer of the manuscript collections held by the Archives to digital formats so they may be accessed from the web.

Fifth, the need to do something to speed up the declassification of government records.

[1] The prepared statement of Mr. Sherwin appears in the Appendix on page 104.

Sixth, the disgraceful disappearance of millions of White House e-mails written between March and May 2003 in the run-up to the Iraq War.

It also addresses a more general and, I think, profoundly important issue, the relationship between Presidential records and our democracy.

In 1941, at the dedication of his library, President Franklin Roosevelt clearly articulated why the National Archives and the Presidential Library System are so vital to the vitality of our democracy. The dedication of a library is in itself an act of faith, he said. 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 to learn from the past that they can gain in judgment in creating their own future.

Forty-six years ago, I was a young Lieutenant JAG in the U.S. Navy trying to decide whether to study law, business, or history. Then in October 1962, I participated in the Cuban Missile Crisis and my experiences during that extraordinary event led me to dedicate my career to understanding the principles, assumptions, and details of American politics and foreign policy.

Anyone so dedicated will confirm that it is in the nature of the political process of any government, and the U.S. Government is no exception, that much of what we believe about contemporary decisions will be revealed by historical research to have been incorrect, or at best partially correct. And I submit that our democracy cannot remain robust without this constant historical auditing of our government's behavior.

Just as the press is the fourth estate of our democracy, it is clear to me that President Roosevelt was making the point in 1941 that history is its fifth and equally essential estate. Ominously, the current Administration does not appear to share President Roosevelt's view that sustaining our way of life depends in important ways on our access to our government's history.

Under the Presidential Records Act of 1978, Presidential records were to be released to historians and the public 12 years after the end of a Presidential administration. However, in November 2001, President George W. Bush issued Executive Order 13233 that gave current and former Presidents, their heirs or designees, and former Vice Presidents broad authority to withhold Presidential records or delay their release. I consider this an outrage, nothing less than a frontal assault on the principle of open government that sustains our democracy.

The President and Vice President are public servants, elected to office to serve our Nation, not as dictators, not as they define their service, but as our laws, our traditions, and our institutions define them. After their tenure has expired, it is the public's right to know in a timely manner the details of how they went about fulfilling their responsibilities. Their actions are not a privileged secret that they and their families have the right to control. That is how dictatorships operate. That is how totalitarian societies function. That is a certain recipe for corruption. I urge every Senator

who is truly committed to sustaining the future of our democracy to vote to assure that the 1978 Presidential Records Act is restored.

At a recent hearing before the Senate Judiciary Committee on the completion of the Founding Fathers project that received support from the National Historical Publications and Records Commission, Historian David McCullough said, "you can tell a lot about a society by how it spends its money. Here is our chance, and it is long overdue to show what we care about, what we value, and what we are proud to pay for."

I join David McCullough in urging the rejection of the President's zero funding proposal for NARA and the National Historical Publications and Records Commission and request that Congress appropriate funding at the fully authorized level, $10 million for the NPRC National Grants Program and an additional $2 million for staffing and related program administration.

In conclusion, when your constituents elected each of you, they entrusted you with great responsibilities. I submit that one of those responsibilities is to be stalwart stewards of America's past. Decisions you make about funding the organizations that preserve and make available Federal and Presidential records directly affect whether our democratic institutions will be reinforced by a robust historical understanding or weakened by a shallow, superficial historical awareness. Given these options, I trust that there will be bipartisan support for Franklin Roosevelt's vision of the centrality of history and the vitality of our democracy.

Thank you for your time.

Senator CARPER. Thank you for that excellent testimony. Thank you so much.

Mr. SHERWIN. Thank you.

Senator CARPER. You were in the Navy?

Mr. SHERWIN. Yes.

Senator CARPER. Were you on a ship?

Mr. SHERWIN. In the air. I get seasick when someone runs the bathtub. [Laughter.]

Senator CARPER. What kind of airplane?

Mr. SHERWIN. P2Vs.

Senator CARPER. P3. Great to see you.

Mr. SHERWIN. You were lucky.

Senator CARPER. Yes, we were. I did 5 years active duty in the Vietnam War and another 18 beyond that. I would still be in the Navy if my wife hadn't made me quit after 23 years.

Mr. SHERWIN. Well, we are glad you are in the Senate.

Senator CARPER. So am I, and thank you for your service to our country.

My first question is really one I am going to ask everyone to chime in on. I want to ask you to just step back a little bit and to use your outside perspective, not as an IG or someone who is actually working within the Archives office, but how do you think the Archives is doing in fulfilling its mission? I know many times it is easy to beat up on an agency that is in the hot seat, but if there is anything that the Archives is doing exceptionally well, I would like to hear about that. If there are things that they ought to be commended for, we would like to hear about that. Anything that

you want to highlight that you have seen and want Congress to know about.

What would you say as outside witnesses, is the No. 1 challenge that the Archives faces today, and what advice would you have for us in Congress as to what we ought to do about it? And some of you have spoken to that, but repetition is not a bad thing.

Dr. McDermott, do you want to lead that off?

Ms. MCDERMOTT. Sure. How do I think NARA is doing fulfilling its mission? I think NARA is struggling to fulfill its mission. One thing that wasn't in my bio is I used to work at NARA. I worked at the Carter Presidential Library and then I actually worked at NARA here in DC. I think they have a problem that was addressed in the earlier testimony in that they, as Mr. Brachfeld said, they take an approach of collegiality and advising rather than being willing to seek the money that they need and to take their responsibility fully to ensure that our historical record really is being preserved.

The Archives 10 years ago adopted a records management standard that DOD had adopted—5015, I think, something like that—and nothing has happened. Most agencies, as I said, don't have records management programs. They don't do records management; NARA has abandoned its role of doing auditing. They do training and they do guidance, but I think they really are failing in that mission.

And I think that the Electronic Records Archives is a way of after-the-fact, as Mr. Blanton said, dealing with that problem, ingesting this material that they should have been dealing with 20 years ago. I mean, it has been over 20 years now that the government has moved to primarily digital creation of its documents and nothing has happened. Scott Armstrong, who helped found the National Security Archive, used to call it the Carlin Gap, that there is a 20-year, and now a 30-year gap in our history. We don't know if this stuff is being preserved, the electronic documents.

So I think they are struggling, but I don't think they are doing well and I think Mr. Blanton is right that they are overwhelmed with the volume that is coming at them on classified information and the electronic records that are coming at them, and now they have these new missions that are arguably different. They are dealing with contemporaneous issues and contemporaneous records.

So I think they need strong oversight. And I think they need to be pushed to seek more funding and then that funding needs to be overseen.

Senator CARPER. Thank you. Mr. Blanton.

Mr. BLANTON. I want to say a few good things about the National Archives, which is in my experience at so many of these facilities, the National Archives has a phenomenally professional, responsive staff that put up with onerous researchers who come in and make huge requests for records and want to scan everything yesterday. They are phenomenally responsive to their customers. They have a very high standard.

And I think, having done research in archives around the world, from Jakarta to Moscow to Guatemala City, I say in the testimony, and there are a lot more places we have been, I would say every one of those folks comes to College Park or comes down here on the

Mall and looks at our National Archives and says, well, that is the world class standard, and that is true. All that is true, and much to their credit.

And when there is a crisis, like when we found the CIA and the Air Force stuffing previously released public documents back into the vault, or as the *Washington Post* called it, toothpaste back in the tube, Dr. Weinstein and his tremendous staff did absolutely the right thing, did an audit, showed the problem, and while the agency shoved 25,000 documents, hundreds of thousands of pages back into the vault before the audit, since the audit and those standards, seven documents. So they do the right thing when they see it on the front page or they get a call from the U.S. Senate to go do it.

I outlined what I thought were the two big challenges, the electronic avalanche and the classified and declassified—there is a new mountain range of classified secrets being created today under new pressures from the War on Terror using old Cold War thinking, when even Donald Rumsfeld's own Defense Department said that 50 percent of what is classified shouldn't be, over-classified. Well, in that situation, think about the cost structure of that. If we are spending more than $8 billion on keeping the secrets and yet $4 billion of it is unnecessary, and it is more than unnecessary, it does damage to our national security to keep those secrets or keep making our own system more inefficient.

So I think advice to Congress on those challenges, I think you have got to get in on the front end. You have got to set the standards for the agencies. It is not just a matter of giving money to the National Archives because you give money to the National Archives to do the Electronic Records Archives initiative. You are still behind the curve unless you tell the Pentagon, take your $30 billion you are spending on information technology and put archiving requirements in there. And when you make a system, build it so that it will produce a document that can be released to the public.

The CIA spent tens of millions of dollars on this Remote Archives Capture project and it helped the National Archives a lot to try to address this huge load of classified documents. But there is no net output because the CIA didn't design that system to ever put those documents online. So now they have been processed digitally here in Washington. They come back to a Presidential library and those poor archivists have to print them out, review the printout, and then walk the printout to a Hollinger box and stick it into a file before you or I can get to see it. That is absurd. That is a total waste. So we have got to design our systems on the front end, and I think Congress is going to have to mandate that.

Senator CARPER. All right. Thank you. Same question, Dr. Henderson?

Mr. HENDERSON. I have less inside scoop on what has actually been going on in many respects, but from the distance point of view, the DOD standard which I actually have committed to memory, which is 5015.2——

Ms. MCDERMOTT. Right. Thank you.

Mr. HENDERSON [continuing]. Is an incredibly detailed functional requirements for records management applications. This is something, though, as I mentioned, back in the 1990s people were starting to even think about the functional requirement for records

management applications and just what it ought to be. And NHPRC and NARA supported that thinking, so I would give them mega-points for just even getting people to understand this.

I think, though, what could be done more would certainly be to transfer some of that operational knowledge to some of the State archives in some formal way. I think we often struggle out in the provinces, even though we go to the national meetings and we know the people, but I don't think—that has not been one of the spin-offs of maybe a lot of knowledge that has been created within NARA and should be.

And the other clearly is the advocacy for the funding. It is just part of the mission, I think, is to advocate. So if it isn't heard, then it ought to be clarified and it ought to be clear who heard the message, why it hasn't been responded to, and clearly the magnitude of the funds necessary versus other priorities are just completely out of whack since if we don't spend the resources at the front end and now, we are basically saying this is not as important as we all say it is when we have our flags on our lapel pins and we go out campaigning. But this really isn't as important as a few pigs in a poke.

Senator CARPER. All right. Thank you.

The last word here, Dr. Sherwin, on this particular issue. I have one more question, and then we are going to wrap it up. Go ahead, Dr. Sherwin, please.

Mr. SHERWIN. I just want to say that I agree with everything that Tom Blanton especially said.

Senator CARPER. Everything?

Mr. SHERWIN. Yes, everything. Everything. [Laughter.]

Senator CARPER. Has this happened before, Mr. Blanton?

Mr. BLANTON. Never. [Laughter.]

In fact, I lectured in a series at the University of Delaware hosted by the distinguished journalist Ralph Begleiter and——

Senator CARPER. I was just with Ralph on Saturday.

Mr. BLANTON [continuing]. I never list that in my resume because of the title he put on the lecture series. It was, "Spies, Lies, and Sneaky Guys." I was the only non-spy on the panel. [Laughter.]

Senator CARPER. All right. Thanks.

Mr. SHERWIN. Well, asking a historian about the National Archives experience is like asking a shopper who goes into a department store. If you find just what you are looking for on sale and you have a great sales person, you are happy as a clown, and that has happened to me frequently. Occasionally, I have had the opposite experience. What the internal structures are and the internal problems are that lead to the opposite experience, I can't say. But I think Mr. Blanton has put his finger on it.

I think the most important thing for the near future is getting everything digitized and up online, and I think that the National Security Archive is really the model. Now, the National Archives, of course, are orders of magnitude, tens of thousands of orders of magnitude larger organization, and therefore much larger problem. But the process of digitizing all this and getting it online will also lead to a much more efficient declassification process because you can find words in there and you can go through hundreds of thou-

sands of documents at once, and if none of the one million words that indicate that this might be a classified document are in any of these documents, bingo, they are declassified and that is the end of it.

And the last thing I want to say is remind us all about the Pentagon Papers. I mean, those were top secret documents and they were released in the early 1970s. What harm did that do to the Nation? We knew more about why we were involved in that war and that was important to know. I think the Pentagon Papers is something that really should be looked at in terms of its impact on politics and the whole classification idea.

Mr. HENDERSON. Mr. Chairman, would you tolerate just a minute?

Senator CARPER. Yes, just briefly. Go ahead.

Mr. HENDERSON. Yes, and that raises the issue of digitization, which certainly isn't immediate gratification but it is a long-term royal pain and expense. So we just have to keep that in mind, that these electronic records are not, as everybody is saying, like the nice paper you put on the shelf that is going to last 400 years. It won't. It requires a lot of capital investment and long-term amortization of the cost of doing those things.

So what I would be concerned about is as digitization is important for access, needless to say, preservation is so critical that we don't want to get further behind on that side of the coin.

Senator CARPER. OK. The last question that I wanted to ask focuses on a point that several of you have made. As somebody who has spent some time in the military and here in the Congress, as well, the notion that we sometimes over-classify information and continue to over-classify it and are reluctant to declassify information.

I have someone waiting in my office who has been waiting now for a half-an-hour for me, and I need to go there in preparation for a markup on the Banking Committee on which I serve tomorrow on two significant pieces of legislation. I am being rude to them, and what I am going to have to do is draw this to a close. But rather than ask this question and one or two others that I have orally, what I would like to do is submit them electronically——

Mr. BLANTON. We will archive them for you, if you would like.

Senator CARPER. I was hoping that you might.

Mr. HENDERSON. If they are deemed worthy.

Senator CARPER. I have a couple more questions I would like to submit. Others on our Subcommittee may have questions, as well, to submit, and I would just ask that when you get the questions to try and respond to them promptly. We would be most grateful.

You have been very generous with your time today. This has been enjoyable, and frankly, for me, quite informative. It is nice to connect with a fellow Navy P2, P3 colleague, as well. So we will look forward to submitting a couple of questions in writing. We just ask that you respond.

With that having been said, I am going to declare this hearing adjourned. Thank you.

[Whereupon, at 5:25 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT OF
THE HONORABLE ALLEN WEINSTEIN
ARCHIVIST OF THE UNITED STATES
Before
The Homeland Security and Governmental Affairs
Subcommittee on Federal Financial Management, Government
Information, Federal Services, and International Security

May 14, 2008

Senators Carper and Coburn let me begin by thanking you for holding this hearing today. This is my first opportunity to testify before you since my confirmation hearing a little over three years ago. I am pleased to return today to report on the progress at the National Archives and Records Administration during my tenure of three years and three months. There is much to report, and I can only touch on the highlights here; however, I will be happy to answer any questions you might have, and provide for the record whatever supplemental information you might need.

Let me begin with a few words about the National Archives's vision, mission, and strategic goals—the controlling ambitions that guide our efforts.

First, our vision:
As the nation's record keeper, it is our vision that every American 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 every American to be inspired to explore the records of their country.

Then, NARA's mission:
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.

Finally, six strategic goals:

- *One:* As the nation's record keeper, we will ensure the continuity and effective operations of Federal programs by expanding our leadership and services in managing the government's records.
- *Two:* We will preserve and process records for opening to the public as soon as legally possible.
- *Three:* We will solve the challenges of electronic records in the government.
- *Four:* We will provide prompt, easy, and secure access to our holdings anywhere, anytime.
- *Five:* We will increase civic literacy in America through our museum, public outreach, and education programs.
- *Six:* We will equip NARA to meet the changing needs of our customers.

Today, I would like to talk to you about a few activities that illustrate our commitment to our vision, mission, and strategic goals:

- Records management including our attention to the declassification of records;
- Our Electronic Records Archives;
- The Presidential Libraries;
- Our Regional Records Centers;
- Civic Literacy;
- The Center for Legislative Archives; and
- The National Historical Publications and Records Commission.

Records Management and Declassification

In NARA's Strategic Directions for Federal Records Management, we state that NARA will partner with stakeholders to ensure 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

These high-level goals still guide our activities – and how we work with Federal agencies – to ensure effective records management across the Federal government.

On a more basic level, NARA carries out its statutory authorities by approving disposition authorities for Federal agencies, issuing regulations and guidance, and providing training to aid Federal agencies in establishing and maintaining effective records management programs.

In 2006, we established a Federal Records Council, a 27-member interagency committee to work with NARA to identify strategies, best practices, and solutions to electronic records and records management issues. This group is helping us identify and understand the best ways to integrate records management into agency business processes, which are increasingly driven by information technology, so the National Archives will have a historical record of the Federal government's activities in the 21st century and beyond.

However, we still face problems with processing archival records and declassification. NARA's holdings of traditional records have nearly doubled in the last 10 years making it increasingly difficult to register receipt of new holdings and shelve them.

We have taken steps to deal with a tremendous backlog of textual records that have not been fully processed—some one million cubic feet of documents of all kinds. These

documents have not yet been described well enough to enable efficient access to them. We are seeking to describe all records series to the appropriate level to ensure the description is adequate for access by professionals and others who do research here at the National Archives. We have assigned dozens of staff members to work on this processing initiative full time, and we are making steady progress.

Declassifying documents and returning them to the open shelves, has been a special concern.

Executive Order 12958, as amended, set December 31, 2006, as the deadline for automatic declassification of classified records more than 25 years old. Since the order went into effect in 1995, more than 460 million pages of Federal records have been declassified and released at NARA, with about 400 million pages to go as of the deadline date.

In the last year, the Presidential libraries met the mandate of Executive Order 12958, as amended, by referring all remaining 25-year-old classified Presidential documents for agency review and decision. The way in which the libraries achieved this was primarily through the Remote Archives Capture (RAC) Project[1]. To date, the libraries from Truman through Carter have scanned 3,645,308 pages. We expect by this summer that nearly 1 million pages will have been returned to the Libraries. The libraries also continue to make progress on declassification through the systematic and mandatory declassification review processes. However, good news usually comes with a little bad news, which is that there is a backlog of moving the declassified items back into the open environment.

We are working with the Presidential Libraries and CIA to make this process more efficient. For example, at the Carter Library, we have been able to make the returned

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[1] The Remote Archives Capture (RAC) Project is a collaborative program to implement the automatic declassification provisions of EO 12958, as amended, to 25-year-old classified holdings in the Presidential Libraries. The program has been a coordinated project among the Presidential Libraries, the CIA and other classifying agencies. Classified Presidential materials at field locations are electronically scanned and brought to Washington where they are reviewed by equity-holding agencies in a centralized location.

declassified and processed records available electronically though these electronically available records are outside the context of their textual files. We appreciate that researchers want access to these files as soon as possible, so we will work, to continue to improve efficiency by developing better processes and studying the further use of electronic systems at each Presidential Library.

With RAC systems, such as the one at the Carter Library, declassified records will still require review for non-classified restrictions, such as personal identifiers or detailed information on how the Secret Service protects of the President, but using an electronic system could expedite the process .This combined with other process improvements could allow faster public access to historical materials, while safeguarding sensitive information Seven to 8 million pages of records from the Reagan Library will be the next set of pages that will be reviewed and declassified. .

To speed the declassification process for federal records NARA established an interagency referral center in 2005, and since then staff has concentrated on preparing records for review by their originating agencies. Now, with agencies returning decisions, staff is beginning to process records for release in the open shelves.

Among the first records to be released are State Department records on Central America and Army records on the Vietnam War.

The declassification issue, however, has a larger dimension. Last year, I announced the launch of a National Declassification Initiative, or NDI, to build on the success of our referral center. The purpose of the NDI is to coordinate more closely the declassification activities of the Federal Government and use the most efficient declassification process to improve the quality of the reviews and release the maximum amount of information in the shortest possible time.

In the past, resolving referrals required a large investment of both time and resources. Records had to be sent, either physically or electronically, to the agency, and then the

agency had to review the records, resolve any questions that arose, and report their decisions. However, the NDI has streamlined this process for all involved.

Now, agency representatives come to the Archives and examine documents with NARA staff. If another agency needs to review a document for equities, the representative of that agency is also involved so that questions and concerns can be settled quickly. This face-to-face process has been one of the keys to the NDI's success so far, as it serves to preclude redundancies in review by having every agency with an equity review the same group of records at the same time rather than having time consuming "serial referrals."

Second, the NDI established a quality assurance team to perform quality assurance review on the initial review of documents conducted by agencies. By doing this, we ensure that material that should be made public is released, and material that needs to remain classified, for national security reasons, is not released. In addition, this review helps to avoid situations where agencies unnecessarily refer material to other agencies, slowing down the declassification process, or fail to release information that does not require continued classification.

Looking to the future, we advocate the development of systems that integrate records management, information security, and declassification within agencies. Our partners, the Information Security Oversight Office and the Federal agencies who classify records, recognize the increasing complexity of managing and declassifying these records, and that the challenges will only increase in a rich electronic information and electronic record environment. An integrated approach will give us the tools to better manage those complexities.

Partnerships

Providing wider access to the billions of pages of textual records already in the National Archives nationwide is another challenge that we our attempting to meet through several digitization projects.

We have established several major partnerships with private entities. In 2006, we announced a partnership between the Kennedy Library and the EMC Corporation of suburban Boston to digitize the entire collection of papers, documents, photographs, and audio recordings of President Kennedy.

We also entered into an agreement with Google for a pilot program to make some of the National Archives' audiovisual holdings available online. Today, you can go to the Google site and see a collection of NARA's rare and historical films.

More recently, we entered into a partnership with Footnote.com, to digitize millions of records. Footnote is a subscription-based internet service that features searchable original documents. So far, Footnote has digitized more than 33 million pages that are now available on its web site.

In addition, we recently entered into a partnership with the Genealogical Society of Utah to digitize Civil War pension files.

Although each partnership is unique, we have crafted a digitization strategy that incorporates basic principles for all partnership projects which ensure:

- The safety and accessibility of original records during the digitization process;
- Partnerships are non-exclusive, and all of them require free public access to the online images in all of NARA's research rooms nationwide;
- All of the agreements give NARA unrestricted ownership to the data and images after an agreed-upon period of time; and
- Draft partnership agreements are posted for public comment to ensure transparency and to get public input before NARA commits to the partnership.

We are looking for additional partnerships to help us meet our goal of increased public access to our holdings. We are also working to develop our own capability to digitize and make available—electronically via the Internet—collections of paper and audiovisual records that are especially fragile or valuable.

Electronic Records Archives

One of the greatest challenges to the National Archives is the rapidly growing number of electronic records being created by the Federal Government. These records include text documents, e-mails, web pages, digital images, videotapes, maps, spreadsheets, presentations, databases, satellite images, geographic information systems—and more types of records to be created in the future.

Unlike parchment or paper, electronic records can become inaccessible quite easily—as time passes and technology advances. The hardware and software used to create these records can become obsolete very quickly, within years or months. This leaves countless important records at risk of being lost forever, but the good news is that the technology for *preserving* electronic records is finally catching up with the technology for *creating* them.

The first phase of our Electronic Records Archives, or ERA, will become operational in June of this year. The mission of ERA is clear and simple: it will authenticate, preserve, and make accessible—far into the future—the important electronic records of the Federal Government, regardless of the type of hardware or software used to create them or the kind available in the future. The ERA Program is proceeding on two developmental tracks: the Increment 1 (ERA Base) and Increment 2, Executive Office of the President (ERA EOP). The ERA Base Initial Operating Capability (IOC) will provide basic electronic records management capability for NARA legacy data and records and for current transactions of other Federal agencies. IOC for the ERA Base is scheduled for the end of June 2008. The ERA EOP will provide rapid ingest, search and retrieval capabilities for the Presidential records of the George W. Bush Administration, which will be transferred to NARA on January 20, 2009.

One of the first major tasks faced by ERA will occur on January 20, 2009 when the National Archives takes custody of the records of the Bush Administration. Millions of electronic text documents, digital photographs, and emails will be among that record. If

the past is prologue, the first request for access to those electronic records will also come on January 20, 2009. ERA will ensure that we are prepared to meet those requests.

ERA will be built to be able to respond to advances in information technology. ERA will accept new types of electronic records, and Federal departments and agencies can use the latest technologies in their daily record keeping, knowing that those records can be easily accepted by ERA.

Presidential Libraries and Museums

The Presidential Library system formally began in 1939, when President Franklin Roosevelt donated his personal and Presidential papers to the Federal Government. At the same time, Roosevelt pledged part of his estate at Hyde Park to the United States, and friends of the President formed a non-profit corporation to raise funds for the construction of the library and museum building.

Roosevelt's decision stemmed from a firm belief that Presidential papers are an important part of the national heritage and should be accessible to the public. He asked the National Archives to take custody of his papers and other historical materials and to administer his library.

Before the advent of the Presidential Library system, Presidents or their heirs often dispersed Presidential papers at the end of the administration. Though many pre-Hoover collections now reside in the Library of Congress, others are split among other libraries, historical societies, and private collections. Sadly, many materials have been lost or deliberately destroyed.

Today, the National Archives manages twelve Presidential Libraries from President Hoover to President Clinton. Recently, President Bush announced that his library would be located at Southern Methodist University in Dallas, Texas. The National Archives is already working on the Bush Library. Last year, we hired four archivists and a museum

registrar to begin the planning for Library. This year, we are hard at work planning the logistics of moving millions of pages of documents, electronic records, and artifacts from Washington DC to a temporary facility in Dallas. There, our staff will begin documenting and processing the records in preparation for transfer to the presidential library when it is completed. Our FY2009 budget proposal requests 24 positions for this work.

The enactment of the Presidential Records Act in 1978 gave ownership of presidential records to the American people and made them available to FOIA requests 5 years after the President leaves office. The archival processing of these FOIA requests requires searches through textual and electronic files, the retrieval of responsive files and documents, and page-by-page or message-by-message review for statutory and privacy restrictions. The PRA Libraries -- Reagan, Bush 41, and Clinton -- have substantial backlogs of FOIA requests. We have worked to streamline these processes, but identifying, retrieving, and reviewing files still takes much human effort. The FY 2009 Budget requests 15 positions for additional archivists in these libraries to address the backlog and get to our requestors the documents they need.

The Presidential libraries also continue to collaborate on public programming and conferences and to expand their national presence in education and outreach. Last November, they jointly sponsored a two-day symposium on the Presidency and the Supreme Court, held at the Roosevelt Library in Hyde Park, NY. The keynote speaker was former Supreme Court Justice Sandra Day O'Connor, and other speakers included academic experts on the court and the Presidency, media representatives who cover the court, and former White House counsels. This event followed the successful symposium on the Vietnam War at the Kennedy Library in early 2006. The Presidential Libraries are planning their next joint conference on Energy to take place in 2009.

Regional Records Centers and Archives

For almost 60 years, the National Archives and Records Administration has provided comprehensive records management services to the Federal government. Since the first Records Center opened in 1950, NARA's Federal Records Center Program has grown into a national network of 18 facilities storing 26 million cubic feet of records. Records Center facilities, located from coast to coast, provide secure storage and ready access to non-current records of Federal agencies and District Courts.

In 1999, the Records Center system converted to a reimbursable program that has provided the Federal community with exceptional service on a fully fee-for-service basis. Our Federal Records Center Program has had eight profitable years operating as a reimbursable business within the Federal government.

Records Centers are an efficient, essential means to protect Federal records needed for administrative, legal, fiscal, and, sometimes, historical purposes. Over the past three years, as part of a nationwide effort to meet modern facility standards, NARA has opened new records centers to replace aging facilities in Georgia, California, and Texas. In the next three years, we plan to open new facilities in Colorado, Illinois, and Missouri. In addition to housing paper records, our Records Centers store electronic media, and help agencies convert paper to digital media.

The national Military Personnel Records Center (MPRC) in St. Louis is one of the National Archives' largest operations. It is a central repository of 100 million military personnel and medical records of veterans since the beginning of the twentieth century. (Earlier military personnel records are in Washington, DC.) MPRC staff respond to over a million requests a year – 5,000 per work day – mostly from veterans and their families needing information to qualify for benefits and entitlements. It is not uncommon for the Center to receive an urgent phone call from a doctor with an immediate need for a medical record, or from a family needing proof of military service to bury a loved one. Our staff are on call 24/7 to answer such emergency requests.

Older military personnel records, typically those of WWII and earlier veterans, are increasingly sought for genealogical and historical purposes. To meet this research need, NARA and the Department of Defense reached an agreement in 2004, for the National Archives to acquire legal custody and responsibility for records, 62 years after a veteran's death or separation from service. As a result, the National Archives will assure that our veterans' records are preserved and accessible to future generations of Americans.

In addition to the nationwide Records Center system, NARA has fourteen Regional Archives throughout the country. The Regional Archives are one means to extend public access to our expert services and programs for researchers, educators, students, or anyone else with an interest or need to use or know about our government's records and our nation's history. Of course, another important way we extend access to our programs and services is through our Web site.

Most Regional Archives are co-located with a Records Center. In 2005, NARA opened a new Southeast Regional Archives in suburban Atlanta. Next year we will open a new Central Plains Regional Archives in Kansas City. These two facilities replace old, deteriorating facilities. Currently, NARA is undertaking a comprehensive analysis of the future role of the Regional Archives system. We expect to complete this analysis by the end of the fiscal year.

Civic Literacy

At this time of year, approximately 5000 people pass through the National Archives each day. Many are high school and junior high school students who wait noisily and impatiently to get to the Rotunda for the Charters of Freedom. But as the teenagers climb the marble stairs of the Rotunda to see the Charters, they became suddenly solemn, as they discover what thousands of visitors to the National Archives do each year – that the freedom declared in writing more than 230 years ago, i.e., the government foundations

laid out by the first Americans, and the rights ensured to all citizens – are still relevant today

.

At the National Archives, simply giving access to our holdings is not enough. We are committed to providing opportunities for the public to see, use, and learn from the records of our government and in doing so develop a greater understanding of the history, culture, values, and ideas that have shaped our nation. It is vital that the raw documentary facts we process, preserve, and store—10 billion pieces of paper and, in the future, many terabytes of electronic records—have meaning for the American people to whom they belong.

In Washington, D.C., our Learning Center is now fully open, focusing on NARA's efforts to help teachers make the study of history, civics, and social studies more engaging, interesting, and important for students through the use of primary documents. The Presidential Libraries and Regional Record Centers conduct similar programs for students and teachers. For nearly 30 years, NARA has conducted the "Primarily Teaching" summer institutes at the National Archives Building in Washington, DC. The goal of the program is to teach teachers how to conduct research in our holdings so they can creatively integrate historical documents into classroom instruction.

Other longstanding education activities and partnerships include our involvement in National History Day—at the local, state, and national levels—and in "Teaching American History" grant projects funded by the Department of Education, in which staff in Washington, at many of the Presidential Libraries, and at regional archives around the country all participate. The Presidential Timeline, in which all Presidential Libraries participate, provides resources for teachers and students. Our new Digital Vaults web site recently has been nominated for a Webby, the leading international award honoring excellence on the Internet,

Taking our civic literacy efforts directly into homes, we have collaborated with the "Mini Page," which is syndicated in more than 400 newspapers around the world and reaches

millions of children and their families. At any given time, hundreds of NARA staff members are serving as teachers and consultants, writers and editors, archival scholars, and museum curators in public programs aimed at engaging Americans in the study of their own history through written records that document that history.

Center for Legislative Archives

The Center for Legislative Archives preserves and makes available to researchers the historical records of the U.S. House of Representatives and the U.S. Senate. The Center reports on its programs and activities, as you know, to the Advisory Committee on the Records of Congress, co-chaired by the Secretary of the Senate and the Clerk of the House. Through its public outreach programs, the Center uses these historical records to promote a better understanding of Congress and the history of American representative government.

The Center is actively involved in the development of content for the exhibitions featured in the Capitol Visitor Center. Many of the extraordinary treasures from House and Senate records, currently stored in the Legislative Treasure vault, will be on display for the American people to see when they visit the Capitol. In essence, these landmark documents are returning home to the Capitol, where they first originated when the House and Senate created them doing the people's and the nation's business. In concert with the CVC's opening later this year, the Center will also be distributing its educational publication on the history of Congress to high school classrooms.

With a budget of $2,000,000 and a staff of 17 full-time and 3 part-time employees, the Center for Legislative Archives houses the institutional records of the House and Senate from the First Congress to the present—totaling one-half billion pages documenting the history of representative government in America. The Center delivers over a million pages of records annually to support the current conduct of Congressional business. The Center is devoting significant resources to the processing of the records of the 9-11

Commission. During FY 2009, the Center will make those records available to the public, as mandated by the Congress and the Commission.

The Center also provides on-site reference assistance to researchers ranging from Congressional scholars and historians to attorneys looking for legislative intent and genealogists searching for individual petitions and claims. In the research room, the Center maintains published source material on Congress including the Journals of the House and Senate, the Congressional Record (and its predecessors the Globe and the Annals of Congress), Guide to the U.S. Serial Set, CIS Indexes, as well as other works on the history of Congress.

The Center has an increased challenge as Congress moves from paper to electronic preservation of its materials. It recently acquired over 900 DVDs of Senate Hearings from the 108th Congress. These discs, which are not reliable for long-term preservation, are the only copies of these hearings. Like the rest of the National Archives, the Center will take on one more challenge of managing fragile electronic records by creating the ways and means to provide for the permanent storage and continued access to these important records documenting the history of Congress. These discs represent the beginning of a sea change in how Congress creates and preserves its records.

With the assistance of the Senate and House Archivists, the Center is meeting with committee staff and information technology specialists in the Senate and House to conduct a survey of electronic record-keeping systems and practices. The results of that survey will help the National Archives prepare to meet the unique needs and requirements of the Senate and House as we move forward with the development of ERA.

The National Historical Publications and Records Commission

Congress established the National Historical Publications and Records Commission (NHPRC) in 1934. It supports a wide range of activities to preserve, publish, and encourage the use of documentary sources, created in every medium ranging from quill pen to computer, relating to the history of the United States. The Commission is a 15-member body, chaired by the Archivist of the United States and includes representatives of the three branches of the Federal Government. In addition, the Commission includes representatives of professional associations of archivists, historians, documentary editors, and records administrators.

Since it received grant-making authority in 1964, the NHPRC has awarded $169 million to 4,200 projects involving records held by state and local governments, colleges and universities, nonprofit organizations, and private collections. The Administration, however, is not seeking funding for this program in 2009, and instead is focusing on management changes in 2008 to improve performance.

I will now end with a story told by President Eisenhower: A government worker arrived in Washington in 1953, and as his taxi passed by the National Archives Building, he saw carved on one of its pedestals "What is Past is Prologue." He asked the taxi driver what the motto meant, and the reply was "Oh. That. That's bureaucratic talk. What it really means is 'you ain't seen nothin' yet.'"

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, Senate Committee on Homeland Security and Governmental Affairs

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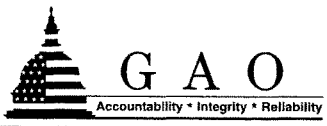
INFORMATION MANAGEMENT

Challenges in Implementing an Electronic Records Archive

Statement of Linda Koontz, Director
Information Management Issues



GAO-08-738T

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Highlights

Highlights of GAO-08-738T, a testimony before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, Senate Committee on Homeland Security & Governmental Affairs

Why GAO Did This Study

Since 2001, the National Archives and Records Administration (NARA) has been working to develop a modern Electronic Records Archives (ERA) system, a major information system that is intended to preserve and provide access to massive volumes of all types and formats of electronic records. The system is being developed incrementally over several years; the first system increment is to provide an initial set of functions, with additional capabilities to be added in future increments. However, in 2007, NARA's contractor acknowledged that it would not be able to meet the planned date for the initial operational capability of the first ERA increment.

GAO was asked to provide information on the steps that NARA has taken to respond to the delays encountered in the development. To prepare this testimony, GAO reviewed its previous work in this area, as well as the preliminary results of an ongoing performance audit. For this ongoing audit, GAO analyzed NARA reports, contract documents, and other material related to the ERA development project, and interviewed agency and contractor officials.

To view the full product, including the scope and methodology, click on GAO-08-738T. For more information, contact Linda Koontz at (202) 512-6240 or koontzl@gao.gov.

May 14, 2008

INFORMATION MANAGEMENT

Challenges in Implementing an Electronic Records Archive

What GAO Found

NARA is working to overcome the ERA schedule delays that occurred in 2007 by changing to a two-pronged development strategy, but uncertainties remain. First, NARA developed plans to achieve an initial operational capability for the ERA system in June 2008 with somewhat reduced capabilities from those that had been planned. For this initial system, known as the "base" system, software development deadlines have been met, and testing began on schedule. However, NARA has extended some test periods beyond what was originally planned, leaving less time at the end of the schedule for completing final activities. Although officials remain confident that the schedule changes will not affect the date of the initial operational capability, problems uncovered through testing could lead to its delay. Archives officials said they are mitigating the risk of delays by closely monitoring the testing process.

Second, the development delays of 2007 put at risk NARA's plan to use ERA to receive the presidential records of the Bush Administration in January 2009. In response to this risk, NARA and its contractor are pursuing a parallel development of a separate part of the system that is to be dedicated initially to the Bush records; this part of ERA—referred to as the "EOP (Executive Office of the President) system"—uses a different architecture from that of the base system: it is being built on a commercial product that can provide basic requirements for processing presidential electronic records, such as rapid ingest of records and ability to search content. Pursuing this as a separate development decouples the EOP system from dependence on the base system. However, completing the EOP system in time for the presidential transition remains uncertain, primarily because NARA and its contractor are still negotiating the precise scope of work and system requirements. These negotiations are challenging because, among other things, NARA does not know the exact nature of the presidential records that it is to receive in 2009. Although NARA and Bush Administration officials have held meetings on this topic, according to NARA officials, the Administration has not yet provided specific information on the volume and types of data to be transferred. System development is nonetheless proceeding based on NARA's volume estimates and the information available so far. According to NARA, developing the EOP system in time for the presidential transition is critical so that it can respond in a timely fashion to the information requirements of the Congress, the former and incumbent Presidents, and the Courts.

Challenges remain for the ERA program in both the near and long term. In the near term, NARA has to finish testing the base system, define the scope and requirements of the EOP system, and complete its development. In the long term, it plans to merge the two architectures of these systems into an integrated whole. Meeting these challenges will be important to achieving NARA's ultimate aims for the ERA system: preserving and providing access to all types and formats of electronic records.

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to participate in today's hearing on challenges and progress in overseeing the preservation of our nation's historical documents. As you know, since 2001, the National Archives and Records Administration (NARA or the Archives) has been working to develop a modern Electronic Records Archives (ERA) system. This major information system is intended to preserve and provide access to massive volumes of all types and formats of electronic records. ERA is to automate NARA's records management and archiving life cycle; the system is to consist of

- infrastructure elements, such as hardware and operating systems;
- business applications that will support the transfer, preservation, dissemination, and management of all types of records and the preservation of and online access to electronic records; and
- a means for public access via the Internet.

In view of its complexity, the system is being developed incrementally over several years; the first piece (or increment) of the ERA system is to provide an initial set of functions, with additional capabilities to be added in future increments. However, in 2007, NARA's contractor acknowledged that it would not be able to meet the planned date for the initial operational capability of the first ERA increment.

As agreed, in my testimony today, I will provide information on the steps that NARA has taken to respond to the delays encountered in the development. My comments today are based on our previous work in this area, as well as the preliminary results of an ongoing performance audit, which began in February 2008 in response to a legislative mandate.[1] For this ongoing performance audit, we analyzed NARA reports, contract documents, and other material related to the ERA development project, interviewed agency and contractor officials, and observed an ERA software demonstration. All work on which my statement is based was conducted in

[1] Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, div. D, title V, 121 Stat. 1844, 2006 (Dec. 26, 2007).

accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

NARA changed its approach to developing ERA in response to schedule delays that occurred in 2007, but uncertainties remain. The ERA program is currently pursuing a two-pronged development strategy:

- First, NARA has developed plans to achieve an initial operational capability with somewhat reduced capabilities from those that had previously been planned; it refers to this initial system as the "base" ERA system. Initial operational capability for the base system is scheduled for the end of June 2008. Although software development deadlines have all been met, and testing began on schedule, NARA has extended some test periods beyond what was originally planned, leaving less time than had been planned at the end of the schedule for final security certification and accreditation.[2] Although officials remain confident that these schedule changes will not affect the date for the initial operational capability, problems uncovered through testing could lead to its delay. According to NARA officials, they are mitigating the risk of delays by paying close and continuing attention to the testing process, through such actions as weekly meetings of NARA's test team.
- The development delays in 2007 meant that the original plan to use ERA to receive the presidential records of the Bush Administration in January 2009 was put at risk. In response, NARA and its contractor are pursuing a parallel development of a separate part of

[2] The Office of Management and Budget requires that agency management officials formally authorize their information systems to process information and accept the risk associated with their operation. This management authorization (accreditation) is to be supported by a formal technical evaluation (certification) of the management, operational, and technical controls established in an information system's security plan.

the ERA system that is to be dedicated initially to these records; this part of ERA is referred to as the "EOP (Executive Office of the President) system." This system uses a different architecture from that of the base system: it is being built on a commercial product that provides some of the basic requirements for processing presidential electronic records, such as rapid ingest of records and ability to search content. This separate development decouples the EOP system from dependence on the development of the base system. However, it is uncertain whether the EOP system will be developed to the point that it can receive the Bush records in January 2009, primarily because NARA and its contractor are still negotiating the precise scope of work and system requirements. Finalizing the negotiations is challenging because, among other things, uncertainties remain regarding the exact nature of the presidential records that will be transferred to NARA in 2009. Although NARA and Bush Administration officials have held meetings on this topic, according to NARA, the Administration has not yet provided NARA with specific information on the volume and the types of data to be transferred. System development is nonetheless proceeding based on NARA's volume estimates and the information available so far. According to NARA, receiving the electronic presidential records and being able to search, process, and retrieve them immediately after the presidential transition is critical so that it can respond in a timely fashion to the information requirements of the Congress, the former and incumbent Presidents, and the courts.

Challenges remain for the ERA program in both the near and long term. In the near term, NARA has to complete the testing of the base system and define the requirements and scope of the EOP system and complete its development. In the long term, it also plans to merge the two architectures of the ERA base and EOP systems into an integrated whole. Meeting these challenges will be important to achieving the ultimate aims for the ERA system: automating NARA's records management and archiving life cycle and preserving and providing access to all types and formats of electronic records.

Background

The ability to find, organize, use, share, appropriately dispose of, and save records—the essence of records management—is vital for

the effective functioning of the federal government. In the wake of the transition from paper-based to electronic processes, records are increasingly electronic, and the volumes of electronic records produced by federal agencies are vast and rapidly growing, providing challenges to NARA as the nation's recordkeeper and archivist.

Besides sheer volume, other factors contributing to the challenge of electronic records include their complexity and their dependence on software and hardware. Electronic records come in many forms: text documents, e-mails, Web pages, digital images, videotapes, maps, spreadsheets, presentations, audio files, charts, drawings, databases, satellite imagery, geographic information systems, and more. They may be complex digital objects that contain embedded images (still and moving), drawings, sounds, hyperlinks, or spreadsheets with computational formulas. Some portions of electronic records, such as the content of dynamic Web pages, are created on the fly from databases and exist only during the viewing session. Others, such as e-mail, may contain multiple attachments, and they may be threaded (that is, related e-mail messages are linked into send–reply chains).

In addition, the computer operating systems and the hardware and software that are used to create electronic documents can become obsolete. If they do, they may leave behind records that cannot be read without the original hardware and software. Further, the storage media for these records are affected by both obsolescence and decay. Media may be fragile, have limited shelf life, and become obsolete in a few years. For example, few computers today have disk drives that can read information stored on 8- or 5¼-inch diskettes, even if the diskettes themselves remain readable.

In response to these widely recognized challenges, the Archives began a research and development program to develop a modern archive for electronic records. In 2001, NARA hired a contractor to develop policies and plans to guide the overall acquisition of an electronic records system. In December 2003, the agency released a request for proposals for the design of ERA. In August 2004, NARA

awarded two firm fixed-price[3] contracts for the design phase totaling about $20 million—one to Harris Corporation and the other to Lockheed Martin Corporation. On September 8, 2005, NARA announced the selection of Lockheed Martin Corporation to build the ERA system. The contract with Lockheed is a cost plus award fee contract[4] with a total value through 2012 of about $317 million. As of March 2008, the life cycle cost of the system through 2011 was estimated at $453 million; total life cycle cost includes not only the development contract costs, but also program management, research and development, and program office support, among other things.

The ERA system is planned as a comprehensive and systematic means for preserving electronic records, free from dependence on any specific hardware or software. NARA plans for the system to manage the entire lifecycle of electronic records, from their ingestion into the system through preservation and dissemination to customers. According to the Archives, the most fundamental characteristic of ERA is that it must be able to evolve over time to allow new types of electronic records to be brought into the system and preserved.

As planned, the ERA system will consist of six major components, each of which supports a specific business area:

- "Ingest" enables transfer of electronic records from federal agencies.
- "Managed Storage" enables stored records to be managed in a way that guarantees their integrity and availability.

[3] According to the Federal Acquisition Regulation, a firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This type of contract places on the contractor maximum risk and full responsibility for costs and resulting profit or loss.

[4] A cost plus award fee contract is a cost reimbursement contract that provides for a fee consisting of a base amount fixed at inception of the contract plus an award amount that may be given based upon a judgmental evaluation by the government of contract performance. The theory behind these contracts is that although the government assumes most of the cost risk, it retains control over most or all of the contractor's potential fee as leverage.

- "Dissemination" enables users to search descriptions and business data about all types of records, and to search the content of electronic records and retrieve them.
- "Records Management" supports scheduling,[5] appraisal,[6] description, and requests to transfer custody (from agencies to the Archives) of all types of records, as well as ingesting and managing electronic records, including the capture of selected records data (such as origination date, format, and disposition).
- "Preservation" enables secure and reliable storage of files in formats in which they were received, as well as creating backup copies for offsite storage.
- "Local Services and Control" regulates how the ERA components communicate with each other, manages internal security, and enables telecommunications and system network management.

Acquiring a major information technology system like ERA is a significant challenge for a relatively small organization such as NARA, which had no previous experience in acquiring major information systems. In 2002 and 2003, we pointed out this and other challenges facing the ERA project: for example, the solution to the electronic records archiving challenge had not been developed,[7] and no electronic archive system existed that was comparable in complexity or scale to NARA's vision.[8] Further, some key technologies associated with electronic document archiving and storage were not available commercially. As a result, ERA was

[5] A records schedule is a document that describes agency records, establishes a period for their retention by the agency, and provides mandatory instructions for what to do with them when they are no longer needed for current government business. Scheduling records includes, among other things, reviewing the organization's functions and recordkeeping requirements for organization and determining how long records are needed for conducting agency operations and meeting legal obligations.

[6] Records appraisal is the process of determining the value and the final disposition of records, making them either temporary or permanent.

[7] GAO, *Records Management: National Archives and Records Administration's Acquisition of Major System Faces Risks*, GAO-03-880 (Washington, D.C.: Aug. 22, 2003); *Information Management: Challenges in Managing and Preserving Electronic Records*, GAO-02-586 (Washington, D.C.: June 17, 2002).

[8] NARA officials believed that many relevant hardware and software components were available in the marketplace, and that potential integrators would have both an understanding of NARA's needs and appropriate strategies for addressing them.

technically and managerially complex and challenging, requiring the development of an advanced architecture for the conversion and preservation of electronic records.

In view of this complexity, the ERA program planned to use an acquisition and implementation approach in which the system would be deployed in five separate increments. The increments were to provide the following capabilities:

- Increment 1: provide the hardware, software, and communications needed to deploy the system; capabilities for unclassified and sensitive records (enabling online transfer of electronic records to NARA, annual transfers of records, and secure storage of electronic records in original formats); and support for certain records management functions (such as scheduling and appraisal).
- Increment 2: provide additional capabilities, such as content searching, responding to Freedom of Information Act requests, and preservation planning.[9] It is also to handle classified data.
- Increment 3: provide public access.
- Increments 4 and 5: provide additional preservation capability and storage.

Under the ERA program plan, developed in September 2006, Increment 1 was to take 2 years to develop, and the remaining increments were each to take 1 year.

Among the requirements that ERA is to fulfill are storing and providing access to electronic records from past presidential administrations. The Presidential Records Act gives the Archivist of the United States responsibility for the custody, control, and preservation of presidential records upon the conclusion of a President's term of office.[10] The act states that the Archivist has an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of

[9] Preservation planning is an ERA function that will help ensure that researchers have continued reliable access to records over time, regardless of the complexity or format of the records.

[10] 44 U.S.C. 2203(f)(1).

the act. At the time of the last presidential transition, NARA met these requirements by recreating the Clinton Administration's computer systems (software and hardware) that originally held the records and developing simple search interfaces so that NARA personnel could search for requested information. NARA reported that it took about 400 days to process the 2 terabytes of data from the Clinton administration.[11] According to NARA, it planned to use ERA to receive the Bush Administration's presidential records when the Archivist takes custody of them in January 2009. The ERA schedule had planned for the required capabilities (part of Increment 2) to be available in mid-2008.

We have issued several reports on ERA and its development.[12] Most recently, in July 2007,[13] we reported that NARA had taken action to implement our prior recommendations. The agency (1) established a baseline and target architecture, a plan to transition from the baseline to the target, and an architecture review board; (2) revised four of five key acquisition policies and planned to comply with appropriate standards; and (3) developed a fiscal year 2007 expenditure plan that contained an appropriate level and scope of information needed for the Congress to understand its plans and commitments relative to system capabilities, benefits, schedules, and costs.

However, we also reported that the ERA project had experienced schedule delays and cost increases. Factors contributing to the delays included low productivity of contractor software programmers, difficulties in securing an acceptable contract to prepare the site that was to house the system, and problems with software integration. Although the contractor took actions to

[11] A terabyte is about one trillion bytes or about 1000 gigabytes.

[12] GAO, *Records Management: Planning for the Electronic Records Archives Has Improved*, GAO-04-927 (Washington, D.C.: Sept. 23, 2004); *Information Management: Acquisition of the Electronic Records Archives Is Progressing*, GAO-05-802 (Washington, D.C.; July 15, 2005); *Electronic Records Archives: The National Archives and Records Administration's Fiscal Year 2006 Expenditure Plan*, GAO-06-906 (Washington, D.C.: Aug. 18, 2006).

[13] GAO, *Information Management: The National Archives and Records Administration's Fiscal Year 2007 Expenditure Plan*, GAO-07-987 (Washington, D.C.: July 27, 2007).

address the factors causing these delays and overruns, including replacing several programmers with a more experienced software development staff, NARA concluded that the project schedule should be revised so that reduced functionality would be available by the initial operational capability date. Subsequently, the schedule as of July 2007 delayed the date of the initial operational capability (IOC) from September 7, 2007, to March 31, 2008. NARA and the contractor projected that the estimated cost at completion of the IOC would be between $8 million and $12 million over budget. In May 2007, NARA and the contractor were in the process of negotiating additional mitigating actions needed and changes to the project's cost and schedule.

NARA Is Working to Overcome ERA Schedule Delays through Parallel Development Projects, but Uncertainties Remain

In response to the delays that occurred in 2007 and their effect on the Archives' readiness to receive the presidential records of the Bush Administration in January 2009, NARA developed a two-pronged strategy for continuing ERA development. First, it has developed plans to achieve IOC by June 2008 with somewhat reduced capabilities from those that had been planned; it refers to the system to be delivered at IOC as the "base" ERA system.[14] Second, it is planning to pursue a parallel development of another part of the ERA system that is to be dedicated initially to presidential records from the Bush Administration; this part of ERA, which is being developed using a different architecture from that of the base system, is referred to as the "EOP (Executive Office of the

[14] In the "increment" terminology, the base ERA system generally corresponds to Increment 1, although certain capabilities have been postponed.

President) system."[15] When these developments are complete, NARA plans to merge the two architectures into one ERA system.[16]

This strategy was developed through a series of negotiations that followed the contractor's acknowledgement that the IOC deadline would not be met. In July 2007, NARA issued a cure notice[17] to the developer, asking for a recovery plan that would include revised delivery dates, complete cost and schedule estimates, and a cost overrun sharing plan. In response to NARA's cure notice, the contractor provided a plan in August to deliver software in three iterations (or "drops") that would lead to IOC in May 2008; as part of this plan, the software to be delivered would not include all the capabilities that had been planned: for example, support for certain records management functions was postponed.[18] After review of the contactor's proposed plan, NARA determined that more time would be needed to complete and test the software and achieve security certification and accreditation of the system; accordingly, it adjusted the schedule to put IOC at the end of June 2008.

In addition, in September 2007, the contractor demonstrated to NARA a prototype for the EOP system that would address basic requirements for processing presidential electronic records, such as rapid ingest of records and ability to search content. To ensure that a system to receive presidential records would be available by the

[15] The EOP system generally corresponds to Increment 2 with the eventual addition of certain capabilities from Increment 1.

[16] Although ERA is conceived as one system, it is to include multiple "instances." An instance is a single segment of the ERA system, consisting of the integrated system hardware and software. Separate ERA instances will be installed according to the classification of data: for example, unclassified and classified data will be housed on separate, unconnected instances.

[17] A cure notice is issued by the government to inform the contractor that the government considers the contractor's failure a condition that is endangering performance of the contract. The cure notice specifies a period (typically 10 days) for the contractor to remedy the condition. If the condition is not corrected within this period, the cure notice states that the contractor may face the termination of its contract for default.

[18] The postponed functions include expanded capabilities for scheduling, disposition agreements, ingest, search, and dissemination, as well as initial capabilities for appraisal management and life cycle management planning. These functions, originally planned for inclusion in Increment 1, were moved to a future increment.

next change of Administration, NARA decided to pursue development of the contractor's prototype system.

Although NARA's cure notice asked for a cost overrun sharing plan, the contractor did not offer such a plan. According to NARA, the contractor developed the prototype EOP system at its own expense, in partial mitigation of the cost overrun incurred in 2007. Officials also stated that the contractor was independently funding research on issues related to preservation, whose results would be applied to future work. In addition, the Archives applied the development contractor's allocated award fee to the cost overrun. According to NARA, it would continue to work with the development contractor to devise ways to mitigate the cost overrun without loss of functionality, but officials acknowledged that under a cost plus contract, achieving such mitigation was uncertain.

In December 2007, NARA estimated a cost overrun for the development of ERA of about $15 million.[19] NARA now estimates this cost overrun at $16.3 million.

ERA Base System Is Generally on Schedule to Achieve IOC, but Testing Delays Are a Risk

Under the most recent plan, the base system is to achieve IOC at the end of June 2008; this is a 9-month delay from the earlier plan (of September 2006) for an IOC in September 2007. In carrying out this plan, the contractor met all deadlines for delivering the software drops, as shown in table 1.

[19] NARA, *The Electronic Records Archives Fiscal Year 2008 Expenditure Plan* (Dec. 4, 2007).

Table 1: Delivery of Software Drops for ERA Base System

Software drops with selected functions provided	Date planned	Actual date
Drop 1: • Ability to manage (create, modify, delete) new records schedules, legal transfer instruments, and transfer requests • Secure storage of assets placed in ERA • Network security and perimeter defense • Common interface for user interaction with ERA system	September 28, 2007	September 27, 2007
Drop 2: • Ability to manage (create, modify, delete) legacy records schedules, legal transfer instruments, and transfer requests • Transfer and ingest of records • Backup and restore • Expanded look and feel, help functions	December 21, 2007	December 19, 2007
Drop 3: • Verification of ingested records • Enforcement of access restrictions • Further expanded look and feel, help functions	March 7, 2008	March 5, 2008

Source: GAO analysis of NARA information.

In preparation for achieving IOC, NARA is currently conducting a series of tests aimed at verifying that ERA requirements are met. As part of this process, according to NARA officials, a NARA "Tiger Team" meets weekly to discuss testing and other activities leading to IOC and may adjust the schedule in response to test progress and results. Table 2 shows the status of the testing compared to the current schedule and the high-level schedule provided by the contractor.

Table 2: Progress and Changes in Test Schedule for ERA Base

Test milestones[a]	Date planned as of December 4, 2007	Date planned as of May 2, 2008	Actual date
Test readiness review	April 11	—	April 11
Product acceptance test/	April 14–30	April 14–May 23	Began April 14
operational acceptance test[b]		May 19–23	
Security test and evaluation	April 24–May 15	June 2–13	
Certification and accreditation	May 15	June 26	
Operational readiness review	(Not specified)	June 27	
Initial operational capability	June 30	June 27	

Source: GAO analysis of NARA information.

[a]Test readiness review: Review of plan and procedures status, procedure deviations, known problems, requirements and performance metrics, test schedule, and other information relevant to beginning of testing phase.

Product acceptance test: Verification that system hardware and software meets agreed measures of maturity and stability, among other things.

Operational acceptance test: Verification that usability and accessibility meet requirements, and critical and high-priority errors are addressed, among other things.

Security test and evaluation: Process to establish a high degree of confidence in the security of ERA and to minimize threats.

Certification: Formal technical evaluation of the management, operational, and technical controls established in the system's security plan.

Accreditation: Formal authorization by agency management officials for the system to process information.

Operational readiness review: Review similar to test readiness review that occurs before IOC.

[b]NARA's original plans showed the product acceptance test and the operational acceptance test being run concurrently; in later plans, the two tests overlap as shown.

Note: All dates are 2008.

As the table shows, the dates for product acceptance testing and operational acceptance testing have been extended, and later test dates have been adjusted in response. According to NARA, it decided to extend the time to ensure adequate time for government testing review of the delivered systems and related documentation. Further, NARA stated that when the Tiger Team analyzed the contractor's high-level schedule, it determined that NARA's systems engineering test team required 6 weeks for product acceptance testing, and the end users required only 1 week for operational acceptance testing. Accordingly, product acceptance testing was extended to May 23, and operational acceptance testing was scheduled for the end of that period. NARA officials remain confident that their testing will be completed and necessary fixes made in time for IOC at the end of June.

However, the ERA program faces near-term challenges in achieving IOC of the base system. Unforeseen problems uncovered through testing could lead to further delays. According to NARA, it is mitigating the risk of delays by paying close and continuing attention to the testing process, through such actions as the weekly meetings of NARA's test team. Delays in achieving IOC could lead to further delays in the development of ERA and the success of the Archives' long-term plan for electronic records management and preservation.

EOP System Is Being Developed, but Completing the Development in Time for the Presidential Transition Is Uncertain

In September 2007, the contractor demonstrated to NARA a prototype for the EOP system, designed to show the ability to address basic requirements for processing presidential electronic records, such as rapid ingest of records and ability to search content. To ensure that the EOP system would be available by the change of Administration, NARA decided to modify its architectural approach to the EOP system by continuing development of the system along the lines provided by the contractor's prototype. However, details of the system requirements and capabilities, as well as the specific development plans, are still being defined and final contract terms negotiated while development continues.

Under the new approach, the EOP system would be separately designed, use a dedicated system team (separate from the team working on the ERA base), and be developed concurrently with the work to complete the base system. The EOP system is to use an architecture based on a commercial off-the-shelf (COTS) product that supplies basic EOP requirements, including rapid ingest of records and immediate and flexible search of content.[20] (According to NARA, the EOP system is also to use key elements of the base system infrastructure.) Developing the EOP system in this way

[20] The COTS product lacks other records management features that the ERA system as a whole requires, but these are not required to meet NARA's immediate needs for receiving and managing the presidential records.

decouples it from dependence on the completion of IOC for the base system.

From October 2007 to March 2008, NARA spent $13 million on EOP system planning and development, of which $7 million was used to buy hardware. At this point, the contractor has delivered three initial software drops for the EOP system; it demonstrated Drop 3 software to NARA on April 28 and 29. (As of March 2008, two additional drops were planned, but the ultimate number of software drops is still being negotiated.)

Table 3 shows the dates that the contractor is to provide the planned drops as well as selected functions associated with each.[21] As the table shows, the first three drops were provided later than originally planned.

[21] The schedules in the table are for "handoff" dates: when the contractor provides the software but before NARA completes its review and accepts it.

Table 3: Software Drops for EOP System

Software drops with selected functions provided or planned	Date planned[a]	Actual date
Drop 1: • Upload (ingest) information about the record or file (metadata) • Upload original and adapted files into COTs product • Simple search and access retrieval	October 31, 2007	December 21, 2007
Drop 2: • Management of misclassified information ("digital shredding") • E-mail conversion • User interface for data-set-specific search • User access permissions for search results • Asset retrieval • Strong password rules • Creation of user profiles • Backup and restore	December 14, 2007	February 4, 2008
Drop 3: • Full access review case management • Full backup and restore • User administration for entering permissions • User profile deletion • Session lock mechanism • Integrity monitoring	March 28, 2008	April 29, 2008
Drop 4 • Generate output for access request • Log management • Access control service	May 13, 2008	
Drop 5 • Expansion and refinement of established features	June 13, 2008	

Source: GAO analysis of NARA information.

[a]Dates for drops 1 to 3 were planned as of December 4, 2007; dates for drops 4 and 5 were planned as of March 2008.

Although the development is continuing, challenges remain. In particular, because NARA and the contractor are still negotiating the detailed development plans and specific system requirements, the IOC date for the EOP system and specific details regarding functionality remain uncertain.

- The scope of work and requirements for the EOP are not settled. In response to NARA's request for a proposal describing detailed plans

for developing the system, the contractor delivered a proposal in February 2008. After review, NARA asked the contractor to respond to over 200 comments and provide a revised proposal. The revision, delivered April 25, 2008, is currently being reviewed. NARA expects to complete its review on or before May 16, and it expects to reach agreement with its contractor no later than May 30, with a signed contract modification by mid-June.

- Currently, NARA and its contractor plan to develop physically separate EOP system segments (or "instances") for classified and unclassified presidential records, with IOC for the unclassified instance preceding that for the classified instance. NARA is planning for both instances to achieve IOC by the end of 2008, but the dates are not settled.

Among the difficulties of finalizing the negotiations are uncertainties regarding the exact nature of the presidential records that will be transferred to NARA in 2009. Although NARA and the Administration have held meetings on this topic, according to NARA, the Administration has not yet provided NARA with specific information required for it to plan for reliable ingest, indexing, and accessing of the electronic records involved. Both the volume and many of the data types are uncertain:

- NARA has estimated that the volume of data from the Bush Administration will likely be 100 terabytes—about 50 times greater than that received from the Clinton Administration, and it has based its capacity requirements on that estimate.
- The COTS product on which the EOP system is based supports about 370 common data formats, so it can already accommodate some portion of the Bush Administration records. NARA has also obtained limited information regarding the e-mail and image records that will be transferred. However, it has not received details on the data types and formats for about 32 systems for which the Administration has provided brief descriptions, nor has it received sample data on which it could base its planning. According to NARA officials, if further information is received too late to be included in initial system development, they would plan, where possible, to convert the data types received to a generic format that would allow the EOP system to ingest and search the information.

These uncertainties mean that achieving a working EOP system in time for the presidential transition in January 2009 will be a

challenging goal. According to NARA, if it cannot ingest the electronic classified and unclassified records from the Bush Administration in a way that supports the search, processing, and retrieval of records immediately after the presidential transition, it will not be able to meet the requirements of the Congress, the former and incumbent Presidents, and the courts for information in these records in a timely fashion.

In summary, NARA has developed a strategy to overcome the earlier ERA schedule delays: it has developed the software and begun testing for the base system, and it has begun development of the EOP system. However, in the near term it faces the challenge of completing the testing of the base system and the larger challenge of defining the requirements and scope of the EOP system and completing its development. In the long term, NARA also plans to merge the two architectures of the ERA base and EOP systems into a coordinated whole. Continuing careful oversight by NARA and the Congress will be important in achieving the ultimate aims for the ERA system: to automate NARA's records management and archiving life cycle and preserve and provide access to all types and formats of electronic records.

Mr. Chairman, this concludes my testimony today. I would be happy to answer any questions you or other members of the subcommittee may have.

Contacts and Acknowledgements

If you have any questions concerning this testimony, please contact Linda Koontz, Director, Information Management Issues, at (202) 512-6240, or koontzl@gao.gov. Other individuals who made key contributions to this testimony were Barbara Collier, Pamlutricia Greenleaf, Charles C. Hinnant, Tarunkant N. Mithani, and James R. Sweetman, Jr.

Statement of

Paul Brachfeld

Inspector General

National Archives and Records Administration

Before the

Senate Homeland Security and Government Affairs Committee's Subcommittee on

Federal Financial Management, Government Information, Federal Services, and

Information Security

May 14, 2008

Mr. Chairman and Members of the Subcommittee, I thank you for offering me the opportunity to testify today.

NARA represents America's past like no other agency. We hold the treasure troves of our nation's history. However, as an organization, we must live in the present while preparing for the future that focuses upon electronic records. Today I will be quite candid in discussing what I and my staff have observed during my tenure as the National Archives Inspector General.

Archivist Allen Weinstein has in tangible ways supported my office, as well as me personally. However, our work comes at a price. In the wake of certain investigations and significant audits conducted by my office; my staff and I have been met with significant resistance and unfounded challenges.

Our audits and investigations have consistently identified challenges in core elements of NARA's operations that we believe, by definition, constitute material weaknesses. While preservation workstations sit empty in our world-renowned laboratories due to funding and staffing constraints, contractors siphon funds for projects that are ill defined, poorly managed and fail to meet user needs. While millions of dollars flow to the Electronic Records Archive program – which to date is well over budget and has failed to meet deliverable dates – and other IT related contracts, Archivists struggle under resource

constraints to process and preserve the ever-expanding quantities of records arriving at NARA everyday. While NARA is exposed to significant frauds and the loss or theft of millions of dollars worth of accountable property such as laptops, desktops, and servers, Presidential artifacts sit unprocessed and vulnerable due to limited resources. Finally the importance of these issues is magnified by the fact the Archivist and I share the belief that NARA is by definition a national security agency as we hold the vital records of virtually every Federal agency, as well as those of such other entities as the Warren and 911 Commissions.

I will dedicate the balance of my testimony to the Electronic Records Archive program and related electronic White House Presidential Records. I am also available to discuss other audit and investigative work products produced by my office touching upon areas ranging from preservation of holdings, processing and accessing federal records or the recovery of hundreds of stolen Federal records via our highly successful and unique Archival Recovery Team (ART) concept recently featured in the April edition of Smithsonian Magazine.

Electronic Records Archive

With regard to the Electronic Records Archive Program, in December of 2001, nearly 7 years ago, I first approached the former Archivist about the need for audit coverage of the ERA Program by stating:

"Resources have not been assigned to the OIG to facilitate our independent analysis of the program and to serve as a basis to report to the Archivist, Congress, and the American people on the status of the ERA program. Stakeholders actively involved in designing, building and coordinating the deployment of ERA may be blinded from identifying issues that exist and call out for identification."

In a subsequent meeting in April, 2002, I requested two audit positions to support the fledgling ERA program. The former Archivist told me he could give me 50 people and I still couldn't cover it, so he asked me how I thought I could do it with two. I responded that I would take the two – but received none.

Dedicated ERA audit resources sought by the OIG in budget submission after budget submission were not forthcoming even as I defined that the value of independent, dedicated and skilled oversight over this critical program could not be overstated and the risks of not performing this function unacceptable. GAO report 03-880 issued in August of 2003 defined NARA's need to staff key unfilled ERA positions to mitigate the long-term risk to the acquisition. In meetings with the GAO I urged them to define that one of the key unfilled ERA staff positions be dedicated to the NARA OIG to support independent and expert oversight of the program and related contractors. Regrettably, the GAO did not act upon this request.

Unfortunately, it came as no surprise to my office when on July 27, 2007; NARA issued a Cure Notice to the ERA prime contractor for "failure to make progress in the work so

as to endanger performance under the subject contract." Indeed, the impact of delays and cost overruns is significant and profound. While I do not know if or when ERA will be fully operational, any additional delay will adversely impact other NARA operations, require NARA to consume additional scarce dollars to sustain the Archives Research Catalog or develop some other vehicle to bridge the gap until ERA meets baseline functionality requirements.

Finally in the fall of 2007, with the support of Archivist Weinstein, this office was able to staff a dedicated ERA audit position. One need not have been a visionary or a soothsayer to anticipate the problems that have encumbered the ERA program. We hope that at this late date that OIG audit support will prove to be of value.

White House E-Mail Records

In April 2007, an article raised my concern as to the condition of the White House records, as under the Presidential Records Act, Bush 43 Presidential Records will accrue to NARA. The ingestion of these records is to be a key and early benchmark in the successful deployment of ERA. Following the April 2007 article, I requested briefings and was informed by key NARA staff members that the Bush 43 development and transition to a new and effective record keeping system had not been accomplished and records were being stored in a vulnerable production server environment. After looking into this I found an internal NARA report for the fourth quarter of FY 2006 where a

NARA official reported that they "continued" to work on matters relating to management of electronic records by the Executive Office of the President, Office of Administration.

The problem for my office is that concerns as to access issues or functionality of White House record keeping systems were never directed to my attention by knowledgeable NARA officials prior to press accounts reaching my desk. Thus I was not afforded the opportunity to address a significant condition which will potentially impact a major NARA program that falls under my statutory jurisdiction.

I am aware of momentum to provide NARA additional authority to ensure Federal agency compliance with records standards most notably with regard to their internal preservation of electronic records. I believe that such legislation and related funding is required. If NARA does not assume this role, then I ask who will. NARA traditionally has not viewed itself as an enforcement entity but rather one that focuses upon collegiality and relationships. I believe that given limited cognizance into agency record keeping processes, a void exists in which inappropriate treatment or loss of Federal records may well be occurring. This position may be alien to my peers at NARA but I come from dual law enforcement and audit backgrounds and believe that additional powers, authority and resources are needed in this area. The consequences of failed record keeping in Federal agencies today will adversely impact our nation tomorrow.

In terms of personnel and budget, NARA is not large, but its mission surely is. I am an Inspector General. My statement today will most certainly have repercussions, but my candor reflects my statutory duty to this subcommittee and the American taxpayer.

I thank you for the opportunity to testify and am available to take your questions.

Statement
Of
Patrice McDermott
Director
OpenTheGovernment.org

Senate Homeland Security and Government Affairs Committee's Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security
On
"National Archives Oversight Hearing: Protecting Our Nation's History for Future Generations."
Wednesday, May 14, 2008
Room 342 Dirksen Senate Office Building
3:00 P.M.

Thank you, Chairman Carper, Senator Coburn, and Members of the Subcommittee, for the opportunity to speak today on the role of the National Archives and Records Administration in protecting our nation's history.

My name is Patrice McDermott. I am the Director of OpenTheGovernment.org, a coalition of consumer and good government groups, library associations, journalists, environmentalists, labor organizations and others united to make the federal government a more open place in order to make us safer, strengthen public trust in government, and support our democratic principles.

In my testimony today I want to discuss a number of roles that NARA has traditionally held and new ones it is being called upon to take on. It is critical, I think, that the Subcommittee fully realize that NARA is probably the only agency in the Executive Branch that has – and is seen by the public to have – access to government information as its primary mission. While that mission has been understood to encompass primarily historically significant – for a variety of reasons – information, NARA is increasingly being looked to as the site to locate new initiatives and offices pertaining to public access to contemporaneous government information. These include the newly mandated Office of Government Information Services, created by the OPEN Government Act, and an office that will have responsibility for implementing the Memorandum on Designation and Sharing of Controlled Unclassified Information, better known as "Sensitive But Unclassified" information. This latter office will have the task of bringing order to the multiplicity of control markings – such as SBU, FOUO – across the government that are meant to safeguard information that is not classifiable, but that is arguably not for immediate public disclosure.

I will briefly address these new responsibilities and then address the concerns of many in the public access community related to NARA's more traditional roles for records, and especially, e-records, management and provision of access to the records of our nation.

Office of Government Information Services

The OPEN Government Act (P.L. 110-175) established OGIS specifically at NARA. It did so as a result of congressional findings that interests promoted by the Freedom of Information Act (FOIA), as well as American traditions and ideals regarding the value of an informed citizenry and the legitimacy of representative government, were being insufficiently served by the existing system of agency practices and implementation, in which DOJ has been the lead agency for 30 years. Congress specifically directed the creation of an ombudsman office apart from the Department of Justice for mediation of contested requests. The new office, established with strong bipartisan support in both Houses of Congress, also has the critical mandate to evaluate agency implementation of FOIA with a disinterested eye. While appropriations are not the purview of this Committee and Subcommittee, we urge your support of NARA's ability to create and sustain this new office and to make it function for the benefit of public access to federal records within a contemporaneous timeframe.

Controlled Unclassified Information (CUI) Implementation Office

The proliferation of disparate and open ended control designations, such as "Sensitive But Unclassified," "For Official Use Only," and "Sensitive Security Information," restricts public access to disclosable information and makes more difficult sharing of information among governmental entities and others that the federal government recognizes as having a "legitimate need to know." Moreover, many of these labels exist without congressional sanction, leading to confusion as to whether the records are releasable under the Freedom of Information Act (FOIA), including undermining the FOIA's presumption of openness and its requirement that Congress, and only Congress, should create new categories of withheld records. Although such designations do not describe any category of records that may be properly withheld under the law, they are often treated as a basis for withholding records requested under FOIA. The new CUI framework will continue to affect the media's ability to keep the public informed and the public's ability to press government action to improve safety and security.

The plan is for the implementing office is to be at NARA. For those of us who care about ensuring limitations on control markings that foreclose public access to unknown volumes of government information, NARA is seen as a good home. It will need both the necessary funds to make it work and ongoing Congressional oversight to make sure it is working properly to the benefit of the public.

Records and E-Records Management

In 1982, the Committee on the Records of Government proclaimed that "the United States is in danger of losing its memory."[1] They were talking about paper records. Our memory is at much greater risk now. And, of course, this is not just the loss of our family photos, as it were, but of that information necessary for accountability. Across the federal

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1 Committee on the Records of the Government 1985:9, 86-87.

government, we do not know with any certainty that all of the documents and information that we need to write our history, to understand policy development and implementation, to trace who knew what, read and edited what document, are being preserved.

Why is our memory in danger? Because the vast majority – if not all – of our documentary and information history is being created electronically but not necessarily well-managed and preserved electronically. Those of us outside government understand that the common policy is to only preserve the final policy document, for instance. That is important, but not sufficient. Some of us who have been around for more than a few years remember the days of carbon copies and complete paper files. In the government, the paper copies were annotated and initialed by those who saw and commented on them. It was not just the final version of the policy or memo that was filed away, but a documentary history of that policy's development.

This is the stuff of "what did you know and when did you know it"; it is the stuff of history and accountability. The various reasons given for not preserving it all are ones that we have heard before – the volume is too great; we don't have the resources to manage all this; it is not of importance to the leadership of our agency. Another reason is that Congress has been lax in holding agencies accountable and for ensuring that records management is seen as part of the mission-critical components of every department and agency. The loss of documents and information through indifference should be viewed with as much alarm as their loss through a system breach. The end result is the same except with indifference – or intentional failure to preserve – we will not necessarily know what has been taken from us and will not be able to restore our history to its previous status.

The National Archives and Records Administration (NARA) is supposed to be the leader in this area. The Federal Records Act gives NARA clear authority (44 USC 2904) including for promulgating standards, procedures, and guidelines, and conducting inspections or surveys of the records and the records management programs and practices within and between Federal agencies. As far back as 1996, NARA committed to working "with agencies on the design of recordkeeping systems for creating and maintaining records of value." While a procurement standard developed by the Department of Defense was accepted many years ago by NARA, very little progress has been made government-wide toward electronic records management systems. Records are stored on servers and, in some cases, on individual PCs, but they are not managed in the sense of being easily retrievable by subject or creator or, I would guess, disposition schedule. We repeatedly have to relearn the lesson, apparently, that servers and backup tapes are not appropriate records management systems.

A report, "*Record Chaos: The Deplorable State of Electronic Record Keeping in the Federal Government*," issued in late April by Citizens for Responsibility and Ethics in Washington (CREW) (http://www.citizensforethics.org/recordchaos), in which OpenTheGovernment.org offered some assistance, gives us a good indication of the state we are in with electronic records generally and electronic communications in particular.

The report focuses on email records due to their ubiquitous nature in the federal government and in the modern office. A 1999 Department of Justice memo speculated that, in aggregate, federal agencies created at least 36.5 billion messages per year, a number that most certainly has increased exponentially in nine years. More recently, a respondent to our online survey posited that about 90% of the business of the federal government was conducted by email. And while electronic records include a variety of records (e.g., spreadsheets, maps, pictures), the widespread usage of email records makes them a top priority for agency record keeping policies. A key finding for this hearing is that no agency looked at used an agency-wide electronic record keeping system. Previously published reports document that most agencies do not use electronic systems for any records management.

The survey confirmed what CREW's research into agency policy had shown, namely that the most popular method of email records management is to print email records and file them with paper records. It is important to note that this was an option made available to the agencies by NARA in its General Records Schedule (GRS) 20. Survey results also pointed to the fact that some agencies seem to have multiple policies governing email records or no policy at all, something that the FOIA releases from agencies hinted at. Worse than multiple policies, is a lack of any method to manage email records. When asked how emails are preserved at their agency one person responded, "We have not gotten to that phase of records management." Not every electronic communication is worthy of permanent preservation, but GRS 20 has given agencies permission to treat all e-mail according to a common schedule for disposition; the policy of "print and destroy the electronic copy" derives from it.

Only six respondent to our survey said that their agency exclusively used some type of electronic system to manage its email records. Eighty-three percent of respondents (but only five individuals) who used an electronic system to manage their emails said that their system was searchable for email records. By contrast, of those using paper or some other system, 61% found it difficult to impossible to search for and find specific email records. This is, of course, the sort of difficulty over which NARA was sued[2] when GRS 20 was issued.

Lack of compliance and lack of penalties for non-compliance emerged as major problems. One respondent commented, "I do know that less than 80% of the agency complies." Overall, 30% of respondents did not think their co-workers complied with email record policies; 34% were not aware of any monitoring of employee record keeping practices; and 56% said there was no penalty for non-compliance (at least on the agency level). This is an area where agencies and NARA can make quick and meaningful changes.

In general, our admittedly unscientific survey exposed a number of major problems.

- First, there is a lack of consistent policies, as evidenced by the fact that so many respondents use multiple techniques to preserve email records at their agencies.

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2 Public Citizen, et al v. Carlin 6 August 1999. 184 F.3d 900. 910-11 (D.C. Cir. 1999)

- Second, movement towards electronic record systems has been unacceptably slow.

- Third, agencies are exposing themselves to legal problem and litigation sanctions, particularly in regard to the lack of care for metadata, if not corrected. Indeed, the failure of the federal government to adequately meet its electronic record keeping obligations has exposed it to potential liability in a host of other contexts. Inadequate electronic record keeping also means inadequate compliance with the FOIA and other information access statutes. Agencies= ability to meet their litigation obligations are seriously hampered by their inability to deal effectively with electronic records.

- Fourth, agencies lack training and compliance monitoring, two problems that would be easily cured by reforming agency policy and increased NARA involvement. Even knowledgeable agency employees lack a basic understanding of their record keeping obligations and how they can be satisfied. Written policies and guidelines within individual agencies are often inconsistent, confusing or outright misleading. This lack of understanding correlates directly to a lack of compliance with record keeping obligations.

The blame in terms of compliance falls most squarely on NARA, which, as I noted earlier, has a statutory obligation to promulgate standards, procedures, and guidelines, and conduct inspections or surveys of the records and the records management programs and practices within and between Federal agencies. NARA has elected, however, to limit its role to providing guidance only with little or no agency follow-through. Most significantly, NARA has abandoned its previous practice of conducting annual audits of agency compliance and proclaimed publicly that the responsibility rests first and last with individual federal agencies. At a symposium last fall, NARA was told by agency personnel that the failure to audit meant a failure of records management.

- Fifth, senior-level agency management needs to realize the serious problems with their agencies' electronic records management and take steps to correct them.

Snapshot of Executive Branch Web Pages

Many of the partners in OpenTheGovernment.org and others have serious concerns about the National Archives and Record Administration's decision to not capture and preserve a "snapshot" of government web pages at the end of the current Administration. Federal websites are federal records and, therefore, must be treated as such and preserved appropriately. As the site for the 2004 Presidential Term Web Harvest indicates, the first such snapshot was "intended to document Federal agencies' presence on the World Wide Web at the time that the Presidential Administration term ended in early 2005."

In a March 27, 2008 memo (NWM 13.2008), NARA stated that the reasons for this decision include:

- Existing, private entities such as the Internet Archive (www.archive.org) already record federal web pages; and

- NARA does not consider such a snapshot to possess enough historical value to warrant conducting and preserving a government-wide web snapshot.

While the work of organizations like the Internet Archive is valuable and meriting support, it does not supplant the responsibility of our national government to protect and document its own history and the NARA snapshot is the critical component of the Nation's historical record. No other agency has both the public mandate and the public accountability necessary for protecting historical records.

A NARA snapshot of federal agency web sites at the end of an Administration is as critically important as the snapshot of the White House and Congressional web sites, which NARA intends to continue. These agency snapshots provide the public with an image and understanding of the government at a particular point in time that can be then compared and contrasted with other such images over Administrations and allow the public direct access to federal digital records at a given time in history. While ongoing records management -- to the extent that it is usefully occurring -- and eventual transfer of permanently valuable records to NARA are both essential to the historical record, they do not fulfill the same purpose that end-of-Administration web harvests do to create a point-in-time record of our political and policy history.

Moreover, depending on private, non-profit organizations to keep our Nation's digital history poses serious risks. How do we ensure that these records will be and remain accessible and freely available without limitations on their use? While it is clear that entities such as the Internet Archive plan to continue such services, it remains the responsibility of government to ensure such access through its own records.

Digitization

Finally, in terms of public access to the records of our government, I want to both commend NARA for seeking to provide digital access to non-digital records and to raise some cautions. NARA has been a leader in looking for private sector providers for digitization of records that were created and preserved in a non-digital format. Their practice in this area has gradually improved, in some cases as the result of pressure from members of the public access community. NARA is, though, an example of a more general problem across the federal government: the government is not willing to pay for the digitization of its non-digital records, or willing to explore non-commercial models – such as consortia of libraries and others – for the provision of this service. Thus, in NARA's case and in others, the records of our government are indeed made available electronically – but, for 5 or 7 years, only at a price or only by physically visiting a NARA facility. In most cases, in what seems to the public access community to be a violation of the Paperwork Reduction Act, the private companies are given exclusive access to the records and no other entity is allowed access to do comparable digitization either in the near- or long-term. And often, initially at NARA and in other agencies, these projects are conducted under a Memorandum of Understanding (MOU) rather than a

public contract. I want to emphasize that the private, commercial sector has a key role to play in providing useful access to government information, but my community believes that the responsibility for ensuring ongoing, equitable, no-fee access to the public's information is the responsibility of government – and it is the responsibility of Congress to ensure it by adequate funding and oversight.

Congress has paid almost no attention to the proliferation of these projects across the government. In August 2006, OMB asked agencies to inform them of discussions or MOUs in existence. We understand there were a significant number of these, but OMB has refused to release even the number, much less what agencies were engaged or the entities with which they were engaging. We urge this Subcommittee to specifically ask OMB for that information and to conduct oversight of these proliferating initiatives.

Thank you for the opportunity to speak to you on these important issues. I am happy to answer any questions you might have

Statement of Thomas Blanton, Director, National Security Archive, George Washington University, www.nsarchive.org

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

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

May 14, 2008

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

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

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

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

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

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

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

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

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

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

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

- The backlog of declassified but unprocessed records is increasing, according to the PIDB, meaning that NARA is only falling further behind, at the very time that an "avalanche" of electronic records is already on its way.
- New original and derivative classification decisions have reached record levels in the last four years, creating a mountain range of new secrets that will have to be reviewed down the road. Federal spending on classification and information security has increased to more than $8 billion, according to the Information Security Oversight Office (the secret CIA budget for this activity would add perhaps 40% more), while the resources devoted to declassification are miniscule in comparison ($44 million in FY 2006, or less than one-half of one percent).[4]
- The Reagan Library has estimated that with their current level of resources it will take 100 years before all the Reagan White House records will be reviewed for release.[5]
- Our own experience at the Reagan Library has been that, just in the last seven years, those delays have lengthened from an estimated 18 months (as of April 26, 2001) to an estimated 87 months (!), according to the letters the Reagan Library sends to requesters on receipt of a Freedom of Information or Mandatory Review request. While 18 months delay is not unusual in our experience when the records at issue are highly classified, seven years of delay (and counting) effectively means denial.[6]

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[3] "[M]ore than 400 million pages have been declassified by the agencies since 1995 and are awaiting archival processing and that the backlog grows larger every day. Unless changes are made, it will be decades before all these records appear on the open shelves (or electronic databases) of the National Archives." Public Interest Declassification Board, *Improving Declassification: A Report to the President*, Dec. 2007, at 28.

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

[5] "Archivists at the Reagan Library, for instance, advised the Board that given their current level of archival resources, it will take 100 years before all the Reagan White House records, including those that are classified, will be reviewed for release." PIDB, *Improving Declassification*, at 18.

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

- The Remote Archives Capture (RAC) program initiated by the CIA and the presidential libraries in 1997 did assist the process of declassification but added to the unprocessed backlog – at the Ford Library, for example, 97,000 pages have come back electronically from RAC but in the past two years only 19,000 have been processed into the Library's collections, in part because CIA is resisting putting the documents online.[7]
- The Government Accountability Office has found that print-and-file record keeping systems at major federal agencies were not appropriately preserving e-mail for as many as half of the agencies' senior officials. Yet e-mail has become the norm for government business, producing by one estimate as long ago as 1999 some 36 billion messages a year.[8]
- The White House Executive Office of the President got rid of its e-mail archiving system during a technology changeover in 2002, and now has provided multiple, conflicting, and alarming answers to judicial, Congressional and NARA's own inquiries as to how many e-mail are missing from the backup tapes and when even the internal damage assessment will be completed.
- A recent survey of federal agencies by Citizens for Responsibility and Ethics in Washington and OpenTheGovernment.org found not a single agency policy that mandates an electronic record keeping system agency-wide, along with widespread confusion and serious lack of oversight on record keeping obligations.[9]
- New forms of electronic media in addition to e-mail are proliferating within government, such as the secure videoconferencing that hosted almost every significant Bush administration decision process around the war in Iraq – the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Oversight of the National Archives and Records Administration and the National Historical Publications and Records Commission

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

Testimony of Dr. James S. Henderson
Representing the Society of American Archivists

May 14, 2008

Mr. Chairman, Ranking Member Coburn, and Members of the Subcommittee:

My name is Dr. James Henderson. From 1987 to 2007, I served as director of the Maine State Archives. Since my retirement from the state archives, I have maintained contact with my colleagues in the archives profession, have returned to university teaching part-time, am continuing a digital publication for schools and libraries entitled *Maine: An Encyclopedia*, and have been active in local government and community organizations. I am here today representing the Society of American Archivists.

Founded in 1936, SAA is the world's largest organization of professional archivists, representing more than 5,200 members across the United States and in more than 20 nations. Archivists are the professionals who are entrusted by society to ensure access to the records of the people's government at all levels; to ensure the authenticity and integrity of those records; and to preserve and make accessible a credible and reasonably complete historical account of government and other aspects of society.

Thank you, Mr. Chairman, for holding this important oversight hearing. We believe it is long overdue because the National Archives and Records Administration and the National Historical Publications and Records Commission are essential in ensuring both government accountability and documentation of our nation's history. We believe that NARA and NHPRC have been overlooked and under-funded for far too long, and we hope that this hearing signals the beginning of proper attention being paid to their strengths and weaknesses, their successes and needs.

Managing Federal Electronic Records

NARA and the rest of the world have struggled for more than two decades with the huge challenges of managing, appraising (determining long-term value), and providing access to electronic records. This is not as simple as saving every record and developing a search engine to retrieve them.

The current Electronic Records Archive (ERA) project is grounded in years of basic

research attempting to define a "record" in the digital environment. Is it the e-mail message, the message plus attachments, all that plus the metadata (who sent it, when, to whom, for what program purpose, etc.)? How does NARA retain audio, video, electronic mapping (GIS), computer-aided design (CAD), and complex databases in a way that these electronic records will be accessible two hundred years from now? Do you know where your 1987 word processing files are?

As one who has struggled with these issues at the state level since 1987, I realize that even now no foolproof solution exists. No single "off-the-shelf" software program provides the magic bullet. Nevertheless, failure to stop the continued loss of our historical government records should be a very high priority. It will require close scrutiny by the Congress, along with some tolerance for uneven progress. And it will require that Congress provides adequate funding of the ERA.

We must be aware, however, that many federal records will remain outside the ERA, or will be lost, if agencies fail to follow systematic electronic records management procedures, such as those contained in NARA's guidelines. Agencies will not make this a priority unless Congress mandates that they do so – and unless Congress provides the necessary funding. NARA is no match for huge agencies with substantial political constituencies that want immediate gratification with little regard for "records management."

The cost of fully implementing an effective records management system may well be in the billions of dollars, as NARA recently has argued. In a budget of approximately $2.7 trillion, the expenditure of $2.7 billion (1/1,000, or 0.1%) does not seem excessive to ensure accountability for, and protection of, our American heritage.

The National Historical Publications and Records Commission

NHPRC supports archives across the country in their efforts to preserve the American record and make it accessible to scholars, students, family and local historians, journalists, documentary filmmakers, and others. It is the *only* federal program that concentrates on records programs and projects. It is the *only* federal program that links federal archives with those held by states, counties, municipalities, universities, and nongovernmental organizations. This rich, diverse, and vital documentary heritage conveys knowledge of a shared national experience from generation to generation, assures continuity of operations, documents personal rights and entitlements, and provides evidence to hold governments and other institutions accountable for their actions and responsibilities.

Since 1964, NHPRC has awarded more than $175 million to 4,300 projects in all 50 states and special jurisdictions. NHPRC grants have helped every state archives to preserve a detailed record of state-operated federal programs, and enabled 53 re-grant projects totaling $5.8 million – matched by state funds of $8.4 million – to reach thousands of local communities.

NHPRC and Electronic Records

NHPRC has provided an enormous boost to the preservation of traditional historical records in historical societies, archives, museums, and libraries across the country. Often these repositories also have responsibility for local government records. And now many of these repositories are being offered electronic versions of the old Civil War letter, the business journal, or the community photographs and maps. Videos, word processing files, spreadsheets, digital photos and maps, and even e-mails are often literally sitting on a shelf on a floppy disc or on a hard drive in an aging computer. They soon will die without attention.

NHPRC has provided funding for research into these problems and the larger problems faced by state governments. Please consider an anecdote from Maine.

During my 20-year tenure as State Archivist of Maine, we were awarded NHPRC support for several historical records projects. Most were for competitive re-grants to repositories throughout Maine to preserve and provide access to their historical records. This "re-grant" system later became the model for a state-funded program in Maine.

Very important were two electronic records grants. The first was to develop a strategic plan for managing, and selectively preserving, Maine State government electronic records. This plan, periodically updated by the State Archives, provided the guidance and information necessary to educate the State's information technology agencies (as well as legislators, the Attorney General's Office, and other key decision makers) about the problems of, and potential solutions to, managing electronic records.

The second electronic records grant supported the creation of a GeoArchives, which now captures, appraises, and preserves geographic information system (GIS) records that consist of maps and related data and metadata. This innovation brought to an end the practice of placing obsolete records on inaccessible backup tapes, erasing old data on the current version and, in effect, leaving no trace.

Both efforts provided the recognition and expertise that the State Archives needed to participate actively in the State's approach to electronic records management. This included being a lead agency in the recent development of a request for proposal to establish a well-managed e-mail system. When implemented, it should ensure retention of e-mail for required minimum periods, provide for improved retrieval for legal discovery and Freedom of Information requests, and enhance agency management. The system will be a precursor to a full, searchable archival repository for permanently valuable electronic records.

NHPRC is an important partner for state and local governments in developing solutions for the preservation of our nation's historical electronic records – wherever they are housed.

For the fourth consecutive year, the President has proposed no funding for NHPRC. Given the importance of the agency's work, SAA strongly opposes this recommendation

and asks Congress to appropriate FY 2009 funding at the fully authorized level of $10 million for NHPRC's national grants program plus $2 million for staffing and related program administration.

H.R. 5582, recently introduced in the House by Representative William Lacy Clay (D-MO), would reauthorize NHPRC at an annual level of $20 million for fiscal years 2010 – 2014. We urge you, Chairman Carper and Ranking Member Coburn, to work together to introduce a companion bill in the Senate and to ensure that it passes before the current reauthorization expires next year.

Freedom of Information

As State Archivist, I was, and continue to be, a member of Maine's Freedom of Information Coalition. Members include newspapers, radio media, Common Cause, and other public interest groups. Effective archives management and records management are inseparable from effective freedom of information policy. Without the legal requirement to retain and find records, Freedom of Information requests would return very little useful information.

For this reason SAA also supports sufficient funding for the Office of Government Information Services, and its Freedom of Information Act ombudsman, within the National Archives and Records Administration.

The Continuing Opportunity and Challenge

Historically many other archival institutions, both in the United States and around the world, have looked to NARA as the model for how to approach records management and preservation. NARA's work has been vital in contributing to the development of standards, policy, and legislation to bolster the greater archival mission. As others have testified, NARA faces enormous challenges not only in processing traditional paper records, but also in making the transition to managing the vast universe of electronic records. The archives community worldwide continues to look to NARA to lead the way in this important challenge. Americans count on NARA to ensure that the records of our government – whether paper or electronic – are held in the public trust.

We hope that the Congress will continue these oversight hearings, will recognize the critical importance of the work of NARA and the NHPRC – and will provide the necessary funding to get the job done well.

Testimony of Dr. Martin J. Sherwin
Representing the National Coalition for History

Oversight of the National Archives and Records Administration (NARA) & the National Historical Publications and Records Commission (NHPRC)
Senate Homeland Security and Governmental Affairs Committee
Subcommittee on Federal Financial Management, Government Information, Federal Services and International Security
May 14, 2008

Mr. Chairman, Ranking Member Coburn and Members of the Subcommittee;

My name is Martin J. Sherwin, University Professor of History at George Mason University and I am here today representing the National Coalition for History (NCH).

NCH is a consortium of over 60 organizations that advocates on federal legislative and regulatory issues affecting historians, archivists, teachers, researchers, and other stakeholders. As historians, researchers and conservators of American history and culture we care deeply about the programs and activities of the National Archives and Records Administration (NARA) and the National Historical Publications and Records Commission (NHPRC). Thank you for the opportunity to present our views on the National Archives and NHPRC today.

First, on behalf of the constituency I represent, I want to thank you Mr. Chairman, for holding this hearing. To our knowledge, this is the first oversight hearing on the National Archives in well over a decade. The archives are the repository of our nation's heritage and while we have faced many pressing domestic and international concerns during this period, I submit that we stand in danger of undermining our democratic institutions when we neglect the institutions that provide the American people with the opportunity to understand their history.

The Stakes for Democracy and Presidential Records

At the dedication of his presidential library in 1941, President Franklin D. Roosevelt made it clear why the National Archives, and its Presidential Library System are so vital to our nation's citizens.

> It seems to me [he said] that the dedication of a library is in itself an act of faith. 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.
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> .
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> 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 judgment in creating their own future.

Forty-six years ago I was a young Ltjg in the U.S. Navy trying to decide whether to study law, business or history. In October 1962 I participated in the Cuban Missile Crisis and my experiences during that extraordinary event led me to dedicate my career to understanding the principles, assumptions and details of American politics and foreign policy. I turned to studying U.S. history because I realized reflecting on that crisis how profoundly our politics and our policies influence the behavior of other nations. Only through the careful historical investigation of our government's policy making process can we understand the truth about policy formation. It is in the nature of the political process of any government that much of what we know about contemporary decisions will be revealed by historical research – by a review of the documents – to be incorrect, or at best partially correct. I submit that our democracy cannot remain robust without this constant historical auditing of our government's behavior. Just as the press is the fourth estate of our democracy, it seems to me that President Franklin Roosevelt was making the point in 1941 that history is its fifth, and equally essential, estate.

Ominously, the current administration does not appear to share President Roosevelt's view that sustaining our way of life depends in important ways on our access to history. Under the Presidential Records Act of 1978, presidential records are supposed to be released to historians and the public 12 years after the end of a presidential administration. In November 2001, however, President George W. Bush issued Executive Order (EO) 13233 that overturned an executive order issued by President Reagan and gave current and former presidents, their heirs or designees and former vice presidents broad authority to withhold presidential records or delay their release.

I consider this an outrage, nothing less than a frontal assault on the principle of open government that sustains our democracy. The president and vice president are public servants, elected to office to serve our nation, not as dictators, not as they define their service, but as our laws, our traditions and our institutions have defined them. After their tenure has expired, it is the public's right to know in a timely manner the details of how they went about fulfilling their responsibilities. Their actions are not a privileged secret that they and their families have the right to control. That is how dictatorships operate. That is how totalitarian societies function. That is a certain recipe for corruption. Does Congress not care enough about sustaining the future of our democracy to assure that the 1978 presidential records act is restored?

The history of the struggle to overturn executive order 13233 is instructive.

On October 1, a federal district court judge gave open government advocates a partial, but significant victory in a lawsuit they filed in 2001 questioning the legality of EO 13233. The judge struck down the section of the EO that allows a former president to indefinitely delay the release of records. However, it left intact other dangerous provisions.

The court held that the core provisions of the Executive Order are not "ripe" for judicial review, and will not be until the veto over the release of records is exercised. Until then, the threat of withholding presidential records will remain intact, and when records are ultimately withheld,

more years of litigation will be needed to overcome the effects of EO 13233. By contrast, passage of legislation to nullify EO 13233 would immediately correct the distortion of the Presidential Records Act that the Executive Order has created. On behalf of the organizations I am representing, I strongly recommend the prompt passage of such legislation.

On March 14, 2007, by a vote of 333-93, the U.S. House of Representatives approved H.R. 1255, the "Presidential Records Act Amendments of 2007,"a bill that would revoke EO 13233. 104 Republicans joined 229 Democrats to support the bill despite a threatened White House veto.

On June 20, 2007, the Committee on Homeland Security and Governmental Affairs reported out H.R. 1255 and its companion bill (S. 886) by voice vote. Twice since then, Majority Leader Harry Reid has sought to bring the bill to the Senate floor under unanimous consent

Last September, Senator Jim Bunning (R-KY) blocked a vote in the Senate on the bill, preventing floor action throughout the fall. On December 18, 2007, Senator Bunning lifted his hold. On January 22, 2008, Senate Majority Leader Harry Reid (D-NV) once again brought the "Presidential Records Act Amendments of 2007" to the floor under the Senate's unanimous consent rule. However, this time Senator Jeff Sessions (R-AL) publicly put a hold on the bill and blocked floor consideration. I would be interested to hear Senator Sessions explain how his actions promote our nation's democratic institutions.

This pro-transparency bill is non-partisan and applies equally to former presidents of both parties. Hypothetically, were Senator Clinton to be elected, and then re-elected, the Bush and Clinton families could conceivably have control of the release of records dating from as far back as 1981, George H.W. Bush's first term as vice president, up to 2017, or the end of Hillary Clinton's second term. To allow a former president's heirs to shape their parent's legacy by controlling access to their records makes an objective historical assessment nearly impossible and, I submit, undermines the foundations of our democratic institutions.

At a time when our nation's citizens are cynical about excessive government secrecy, this is one area where Congress has the ability to contribute to bolster the public's confidence in its government. A president's papers are the property of the American people. Historians should have the greatest possible access to these records to present to future generations the most accurate account possible of our nation's past, warts and all.

Chairman Lieberman has worked tirelessly to get this bill to the floor to no avail. It has broad bi-partisan support. We strongly urge you to work with your colleagues on both sides of the aisle to pass this legislation before the upcoming presidential election. The new president, no matter which party is elected, should start with a clean slate with regard to the preservation of presidential records.

Presidential Transition and Missing White House E-mails:

As you know, there has been on-going controversy, and litigation, over millions of White House e-mails that are either missing or have been destroyed. In court documents filed last week, the White House admitted that that it has no computer back-up tapes with data written before May

23, 2003, and that it cannot track the history of missing e-mails created between March and May 2003.

This three-month gap includes the historically critical period from when the United States invaded Iraq in March 2003, and the May 1, 2003 announcement by President Bush that major combat operations had ended in Iraq. If these records are indeed lost, imagine the difficulties that future historians of the Iraq War will have in presenting a full picture of the decisions that led us into this conflict. A nation inflicted by a White House induced case of historical Alzheimer's disease cannot expect to face future international challenges with the added wisdom that historical understanding contributes.

The end of President Bush's term is now less than nine months away, but no firm recovery plan for these missing or lost e-mails has emerged from meetings on this issue between the White House and NARA. If these hundreds of days of e-mails are truly missing, and not destroyed, the question becomes where is the $15 million or more estimated by the White House's Office of Administration to recover these presidential records going to come from?

When a similar situation concerning missing e-mails occurred at the end of the Clinton administration, the White House's Office of Administration was forced by Congress to absorb the cost of recovery. We strongly urge you to follow the Clinton administration precedent and mandate that whatever funds are necessary to recover the missing e-mails come out of the OA's budget and not that of NARA.

Resources

Any report on the state of the National Archives and Records Administration of necessity must include a discussion of resources, financial and human. NARA faces enormous challenges not only processing and preserving traditional paper records, but also in making the transition to managing electronic records as well. As the production of records from all types of media continues to grow exponentially, NARA is constantly challenged to do more with already strained resources.

I have been told, and I have no reason to think otherwise, that Archivist Weinstein has done an excellent job of getting the most out of every federal dollar and leveraging the use of NARA's funds. However, in recent years, because of the lack of funds, Dr. Weinstein has been left in the unenviable position of having to perform triage on his agency. For example, in 2006 NARA was forced to severely curtail public research hours at its facilities because of budget difficulties. It was only because House and Senate appropriators last year provided specifically allocated funds to NARA that it was able to restore these vital public services.

We understand that Congress continues to face enormous fiscal challenges in crafting the federal budget for fiscal year 2009. We are encouraged that as it did in this current fiscal year, NARA would again receive increased funding under the President's proposed FY 2009 budget. However, this funding is not in reality so much an increase as an attempt to rectify years of chronic under-funding of NARA. These modest funding increases are not a down payment on NARA's future, but rather back payments for years of neglect.

At a recent hearing before the Senate Judiciary Committee on completion of the Founding Fathers projects that receive support from the NHPRC, historian David McCullough said "you can tell a lot about a society by how it spends its money. Here is our chance, and it's long overdue, to show what we care about, what we value, and what we're proud to pay for."

When your constituents elected each of you, they entrusted you with great responsibilities. Obviously, we rely on you to make wise decisions about our nation's future. But you are also the stewards of America's past. Decisions you make about funding NARA and NHPRC, and ensuring preservation and access to federal and presidential records, directly effect whether our democratic institutions will be reinforced by a robust historical understanding, or weakened by a shallow, superficial historical awareness.

National Historical Publications and Records Commission (NHPRC):

I am sure that many of you drive past the National Archives building on your way home from your day here in the Senate. I'm sure you have noticed it is not unusual to see long queues of people stretching down the block and around the building in the evening for a chance to gaze briefly upon the Declaration of Independence, the Constitution and the Bill of Rights. However, the National Archives is much more than the keeper of the Charters of Freedom. Through the development of its many on-line services, NARA's records are now readily accessible to all Americans, not just those who come to visit Washington.

However, for the fourth consecutive year, the President has proposed zero funding for the National Historical Publications and Records Commission (NHPRC). We strongly oppose this irresponsible recommendation and request Congress to appropriate FY 2009 funding at the fully authorized level – $10 million for the NHPRC national grants program and an additional $2 million for staffing and related program administration.

In fiscal year 2008, Congress saved the NHPRC from elimination, and provided $7.5 million for grants, a $2 million increase from the previous fiscal year. However, the NHPRC has not received its fully authorized amount of $10 million since FY 2004. In the following three fiscal years the NHPRC only received only half that amount, or approximately $5 million per-fiscal year.

The NHPRC leverages every federal dollar with private sector contributions at a level approaching 50%. As a consequence, the Commission has been able to fund a wide variety of programs by combining private sector funds with a small federal investment. However, the annual uncertainty over the survival of the NHPRC and an unpredictable funding level makes it difficult to attract private capital. NHPRC grants are the linchpins for the funding structure of most projects. Loss of the NHPRC's funding will have a domino effect causing funding from other sources to be withdrawn or reduced.

Without critical NHPRC funding, award-winning biographies of American presidents and the founding fathers from such noted historians as David McCullough, James Patterson, Joseph Ellis, and others might never have been written. Without such funding Kai Bird and I could not

have written, *American Prometheus: The Triumph and Tragedy of J. Robert Oppenheimer*, which won the 2006 Pulitzer Prize and National Book Critics Circle Award.

Beyond its annual funding challenges, the NHPRC faces an uncertain future, for reasons that I find totally indefensible. This funding is oxygen for our democratic blood and to cut it off threatens to create an anemic national history.

NHPRC's current authorization expires in FY 2009. As we have seen, even with an authorization, the NHPRC has been under siege. Without congressional reauthorization, we fear that NHPRC would be even more vulnerable in the future.

A bill (H.R. 5582) to reauthorize the National Historical Publications and Records Commission (NHPRC) was recently introduced in the House by Representative Wm. Lacy Clay (D-MO). The bill would reauthorize the NHPRC at an annual level of $20 million for fiscal years (FY) 2010 – 2014.

We urge you Chairman Carper and Ranking Member Coburn to work together to introduce a companion bill in the Senate and to ensure that it passes before the current reauthorization expires next year.

The Need for Additional Archival Staff

The recent controversy over the release of Senator Hillary Rodham Clinton's papers from the Clinton Presidential Library covering her time as First Lady brought to public attention the need for additional archival staff not only at the presidential libraries but also throughout NARA. The lengthy time it took to release Senator Clinton's records fostered an appearance of impropriety and an inaccurate public perception of NARA somehow conspiring with the Clintons to keep these records from the public. The truth is that delays in responding to public requests at all of the presidential libraries have been exacerbated by both the lack of archival staff and the impact of Executive Order 13233. It is an ominous occurrence that historians and American citizens must resort to litigation in order to expedite the release of records.

We were pleased to see that the President's request for the coming fiscal year includes an additional $1.6 million to add 15 archivist positions to the Presidential Library system to begin to reduce the enormous backlog of materials that need to be processed. If appropriated, these additional funds, along with the $800,000 in funding Congress added last fiscal year to hire additional archivists, will begin to address the problem of under-staffing at NARA.

Unfortunately, the reality is that NARA's archival staffing level has remained stagnant for many years while the number of records that need to be processed has continued to grow exponentially as the use of electronic records has proliferated. While it is unrealistic to think that the staff shortage will be solved in a single fiscal year, we are encouraged by the fact that that the problem has been recognized and is being incrementally addressed. We hope that additional funding will be provided over the next few years to continue to remedy NARA's archival staff shortage.

Repairs & Restoration: We are distraught to see the dramatic $20 million cut in NARA's FY 2009 proposed budget for Repairs and Restoration down to a level of $9.2 million. Report language to the FY 2008 appropriation for NARA states:

> NARA is directed to update its comprehensive capital needs assessment for its entire infrastructure of presidential libraries and records facilities. The fiscal year 2008 President's Budget provided funding for ongoing repairs only to records facilities, leaving presidential libraries-some of which are in major disrepair-sorely in need of support and at risk for flooding and other potential dangers. The Appropriations Committees urge that the fiscal year 2009 President's Budget include funding for both records facilities and presidential libraries.

Despite this clear mandate from the House and Senate Appropriations Committees, the Administration has chosen to cut funding for the restoration of facilities already in the Presidential Library system while at the same time expending funds elsewhere in NARA's budget to prepare for the George W. Bush Presidential Library, a "library," that will be more like a presidential vault, if EO13233 is not nullified.

A perfect example of the maintenance needs faced by some presidential libraries is the Franklin D. Roosevelt Presidential Library and Museum in Hyde Park, New York. The FDR presidential library was the first, and is the oldest, in the presidential library system. Much of the library's infrastructure such as heating and air conditioning, as well as fire safety and security systems are dangerously out-moded and violate industry standards for the preservation of archival materials. The electrical wiring dates back to the library's opening in 1941, the basement often floods due to an ancient septic system and leaks frequently appear in the roof and flashing.

As NARA's overseers, I urge this Subcommittee to do all it can to ensure the presidential libraries that are already in the system are maintained adequately.

Recommendations for Expediting Research at NARA Facilities

None of the legislative or funding recommendations that I have urged you to act upon will realize their full potential if researchers are not able to expeditiously access the records that they are entitled to read. I therefore have created a list of recommendations based upon my experiences, and the experiences of several other historians, that will promote a broader and more efficient distribution of the information.

1. Digitizing collections: The goal must be to digitize all the collections in the national archive system and upload them on the web as expeditiously as possible. The example set by the National Security Archive at George Washington University is an excellent model to emulate. For the National Archives and Presidential Libraries, this is an enormous long-term undertaking, but the goal of achieving it should be clearly stated and vigorously promoted.

In the meantime, there are some simple steps that can be taken immediately that will improve research access:

a) All of the inventories of the archives' Record Groups finding aids and descriptions should be digitized and made available on-line which, among other advantages, would allow researchers to order records for use 24 hours ahead of time via the web. This will save time for both archivists and researchers and allow researchers who can only visit the archives on Saturdays to have records pulled for their use.

b) Archivist Weinstein should convene a Digital Records Advisory Committee composed of diverse group of historians who would set priorities for the order in which the national archives' collections would be digitized, and recommend other actions to promote this process.

2. Declassification: The declassification of records continues to be a serious problem. For example, a researcher working in the Eastern Europe collection has informed me that RG 59 (SD) is declassified only through 1974 in spite of the 30-year rule. Many documents are pulled out from already declassified boxes including from the 1940s and 50s. There are no documents in those collections that originated from secretaries, assistant and deputy secretaries in the 1960s making it difficult to figure out how policy was made. This is one specific examples intended to highlight a general problem.

3. CIA records: Allen Dulles' papers were cleared for declassification in 1992, but only released to Mudd Library at Princeton University last year – in the form of excised PDF files. Even OSS material is heavily excised and very patchy. Its easy to see that most of it is still withheld. This researcher reports that the Hungarian archives have been far more forthcoming. Hungary has done far more.

4. Wireless Access: I would also recommend that wireless access to the web be installed in all archives and presidential library reading rooms in order to enable researchers to look use the web to supplement and expedite their research.

Again, thank you for the opportunity to provide this testimony regarding NARA's budget for FY 2009, and for your past strong support for its mission of preserving our Nation's history.

I will be happy at this time to respond to any questions you may have.

Post-Hearing Questions for the Record

"National Archives Oversight: Protecting our Nation's History for Future Generations."
May 14, 2008

Questions for the Record from Senator Thomas R. Carper to Paul Brachfeld

1.) *Mr. Brachfeld, the Archives is given an extremely large mission and some would argue very little resources to complete it. As the protectors of our nation's history and some of its most important artifacts, do you feel you are given enough resources to fulfill the mission of your office?*
   a. *If not, what more is needed in terms of staff and resources?*
   b. *Also, what do you feel is the greatest impediment to accomplishing your duties at the Archives?*

As the protectors of our nation's history and some of its most important artifacts, do you feel you are given enough resources to fulfill the mission of your office? If not, what more is needed in terms of staff and resources?

The Inspector General Act of 1978 (amended) assigns this office the responsibility for conducting all audits and investigations within NARA. This capacity has historically been compromised by our lack of adequate audit and investigative resources.

Investigative resources are wholly inadequate to address the existing caseload of this office. This condition mitigates our capacity to perform pro-active investigative analysis to identify challenges to NARA *before* internal control weaknesses are exploited. Such "challenges" can even result in compromise to our national security due to the types of holdings we control. Thus NARA is not a sleepy little agency residing off the grid, our holdings place us right in the nexus of both current government and our nation's history. Inexplicably, with the investigative jurisdiction we are charged with addressing, our dedicated investigative staffing is as follows:

◊1 Assistant Inspector General for Investigations
◊ 1 Investigative Archivist
◊ 1 Forensic Auditor (50% Audit/50% Support of Investigations)
◊ 4 Special Agents (one position is new and remains vacant)

NARA has 37 geographically dispersed facilities as well as Affiliated Archives (such as the Naval Academy) staffed by approximately 3000 employees plus hundreds of contractors. We house billions of federal records (including troves of highly classified documents and images, our nation's veterans records, federal court records and those of Commissions such as the 9/11 and Warren), the nation's most significant documents

(Charters of Freedom, Amendments to the Constitution, Treaties, Patents etc.), and Presidential artifacts.

OIG investigators work traditional blue and white-collar crimes such as timecard and credit card fraud, theft of government assets, and embezzlement of federal funds. However, our investigative parameters extend far beyond these traditional investigative elements to include espionage, theft of heritage assets, hacker attacks upon our computer infrastructure, and inappropriate access to the most sensitive records of our nation. This is the type of work we are called upon to accomplish. Yet, having a full complement of only four investigators means in reality we will often only have one or two agents available to provide investigative coverage from coast-to-coast due to training, sick and annual leave, and travel status. Investigations are impaired and agents suffer from burn-out due to the unnatural demands placed upon them. The consequences are profound and impair our ability to support this agency, Congress, the Executive Branch and ultimately the American public, and figuratively speaking, there is no cavalry to come over the hill to provide reinforcement. Incremental growth by one agent this fiscal year (the fourth agent position currently vacant) is helpful, but does little to assuage my concerns.

Likewise on the audit side we face challenges just as daunting. Our audit staffing is as follows:

◊ 1 Assistant Inspector General for Audits
◊ 3 Program Auditors
◊ 1 Financial Statement Auditor
◊ 2 Information Technology (IT) Auditors
◊ 2 Electronic Records Archives (ERA) Auditors

The OIG is responsible for providing audit coverage to all NARA programs to ensure NARA meets its mission of serving the American democracy by safeguarding and preserving the records of our Government, ensuring that the people can discover, use and learn from this documentary heritage, and ensuring continuing access to the essential documentation of the rights of American citizens and the actions of their government. The OIG has defined our audit universe (the aggregate of all areas within NARA that are both available and for which audit coverage should be extended) to accomplish this effort; however given existing resources the OIG is challenged to provide even baseline coverage of all NARA programs. Scarce audit resources are consumed addressing non-discretionary audit requirements such as the Federal Information Security Management Act (FISMA), Program Review for Information Security Management Assistance (PRISMA), and the annual financial statement audits. Such mandates consume an estimated 35 percent of audit resources. Dedicating staff to the Electronic Records Archive program and in support of investigators likewise consumes an additional 35 percent of base audit resources. The net result is the lack of staff to perform audits of NARA programs, operations and contractual arrangements.

This challenge is made worse as NARA's functional requirements continue to grow. For example the NARA Business Plan, released February 28, 2007, which defines the strategy NARA will use to transition from its current business operating environment to the new business operation environment needed to implement the agency's strategic plan, lists at least 24 key work activities for FY 2009. These key work activities are each major efforts undertaken in a given year to meet the business objectives in NARA's strategic plan, and they will need program audit coverage by the OIG.

Some of these activities are critical to the agency's success such as (1) continuously monitoring and updating NARA's strategic risk management, (2) further automation and integration of ERA lifecycle processes, (3) implementation of a national declassification initiative, and (4) evolution of COOP plans will require extensive audit coverage not presently available with the current resources in the OIG.

Also, what do you feel is the greatest impediment to accomplishing your duties at the Archives?

The greatest challenge relates to OIG independence (which I will address further under Question 3) paired with a lack of connectivity and support from NARA management. Shortly after my selection as Inspector General in December 1999, I sent a memorandum to all senior NARA managers seeking their support and pledging my first duty was to assist them in their efforts to achieve NARA's strategic mission. By intent and deed I have never consciously deviated from this goal.

Sadly, case after case has defined that certain managers have, by their actions, hampered the ability of my staff to accomplish their work in the most effective and efficient manner and in the best interest of this institution. Parochial interests, short-sited thinking and simple, often unbridled hostility directed to OIG staff have adversely impacted upon our ability to achieve our statutory mission. Impediments and challenges to statutory OIG authority are routinely overcome, but at a price in terms of time and wasteful expenditure of effort.

However, the most damaging actions are those manifested not overtly, but in a less demonstrable manner. The OIG is simply omitted from briefings, discussions and the flow of information that pulses through the organization. Whether intentional or by error of omission, we simply lose valuable connectivity with NARA programs and operations and issues buffeting the agency. This in turn offsets or negates our ability to execute our mission. Often we are brought into a matter only, figuratively speaking, after the containment booms have been breached. The Berger case represents an outstanding example of this as do repeated security issues at a major NARA facility in the greater DC area.

There are model examples of rectifying or addressing the scenario which I have previously defined, such as the manner in which it was addressed head on by the Secretary of the Interior. In a memorandum to all employees the Secretary communicated both the role and authority of the OIG and his personal commitment to

support the OIG. Tangible action such as this would be a most encouraging sign here at NARA.

2.) *There has been some discussion about whether the Archives should take on more of an enforcement role in ensuring federal agencies and the Executive Office of the President are properly preserving and transferring their records to the Archives.*
   a. *Do you believe there is a major problem in agencies' records management systems that the Archives should use more enforcement techniques to achieve compliance?*
   b. *Do you believe that the Archives has adequate enforcement authority to ensure that Federal Records are being adequately captured and protected prior to being transferred.*
   c. *If not, what needs to change?*
   d. *Lastly, does the Archives have the resources necessary to conduct audits of federal agencies' records management systems?*

Do you believe there is a major problem in agencies' records management systems that the Archives should use more enforcement techniques to achieve compliance?

First, our limited audit coverage in this area requires the basis of my response to be primarily speculative in nature. However, I believe there is a major problem in agencies' records management systems. Our 2003 audit of NARA's attempt to aid agencies with records management, the Targeted Assistance Program, defined that NARA's outreach to Federal agencies in proactively addressing records management issues was limited, actually re-active in nature and rarely addressed the twin challenges of capturing and preserving electronic records in appropriate format and mitigating the risk of the destruction or loss of agencies textural records. It appears NARA currently has little capacity to proactively learn of or investigate an agency's record keeping issues before we become aware of them due to publicity generated by the press or other medium, and by that time the damage may be severe and the implications profound. It is likely NARA continues to be challenged in addressing major problems in agencies records management systems due to limited authority, staffing deficiencies and the precedence of other defined organizational priorities.

Thus as an Inspector General and auditor by trade, yet one who also comes from an investigative, law enforcement background, I am a strong supporter of enhanced enforcement tools for NARA. However, such tools will be of little use if NARA lacks capacity to perform inspections and evaluations of other Federal agencies to ensure Federal record keeping rules and regulations are being complied with, and departures from acceptable practices addressed in a timely and responsive manner. To generate effective enforcement, the failure to rectify identified findings must be met with real and significant consequences for the offending agency and responsible management officials.

Likewise, I think the respective agencies Inspectors General can play a critical role in this area. Inspectors General can test, evaluate and ultimately help NARA ensure Federal records are treated in compliance with applicable rules and regulations promulgated by NARA. In instances in which noncompliance with records keeping policy and requirements are observed, OIG staff can monitor and report through appropriate reporting mechanisms upon the status of corrective action whether adopted or not acted upon by their respective agency.

The dual need for additional NARA enforcement mechanism and vigilance of agency Offices of Inspectors General is illustrated by a recent OIG report at NASA. The NASA OIG reported (IG-08-010, February 28, 2008) that the agency "was not effectively and efficiently managing its official e-mail records in accordance with applicable statutory and regulatory requirements.... In addition, more than 92 percent of the senior management we surveyed were noncompliant with the requirements to identify, designate, store, and retain official e-mail correspondence." Clearly, these findings speak to current deficiencies which if not subject to remediation will adversely impact upon the accountability of our government.

Do you believe that the Archives has adequate enforcement authority to ensure that Federal Records are being adequately captured and protected prior to being transferred. If not what needs to change?

Quite the contrary, I believe that NARA lacks the capacity, capability and demonstrated intent to assume the role of enforcer of Federal records rules and regulations. NARA traditionally has sought to use collegiality and persuasion in dealing with other Federal agencies in the hope such an approach will yield positive results. My experience as an employee in other Federal agencies and now as the IG at NARA defines that such an approach often fails to address underlying problems and deficiencies. More enforcement tools for NARA, additional capacity invested in this agency and a re-orientation in approach will in my opinion compel a far higher level of compliance with NARA regulations than gentle persuasion has yielded to date.

Further, inside the agencies themselves records management officials often lack empowerment necessary to effectively address deficiencies. These records management officials are marginalized by operational and program officials who are more focused upon their goals and objectives and have very limited concern over record keeping matters which they view as "housekeeping" matters. Providing NARA with enforcement mechanisms would ascribe enhanced standing or clout to agency records managers and thus reinforce their authority within their own agencies.

Does the Archives have the resources necessary to conduct audits of Federal agencies' records management systems?

I would defer for a more specific and formal answer to this question to the Archivist of the United States as he is responsible for the budget and staffing of the agency. That

being said, I believe that our resources (even if spent in a judicious manner) are inadequate to meet our current mission requirements. Thus a further expansion of NARA's mission to encompass formal audits of federal agencies' records management systems would seem to be far beyond our present capacity.

3.) As I am sure you have heard, there is currently a bill in the Senate that would strengthen provisions of the Inspector General Act and allow Inspector Generals to be more independent conducting their official duties.

Are you a proponent of Senate Bill 2324?

I will respond to your question by noting that as a matter of routine as an IG I do not feel comfortable commenting upon proposed legislation. That being said as this legislation has direct impact upon the ability of my office to perform our duties in support of our stakeholders, I will respond. Let me note the following:

1. I was hired by the head of the agency (the Archivist of the United States)
2. I am evaluated by the Archivist and by law may accept a performance bonus.
3. I can be removed by the Archivist upon notification to Congress
4. My office budget submissions go directly to the Archivist.
5. Staffing requests go directly to the Archivist.
6. Space and facilities are provided by the Archivist.
7. Web content posting has been viewed as being *by authority* of the Archivist
8. With regard to responses to FOIA requests and determinations specific to redaction of OIG work products, at times, NARA's General Counsel has sought to define that the Archivist and not the IG is the deciding authority.

Now to the question posed as to whether I am a proponent of S 2324. I believe that the only true independence I have is based upon my personal integrity, morals, backbone and sometimes sheer guts paired with the character of the person that serves as Archivist of the United States. I strongly welcome the passage of any changes to the IG Act that allows this IG and others to gain additional measures of independence so that we can do the job demanded of us. It is hard enough to be a successful Inspector General much less one that is constrained and hobbled by real or perceived constraints upon independence.

Questions from Sen. Tom Coburn
For Paul Brachfeld, Inspector General, NARA
National Archives Oversight: Protecting our Nation's History for Future Generations
May 14, 2008

- *In your testimony, you indicated that management at the National Archives has systematically tried to deny you the resources you need to do oversight of the Electronic Records Archive – is this a correct assessment of your testimony?*
    - *Has this been the case under the current Archivist?*
    - *What has been the difference between what you have asked for and what you have received?*
    - *How has this affected your ability to oversee major projects such as the Electronic Records Archive?*

Response:
As defined in my testimony of May 14, 2008 before the subcommittee, beginning in 2001, former Archivist John Carlin routinely failed to support the OIG in our ability to provide audit coverage to the ERA program. With the OIG's depleted staffing levels at that time, we could not begin to address a program with the scope and size of ERA.

It cannot be emphasized enough that ERA is a program whose success or failure will have a profound impact upon all branches of government and the American public now and for the foreseeable future. ERA is a program which Archivist Carlin himself defined to the media as "our moon shot." Thus during the critical period stretching from conceptual development, to evaluation and selection of the winning vendor, through the initial phases of contract execution and deliverable evaluation, the agency lacked independent and dedicated OIG audit support. Although NARA received funding for and staffed approximately 40 ERA slots during this time frame, none of these slots were afforded to the OIG. Furthermore, as the GAO reported, many of NARA's ERA slots remained vacant, but still none were given to the OIG. I believe had the former Archivist honored my request for even two dedicated ERA program auditors our "moon shot" may well have not strayed so far off its planned trajectory.

In the third year of his tenure, Archivist Allen Weinstein supported the hiring of a dedicated ERA audit slot, that position was filled in October 2007. This paired with additional staffing allowed me to assign an existing IT auditor to the ERA program as well. Two dedicated ERA program auditors finally afford this office the capacity I have sought to provide a reasonable measure of audit coverage to the ERA program. Our initial focus was upon the accuracy of the contractor's labor billings based upon a referral from the ERA Contracting Officer (CO) concerning potential questionable charges. That report was issued in just the past week and defines significant deficiencies on the part of the government in overseeing the contractor, which in turn failed to provide adequate support for invoices submitted for payment under a cost-plus contractual arrangement. OIG auditors will now focus efforts upon testing and monitoring of contractor performance under the contract, which if all options are exercised, will run through 2012.

- *At this point, what is your opinion of the progress being made by Lockheed Martin in developing the Electronic Records Archive?*
    - *Is the system on-time and on-budget at this point?*
    - *Does the National Archives management have a clear vision of exactly what they are buying from Lockheed Martin or are product requirements vague and poorly defined?*
    - *Do you anticipate there being cost overruns in the future on this project?*
    - *Will the Electronic Records Archive be ready to accept President Bush's records on January 20th when he leaves office?*
    - *Is NARA properly defining its requirements so that the contractor knows exactly what it is expected to do?*

Response:
Initial audit coverage focused upon the accuracy, reliability, and support for contractor invoices. OIG auditors identified a systemic lack of oversight and scrutiny over the contractor, resulting in routine payment of invoices which consistently lacked basic supporting documentation at a time when the contractor was failing to meet contractual requirements. In testimony before the subcommittee on May 14, 2008, NARA officials reported that problematic aspects in terms of contractor performance and NARA oversight have been addressed in a number of positive and constructive ways. We will assign audit resources to independently assess and report on ERA progress as the program moves forward with emphasis on program expenditures as they relate to deliverables. I am not in a position to address the potential for further cost or schedule overruns at this time. What I can state is that our work will focus upon mitigating this threat.

In terms of whether the ERA program will "be ready to accept President Bush's records on January 20th," I can only state with certainty that the records will accrue to NARA in one or more formats. I know NARA has now divided the ERA project in a way to address these Presidential Records in a different way then the rest of the ERA program. Per the ERA Technical Director, NARA will be capable of ingesting these records, but I am unaware as to what that means exactly. The real test will be as to whether these records can be processed, described and made readily available under terms defined in the Presidential Records Act. Addressing systemic capabilities or capacity of the ERA program specific to the Bush administration records would be purely speculative on our part and not grounded in the audit discipline adhered to by this office.

Finally, you ask whether "NARA is properly defining its requirements so that the contractor knows exactly what it is expected to do?" With regard to ERA, the inverse scenario has been more the case. The contractor has been given the reins to design ERA under a cost plus contract vehicle within the parameters of the guidelines defined by NARA. In response to the Cure Letter of July 2007, the contractor has proposed a new strategy for moving forward on the contract and NARA officials have insisted that they will be engaged and vigilant in exercising authority over the contractor. We will work to support NARA in this regard.

- *Your office looked into the fact that Presidential Libraries are maintained largely through earmarks. What percentage of funds that maintains Presidential Libraries come through earmarks?*

- *What is the effect of maintaining the libraries through earmarks?*
- *Does it move lower profile, but more important, needs ahead of the more flashy, but potentially less important, projects?*

Response:
The OIG has performed no work with regard to the funding of Presidential libraries. Our work has focused upon accessioning and processing records and the security and preservation over holdings at these facilities.

Post-Hearing Questions for the Record

"National Archives Oversight: Protecting our Nation's History for Future Generations."
May 14, 2008

Questions for the Record from Senator Thomas R. Carper to Patrice McDermott

1) The federal government produces a lot of information. And much of this information is intended for national security purposes and if publicly available may endanger the well-being of our civilians, military, or economy. However, the U.S. government has been known to over classify some information that could be of greater benefit if open to public scrutiny. After reading everyone's testimony, I heard of some ingenious ways to ensure the government doesn't needlessly classify documents or keep documents classified that have no reason to be. With that, I want to ask a few questions for our panel on what could be the best way to balance security and accessibility. And how Congress can be of assistance. Ms. McDermott, you mentioned in your statement the increasing use of open ended control designations, such as "Sensitive But Unclassified."
    a. What affect do you think these new labels have on the current classification criteria and how can Congress rectify this situation but ensure sensitive information is protected?

Despite the fact that these markings are applied to unclassified information, they seem to be treated, in terms of disclosure, as if they were super-classified. There are currently no limits on who can apply them, when they can be used, how they are to be removed, and no balancing tests applied to their use. I think the proliferation of these markings degrades the national security classification system and further erodes the public's trust that the only information that is kept secret is that for which there is a clear expectation of harm to national security.

As you know, the White House issued a Memorandum to all heads of Executive departments and agencies a month ago. The intent of the Memorandum is to contain and constrain the proliferation of unclassified control markings – within the Information Sharing Environment. The goal is to standardize practices to facilitate and enhance the sharing of what is now called Controlled Unclassified Information, but only with and among those who are already sending and receiving it. The White House Memorandum, however, makes only a minimal nod toward public access and no acknowledgement of the benefits of openness to our society and to our safety.

We are all agreed that there is information that does need to be protected for some period of time. The tension, though, is not between openness and security; it is between information control for bureaucratic turf, power, and, more than occasionally, political reasons and the reality that empowering the public makes us safer. Secrecy does not make for a more secure society; it makes for a more vulnerable society and less accountable governments.

NARA has been given the responsibility for implementing the White House guidance. While they have indicated a commitment to talking with open government, civil liberties and privacy advocates, we think more is needed. The legislation that Rep. Harman introduced and that has passed out of the House Homeland Security Committee (H.R. 6193), while it would apply only to the Department of Homeland Security, has a number of provisions that promote and protect public access to information created or held by the government, ensure the appropriately limited use of the markings. I recommend it to you for your consideration.

It is certainly within the purview of this Committee and Subcommittee to work with NARA on the government-wide implementation of the CUI framework, and we would be happy to work with you.

2.) Sometimes it's necessary to have a little oversight to help agencies focus on their mission. My staff tells me that the Archives used to provide oversight to agencies, and sometimes audit them, in order to ensure proper records management is in place. However, I understand that this is not happening now. For instance, it has been mentioned that the Archives has tried to work with the White House to determine their records management system is in place, but there have been some road blocks.

   a. How can Congress make sure that agencies and the Executive Office of the President are performing proper records management?

NARA needs to be directed to meet its statutory obligation to ensure compliance with the Federal Records Act. Agencies need to be directed to institute electronic records management systems. NARA needs to be directed to change GRS 20 as it applies to e-mail; the failure to direct agencies to schedule electronic communications as they would any non-electronic communications has led to a massive breakdown in management of these records and potentially loss of important records. Regular oversight is a critical role for Congress in this area. The basic statutes are in place; they are just not being implemented as far as agencies are concerned. As far at the Executive Office of the President is concerned, further legislation may be needed to give the Archives clear authority to ensure an electronic records management system is in place and in continuous use for electronic communications and other records. And regular reports to Congress by NARA about its efforts governmentwide and in the federal agencies within the Executive Office need to be instituted and acted upon.

   b. And what types of incentives can Congress provide agencies and the President to make sure their priorities are on preserving key federal records.

Funding for the e-records management systems and regular training would surely be appreciated by the agencies. Making comprehensive records management a responsibility of the agency head and a part of the evaluation process of key agency personnel is a key component. Raising the status (perhaps through OPM) of records

managers within the agencies would also help to ensure preservation. Funding for an e-records management (and e-communications management) system(s) in the White House might ensure the preservation of key federal records in the White House.

c. Thirdly, what can the Archives and the President do about the known missing e-mails?

The Archives must ensure against any further destruction of e-mails (by the overriding of backup tapes or otherwise) and work closely with the Office of Administration to ensure that all existing and future e-mails are securely stored. The other problem is, of course, the missing government record e-mails on the Republican National Committee (RNC) system. The President can, and should, in both cases make clear to his staff and to the RNC that the responsibility for retrieving the mails lies with the Office of Administration in the case of the White House and the RNC in the latter case.

d. Lastly, who should pay for all of this?

The White House and the RNC should pay. Most likely, the American people will, though, because the Archives will have to expend the resources to retrieve these government records from their electronic dumpsters. There is really no choice. We can only work diligently to ensure such disregard for the law does not re-occur.

Post-Hearing Questions for the Record

"National Archives Oversight: Protecting our Nation's History for Future Generations."
May 14, 2008

Questions for the Record from Senator Thomas R. Carper to Thomas Blanton

1) *The federal government produces a lot of information. And much of this information is intended for national security purposes and if publicly available may endanger the well-being of our civilians, military, or economy. However, the U.S. government has been known to over classify some information that could be of greater benefit if open to public scrutiny. After reading everyone's testimony, I heard of some ingenious ways to ensure the government doesn't needlessly classify documents or keep documents classified that have no reason to be. With that, I want to ask a few questions for our panel on what could be the best way to balance security and accessibility and how Congress can be of assistance. Mr. Blanton, you mentioned a "declassification tax" to spread responsibility around the government and provide an incentive to agencies to not classify as much.*
    a. *Could you elaborate on that a little more?*
    b. *And tell us how you think the Department of Defense is going to receive this idea?*
    c. *What type of cost avoidance could we see if we use a tax method to ensure information is not needlessly classified?*

According to the most recent (May 30, 2008) report of the Information Security Oversight Office, government agencies and their contractors spent $9.9 billion on information security and classification in the most recent fiscal year, an increase of a billion dollars. At the same time, government spending on declassification remained at a paltry $44 million, the same as in the year before. This is dramatically out of balance. If declassification spending does not stay in proportion to classification spending, then the government is simply pushing costs into next year and the next, essentially kicking the can down the road without ever confronting the problem.

Each time a record is stamped secret, officials are creating a stream of costs in future years, for housing, securing, transferring and preserving that record in classified environments. In addition to physical security, the costs include expenditures on technology, personnel, training, security clearance processes, and the like. Declassification is a one-time cost that brings to an end that stream of secrecy expenses.

Given the widespread official acknowledgement of massive overclassification, much of the $9.9 billion of information security spending may be unnecessary. Yet without Congressional intervention, the disproportion between secrecy spending and the cost-saving investment in declassification is likely to widen. Simply mandating a 5% "declassification tax" – ordering agencies to spend 5% of their total information security expense on declassification – would re-allocate existing funds, would not require new appropriations, and would ultimately produce cost savings from not having to keep the unnecessary secrets in those expensive classified vaults. It also would permit the money spent on protecting necessary secrets to be focused on safeguarding information that truly poses a risk of harm to the nation.

The Defense Department is likely to react to such a Congressional mandate in a variety of ways. Top officials, including the former Secretary of Defense Donald Rumsfeld, have acknowledged the overclassification problem. They may see the re-allocation of funds as a useful management reform to put downward pressure on the creation and retention of unnecessary secrets. Pentagon budget controllers may well also see the medium- and long-term cost savings from a more rigorous and robust declassification effort. Freedom of Information and declassification review staff will obviously welcome the infusion of resources. Resistance will come from those officials who currently are not required to apply any cost-benefit analysis to their often-reflexive classification actions. Yet, it is those classifiers of information who are part of the overclassification problem.

It is unclear that we would see any form of cost avoidance per se from a "declassification tax" approach. Essentially, this is a metaphor based on the reality that each new "secret" stamp is the beginning of a stream of costs to the taxpayer, and only the "declassified" stamp brings that stream to an end. When agencies spend more of their information security budgets on declassification, they save money for the taxpayer in the long run. The challenge of ensuring that information is not needlessly classified will have to be addressed by Congress and the agencies by changing the classification standards that apply in the first place and creating countervailing incentives to discourage overclassification. A good model for such a reform can be found in the congressionally-mandated standards included in the Nazi and Japanese War Crimes Records legislation that produced major public releases of unnecessary secrets. These millions of pages would have remained in the classified vaults at major cost to the taxpayer, perhaps indefinitely, had Congress not acted.

2) *There has been a lot in the press over the past several months about Senator Clinton's First Lady papers and the large backlog at Presidential libraries to process these types of records. Mr. Blanton, you mentioned that it will take almost 100 years for all of the records at the Reagan library to be reviewed for release at current staffing levels. Obviously, these papers are critical to the work of Dr. Sherwin and the public at large.*
    a. *What are some of the reasons for this backlog?*
    b. *And what are some steps Congress and the Archives can take to process all these records, not just at Presidential libraries, but federal records as well?*
    c. *Is it funding, or are there other ways?*

As President Kennedy remarked, victory has 100 parents while defeat is an orphan. But the backlogs have many parents too. One obviously is staffing. The Reagan Library has lost staff both to attrition and to the start-up of other presidential libraries (particularly the Bush Library and the newly affiliated Nixon Library), while the overall National Archives system has labored under various hiring freezes. The National Archives never asked for increased staff in the 1990s when the White House ordered massive declassification of older unnecessary secrets.

In addition, leadership from the White House is significantly lacking. President Bush's executive order in November 2001 added months if not years of additional delay into the presidential record review process.

Also, recent Presidents have created vastly larger quantities of records, as the result of electronic information systems, and the libraries are inundated with huge quantities of electronic records, especially e-mail (32 million e-mail messages at the Clinton Library alone).

Congress will have to step in. The "declassification tax" idea would redirect existing resources to help clear up the backlog of classified records and to support the National Declassification Center initiative at the National Archives. The National Archives needs Congressional support to hire a new generation of archivists and records managers who are expert in electronic records as well as traditional archival processing. Congress will also have to require federal agencies to include electronic archiving and access standards at the front end of all new information technology procurement; otherwise, the National Archives will always be in the position of cleaning up after the parade. Congress will need to overturn President Bush's executive order on presidential records (a new Presidential administration may do this first, but Congress should legislate permanent standards).

Some of this requires new funding (such as the National Archives' staffing), but most of this involves the re-allocation of existing funding. The existing funding is quite large, so if Congress mandates how agencies should allocate the $9.9 billion they already spend for information security spending, and the $68 billion for information technology and services procurement, there should be plenty of room for improving the government's performance.

3) *Sometimes it's necessary to have a little oversight to help agencies focus on their mission. My staff tells me that the Archives used to provide oversight to agencies, and sometimes audit them, in order to ensure proper records management is in place. However, I understand that this is not happening now. For instance, it has been mentioned that the Archives has tried to work with the White House to determine their records management system is in place, but there have been some road blocks.*
    a. *How can Congress make sure that agencies and the Executive Office of the President are performing proper records management?*
    b. *And what types of incentives can Congress provide agencies and the President to make sure their priorities are on preserving key federal records.*
    c. *What can the Archives and the President do about the known missing e-mails?*
    d. *Lastly, who should pay for all of this?*

The most recent Government Accountability Office study ("National Archives and Selected Agencies Need to Strengthen E-Mail Management," GAO-08-742, June 2008) found that the National Archives no longer performs inspections of agency records management programs, and has not conducted any since 2000. GAO also found that the National Archives has not reported on its oversight activities either to Congress or the public, as required by the Federal Records Act, preferring instead to work quietly with agencies than to expose the problems.

In the case of the White House e-mail, this approach has been a disaster. The National Archives found out back in 2002 that the White House had junked its e-mail archiving system in the transition from one software package to another, but the National Archives' response was merely

to continue meeting with White House officials for another five years, while those same officials decided against implementing any new archiving system, and millions of e-mail went missing. When outside watchdog groups went public with the problem, the National Archives finally wrote the White House to ask what had happened. Only when my own organization -- the National Security Archive -- sued the White House in September 2007 did the National Archives admit in an internal memo that the White House had been unresponsive. In effect, the National Archives has adopted only the first half of Theodore Roosevelt's maxim, "speak softly and carry a big stick."

Congress needs to direct the National Archives to resume its inspection activities and fulfill its reporting requirements so it can assert leadership in the federal government on records management. In addition, Congress must give the National Archives the support it needs when it faces recalcitrant agencies. Congressional oversight needs to keep up the pressure on agencies to comply with archiving requirements. The White House needs to pay for the restoration of the e-mail backup tapes and the transfer of the Bush administration e-mail to the National Archives, with the funds coming from the administrative budget of the White House that should have covered these costs all along. We will always face such cleanup problems in the electronic record environment unless the front-end archiving standards are put in place on every IT system that creates or manages records.

Thank you again for your attention to these pressing matters.

Post-Hearing Questions for the Record

"National Archives Oversight: Protecting our Nation's History for Future Generations."
May 14, 2008

Questions for the Record from Senator Thomas R. Carper

June 30, 2008

Dr. Martin J. Sherwin
University Professor of History
George Mason University
Representing the National Coalition for History

1.) a. Can you tell us some of the ramifications if the Executive Order is not revoked by Congress or the next president?

Answer:

Senator Barack Obama is a co-sponsor of the legislation (H.R. 1255, S. 886) and has publicly stated that if elected he would revoke Executive Order 13233. In addition, Senator Obama is a member of the Senate Homeland Security and Governmental Affairs Committee and voted in favor of the bill at markup.

Senator John McCain is not member of the Senate Homeland Security and Governmental Affairs Committee and has not had to vote on the bill due to a Republican hold that is keeping the bill from consideration by the Senate. He is not a co-sponsor and there is no information on his Senate or campaign website regarding the issue. So his stance on revoking the Executive Order is unknown.

Under the Presidential Records Act, presidential records are legally required to be released to historians and the public 12 years after the end of a presidential administration. In November 2001, President George W. Bush issued Executive Order 13233 that overturned an executive order issued by President Reagan and gave current and former presidents, their heirs or designees and former vice presidents broad authority to withhold presidential records or delay their release indefinitely.

Soon after Executive Order 13233 was issued, a lawsuit was brought by Public Citizen in 2001 on behalf of itself, the American Historical Association (AHA), the National Security Archive (NSA), the Organization of American Historians (OAH), the Reporters Committee for Freedom of the Press, the American Political Science Association (APSA) and historian Stanley Kutler.

After six years of delay, on October 1, 2007, a federal district court judge gave historians and researchers a partial victory in the lawsuit questioning the legality of Executive Order (EO) 13233. However, in practical effect the judge's decision creates even more confusion in the disposition of presidential records.

Judge Colleen Kollar-Kotelly struck down the section of the EO that allows a former president to indefinitely delay the release of records. However, the judge did not rule on the larger issue of the constitutionality of the Executive Order. Instead the judge narrowly crafted her decision ruling that the section of the Executive Order addressing the rights of former presidents to delay release of records violated provisions of the Administrative Procedures Act.

The Bush administration chose not to appeal the decision.

Unfortunately, Judge Kollar-Kotelly did not rule on the legality of the sections of the Executive Order allowing heirs and designees of former presidents, and former vice presidents, the authority to control the release of documents, calling them "unripe" since no records have yet been withheld pursuant to those provisions. However, the judge left open the right for the plaintiffs to challenge these provisions in the future.

As a result, the judge left intact the two most legally dubious sections of the executive order. The idea that executive privilege devolves onto a former president's family or personal representative upon the death or disability of the former president allows private citizens to exercise a claim of authority that is incumbent on the executive branch.

In addition, the Executive Order creates a de facto vice presidential executive privilege for former vice presidents that has never been legally recognized.

The ramifications are obvious and perhaps even more dangerous. Oddly, the judge's decision in effect gives a former president's family, designees and former vice president's greater control over their records than a former-president.

Once the former president has died or become incapacitated, it would be natural, and tempting, for their heirs to present the most positive image of his or her presidency to the public. And, the executive order does not set an end date for the control of the heirs or the representative over the former presidents records. In addition, as we sadly saw with President Reagan, the former president may become incapacitated or pass away prior to elapsing of the 12-year mark that requires release. As a result, the former president's family may control his or her papers from day one.

As for former vice presidents, one only has to reflect upon the obsession with secrecy that Vice President Cheney has shown to realize the danger in extending the ability to withhold records once he is out of office. In addition, there are potentially cases where a former vice president succeeds to the presidency. This would allow a current president the ability to withhold records from their vice presidency that may prove embarrassing.

Finally, the Executive Order perverts the intent of the Presidential Records Act (PRA) by contributing to delays in the release of records. Under the PRA, the presumption is that the public should have access to a president's records. Specifically, the PRA allows for public access to Presidential records through the Freedom Of Information Act (FOIA) beginning five years after the end of the Administration, but allows the President to invoke as many as six specific restrictions to public access for up to twelve years. For example it now take upwards of seven years or more to have a FOIA request filled at the Reagan Presidential Library a as cited in Tom Blanton's testimony during the hearing. While the backlogs can be partially traced to the lack of adequate archival staff at the presidential libraries, the EO only exacerbates these delays.

B. I understand there is a bill in the Senate that will revoke this Executive Order. Do you think the bill goes far enough?
C. Can more be done?

Answer to B. & C.: Yes, the bill completely revokes EO 13233 and further clarifies the PRA. Passage of the legislation would solve all of the legal problems generated by the EO.

Post-Hearing Questions for the Record

"National Archives Oversight: Protecting our Nation's History for Future Generations."
May 14, 2008

Questions for the Record from Senator Thomas R. Carper to Dr. Allen Weinstein

1.) The Archives is given an extremely large mission and some would argue very little resources to complete it. Professor Weinstein, as the protectors of our nation's history and some of its most important artifacts, do you feel you are given enough resources to fulfill the mission of your agency?

Answer - As you have acknowledged, the National Archives has a large mission. With the resources provided we accomplish our mission by undertaking the highest priority and impact activities. Focusing on the highest priority and impact areas is increasingly important, since Federal agencies are creating more records than ever before, many in new electronic formats that must be dealt with when they are accessioned into the National Archives. Federal agencies increasingly look to the National Archives for guidance on how to best handle their records management programs. Our archival holdings grow each year along with our responsibility to process these records to preserve them and make them accessible to the public. Every four or eight years, we take on responsibility for a new Presidential Library. And in some cases we take on responsibilities that were not part of our original mission such as the newly assigned responsibility for the government's controlled unclassified information initiative. Additionally, new technology allows us to reach out more broadly to the public to make our records and related services available in ways that were impossible when using the records meant making a trip to one of our facilities.

a. If not, what more is needed in terms of staff and resources?

Answer – The National Archives will continue to look for ways to improve efficiency and focus activities that further its mission within the annual President's budget. This has become increasingly important, as the volume of records that the National Archives is responsible for preserving and providing access to grows and as new functions are added to the agency's mission.

b. Are there areas we can shift our priorities at the National Archives to ensure we are meeting the most important challenges in fulfilling our mission? If so, what?

Answer – The National Archives has and will continue to look for ways to ensure that activities align with its mission and respond to the most pressing

challenges. For example, the National Archives has actively engaged the private sector in efforts to digitize archival material and place them online.

2.) On January 20, 2009, our country will witness a Presidential transition. Unlike previous transitions, this President will leave behind more documents than any other administration in history. I understand that when President Clinton left office, five C-5 strategic aircraft – the kind that fly out of Dover Air Force Base in Delaware – could have been filled with the documents he left behind. To make your job even more challenging, President Bush will leave behind exponentially more electronic documents than ever before.

a. Could you comment on whether the Archives is fully prepared for this transition?

Answer - The move of Clinton Presidential records and artifacts required eight C-5 airplanes from Andrews Air Force base, along with some trucks for more fragile artifacts. NARA has been working with various White House Offices to gather volume numbers for textual and electronic records and artifacts. NARA has regularly scheduled meetings with the White House and Office of Administration (OA) staffs on the technical requirements of migrating the Bush Administration's electronic records. NARA is currently in active discussions with the Department of Defense, which provides NARA with support for the movement of Presidential materials, to plan the move of the Bush records and artifacts from Washington to Texas. NARA believes that it is currently doing everything to affect a smooth transition of records and artifacts at the end of the Bush Administration.

b. And explain some of the biggest risks to this operation and how the Archives is mitigating them?

Answer - The biggest risk facing NARA that could disrupt a successful transition is our ability to ingest the electronic records of the White House. These records and the technical specifications of the records are critical to building the electronic records system that will be used by NARA to preserve the White House's records and allow them to be searched to respond to questions from the next Administration, the Congress, and the Courts. (Please see questions c. and d. below for a discussion of the risks associated with the development of the Electronic Records Archive (ERA)). The current technical meetings between NARA and White House Offices are aimed at collecting the required information about these electronic records and ensuring that the ERA system that is being built will be able to ingest the records. While the physical move of the Bush records to Texas involves risk, NARA, with assistance from DOD, has successfully accomplished the move of previous Administration's records and sees no reason that the Bush move should be any less successful.

c. Does the Archives have a comprehensive back-up plan in place in case the Electronic Records Archives is not fully functional when the President leaves office?

Answer - There are two risks associated with the transfer of the Presidential records. The first is as stated in the question, the ERA functionality will not be available. At this point in time, we think that this is a low risk. We have just completed a fourth demonstration of the ERA system and we, with Lockheed-Martin support, are on schedule for the deployment of the functionality required for the transfer of the Bush records.

The second risk is that we will not have a clear technical understanding of the data that will be transferred to us prior to the end of the administration. To mitigate this risk, we are working with the EOP to look at strategies for the transfer of the records. If we cannot get the records immediately into ERA, we will use the same process as we did with the Clinton records. We will analyze the systems/data that we receive. Based on that analysis, we will purchase the necessary hardware and software and rebuild the system as it was used at EOP.

d. Can the Archives provide the plan to Congress?

Answer - The plan is still being developed and could change if new risks arise. However, there are dedicated Government technical and archival staff currently working on the Presidential transition and who are ready to invoke the strategy used for the Clinton records, if we determine that the ERA solution will not be ready in time.

e. Lastly, are there areas the Archives may need more help from Congress or the Executive Office of the President to prepare for the transition? Please elaborate if so.

Answer - NARA has continued to work with the White House and elicited their support to help ensure a successful transition. The discussions have been very successful, and we believe we are getting the information and cooperation needed for a successful transition.

3.) My staff tells me that the Archives issues guidance to agencies to properly store, preserve, and transfer records both electronically and physically. However, I understand that many agencies implement the guidance differently and not all agencies may be properly preserving important government records. Professor Weinstein, do you feel that the Archives has adequate enforcement authority to ensure that federal records are being captured and protected prior to being transferred into the Archives custody?

a. If not, is it Congress that needs to provide more authority or can the Archives take on the responsibility to ensure agencies are accountable for their records management systems?

Answer - Pursuant to title 44 of the U.S. Code, Chapters 21, 29, 31 and 33, which together are collectively known as the "Federal Records Act" or "FRA," the National Archives and Records Administration (NARA) works cooperatively with heads of federal agencies to enforce Congressional mandates with respect to the recordkeeping obligations of government. In particular, Section 3102 of Title 44 requires the "head of each agency" to establish and maintain an active, continuing program of efficient records management, including providing for effective controls over creation, maintenance and use of all federal records. Agency heads therefore have wide discretion to implement records management controls in different ways, in a manner that corresponds to each agency's respective mission and resources.

The FRA does, however, provide NARA with broad authority to report to the appropriate oversight and appropriations committees and to the Director of the Office of Management Budget on the state of records management implementation in federal agencies (sec. 2904),to set standards for selective retention of records of continuing value (sec. 2905), to initiate action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law (secs. 2905 & 3106), to inspect records management practices and programs (sec. 2906), and over the ultimate disposition of federal records as either temporary or permanent records of the government, through NARA appraising and approving agency records schedules subject to a public notice process (sec. 3303 & 3303a).

As a general proposition, we believe that our existing authority provides this agency with legal enforcement authority to ensure that federal records of permanent value are being adequately captured, protected, and preserved prior to transfer or accessioning into NARA's physical and legal custody.

When from time to time NARA staff become aware of recordkeeping gaps or deficiencies (including allegations of missing records, whether in paper or electronic form), we routinely initiate formal inquiries, pursuant to our regulations at 36 C.F.R. 1228.104, by means of correspondence and otherwise, aimed at ensuring that the entities involved respond on the record with respect to whatever allegations may be involved. Also, NARA has engaged limited, targeted inspections and evaluations. Based on valid sampling and targeted spot audits or inspections, NARA can make informed generalizations about government-wide records management practices and identify specific issues in targeted agencies. However, as a general matter, we expect and rely on Federal agencies to undertake proper record-keeping practices and follow the guidance issued by the NARA. .

b. Do you believe the Presidential Records Act and Federal Records Act provides the Archives with the options of ensuring agencies and the Executive Office of the President are in compliance?

Answer - With respect to the Federal Records Act, as stated above, we believe the existing statutory scheme provides NARA with adequate legal authority to enforce the records laws.

Under the Presidential Records Act, the incumbent President is solely responsible for ensuring that PRA components of the Executive Office of the President (EOP) adhere to the records requirements set out in that statute. The PRA does require that the President obtain the written views of the Archivist if the President seeks to dispose of Presidential records that do not have continuing administrative, historical, informational, or evidentiary value during a President's term in office. However, regardless of the Archivist's views, the final disposal authority rests with the incumbent President (44 U.S.C. 2203(c).) We also provide advice and assistance, when asked, to various White Offices, including the White House Counsel's Office, the National Security Council, the White House Office of Records Management, and other presidential components of the EOP. Additionally, NARA staff work on a daily basis with White House Offices in providing offsite storage and retrieval for incumbent Presidential records; in this relationship, we provide technical assistance on records issues as requested.

The matter of what additional authority the Archivist might be provided to oversee an incumbent President's recordkeeping practices raises important issues regarding the separation of powers over which we would necessarily defer to the Department of Justice.

c. Is there a way for the Archives to know whether they have not received records from an agency?
d. If not, what is keeping an agency from purposefully or unintentionally not transferring important records?

Answer - Under the Federal Records Act, NARA staff work with agency records managers to schedule and appraise records pursuant to longstanding and well-understood records schedule processes. Moreover, NARA works closely with agency staff whenever records are being transferred into our Federal Records Centers or accessioned into headquarters and regional archival facilities. Before electronic records are accessioned into NARA's legal custody, we validate the data transfer for purposes of completeness and integrity. Under section 207(e) of the E-Government Act of 2002, and consistent with the FRA, NARA staff work closely with federal agencies to identify, schedule and appraise, and eventually accession permanent electronic records into the National Archives.

Agencies do sometimes delay the transfer of their permanent records to us beyond the strict terms set out in records schedules. Recently, NARA was able to successfully conclude an agreement with the CIA which will result in an orderly transfer of classified records that have long been scheduled to be accessioned into our archives holdings.

Beyond all of the above measures, there really is no practical way we know of for NARA to be assured that every document in paper or electronic form of permanent value has been received from an agency. Nor can NARA police the records management practices of over 300 federal agencies to ensure that permanent records are not purposefully or unintentionally withheld from the National Archives. Federal agencies are expected to fulfill their statutory responsibilities. NARA must rely on the agency records officers, other agency officials, and a vigilant public and press to inform us of any such failure to act.

4.) I understand that the Archives recently released a report requested by Congress that discusses how the papers written by the Founding Fathers of our nation can be completed in a timely fashion and published online. However, the plan leaves out some necessary details for Congress.

a. Specifically, what are some of the options that the Archives recommends to speed up the process and publish the papers online?
b. And how much can Congress expect these different options to cost?
c. Are there any benefits or drawbacks to these different options that should be considered?
d. Which option does the Archives recommend as the most cost-effective option?

Answer - We explored two options for speeding up the process of publishing online the papers of the Founders.

The first option would have the Federal government scan the 217 existing print volumes of the papers and publish a digital edition. Costs would include scanning at about $30 per volume and maintaining a separate Web site or incorporating the editions into a current Federal Web site. We did not provide a robust cost estimate for this approach because it quickly became clear that it was inefficient and probably would not provide a useful end-product. For example, volumes would not be electronically marked or indexed, making them difficult to search. Additionally, such an effort would duplicate existing online efforts and provide an inferior product. Finally, the timeline for the online publication of the work would still be dependent upon the editing and transcription work being undertaken by the Founding Fathers' grantees.

In contrast, the recommended option would work with ongoing efforts outside of Government to publish the Founders papers online by testing

concepts to speed transcription for eventual online publication, as well as, working with non-governmental online publishers to broaden public access in the future. For example, over the last seven years, the University of Virginia Press has developed a product called Rotunda that provides online access with robust searching capabilities to already transcribed and licensed Founding Era papers . Right now, the collection is available through a subscription fee—currently ranging from $393 for libraries serving fewer than 100,000 people to $6,630 for research libraries. However, Rotunda has indicated its willingness to alter its business model, and foundations and others have indicated support for the goal of providing open access to the Founders' documents. NARA is currently reviewing these options and will continue to explore ways to broaden public access in the most efficient and effective way.

In addition to working with online publishers to broaden public access to existing material, NARA's plan would also increase the amount of material available through online publishers and speed the completion of the Founding Era projects by testing new concepts to quickly transcribe, to a readable level, all of the remaining documents (about 270,000 pages of material), so they can be published online. This step would allow users to see the entire collection as the editors continue their work of providing historical annotations. To test this concept, the NHPRC will award $250,000 in November 2008 to conduct a pilot project that would fund a single grantee to set up the necessary mechanisms and to transcribe and encode at least 20,000 pages of documents for online publication. If successful, our hope is that the process could be applied to the rest of the papers to speed transcription and encoding, thus hastening online access. However, the final cost of this process will be dependent on the completion of the test of concept.

Lastly, it should be noted that the current rate of print production for these projects is one or two volumes per year with an estimated 125 volumes remaining among the 5 projects. NARA will continue to explore options for increasing productivity and efficiency to ensure that an appropriate level of output is received in return for the government's support.

5.) Some of the entities working on these Founding Fathers' papers have been receiving both public and private funds for over half a century but aren't expected to be completed for some time.
   a. How are private foundations, which provide half of the total funding to these projects, being involved in the planning process?
   b. How have the editors received the plan and how will they be involved in the planning process?
   c. Does the Archives expect to receive any resistance or difficulties in executing this plan? If so, explain.

Answer - The National Archives met with representatives from private foundations during the planning process and following the release of the report. We continue to work with past supporters of these efforts and to seek potential new funding sources for future activities. We have always considered private sector investment a key component of the Founders Online approach, and we recognize the importance of enhancing the funding base for this work as much as possible.

The editors were also consulted during the drafting of the report, and after it was issued, they sent a letter indicating support for efforts to deliver both the annotated and unannotated documents to an existing online publisher. A summary of additional written comments from the editors includes the following:

- **They were skeptical about the report's assertion that providing access to unannotated documents would lead to contributions from independent scholars, insisting that "the editors must retain control over the content of their documents."**

- **They expressed some reservations about other aspects of the report. While they do not oppose the idea of having a single grantee transcribe and encode the unpublished papers, they argued that it is necessary for the applicant to "have a stable of persons skilled in reading 18th century manuscripts and with a reasonable knowledge of early American history." We have addressed this concern in our grant opportunity announcement for the pilot project.**

- **The editors also sought some clarification on what was meant by an "independent review" of the projects and the imposition of "rigorous production benchmarks" outlined in the final recommendation in the report. They questioned whether adopting a content management system across all projects would increase productivity, stating "our experience with the adoption of new technologies in documentary editing is that they help us work smarter, not faster."**

Clearly there are challenges ahead to executing this plan. Providing free online access to the documents on a single website would have some type of cost. Also, work on the founding fathers started almost 50 years ago, when technology and the access to historical research was more limited. Adapting the founding fathers' workflow and processes to new technology and an open source environment will be difficult.

6.) Presidential libraries are a central repository for historians, authors, and the public at large to learn more about some of the most influential figures in our modern history. These buildings house precious artifacts given to our nation's leader from

foreign dignitaries, unique correspondence between key policy makers, and personal collections that represent a complete view of our Commander and Chief.

a. Professor Weinstein, what does it cost to run the twelve presidential libraries?

Answer - The cost of operating and maintaining the Presidential Libraries in FY 2008 is estimated to be approximately $68 million; FY 2009 costs are expected to be approximately $76 million. This increase corresponds with the onset of the George W. Bush Presidential Library.

b. And how much would you say this has increased in proportion to your overall budget over the past 20 years?

Answer - On average, both the NARA budget and the cost to operate and maintain the Presidential Libraries have each increased 6 percent over the past 20 years.

c. How much would you expect this line item to grow in proportion to your budget in the future?

Answer - Based on historical data, even with the onset of new presidential libraries, the 6 percent average should remain consistent.

d. Further, last year Congress provided almost $20 million for repairs to these libraries through earmarks for these buildings, Is that the extent of what is needed, or are there other libraries in need of repair? How much are these repairs expected to cost?

Answer - The funding provided last year went toward specific projects at the Roosevelt, Nixon, Kennedy and Johnson Libraries. Each project represented a segment of a major addition or renovation. The Budget request provides a base level of funding for ongoing repair and maintenance. The FY 2009 Budget request for ongoing repairs is $9 million.

e. What can the Archives or Congress do to help inform us of the complete costs for operating, maintaining, and repairing these libraries? Perhaps maybe a capital budget?

Answer - The National Archives and Records Administration believes that the use of a Capital Improvements Plan allows us to prioritize renovations and major repairs in a rational and efficient manner. NARA recently released a Capital Improvements Plan listing the long-term priorities for renovations at NARA facilities. The plan is updated annually to reflect current needs and priorities of the agency based on Building Condition Reports. We believe that this is the appropriate planning tool for major repairs required at our facilities.

Questions from Sen. Tom Coburn
For Allen Weinstein, Archivist, NARA
National Archives Oversight: Protecting our Nation's History for Future Generations
May 14, 2008

- What type of contract is now in place for the Electronics Record Archive – fixed price or cost-plus?

Answer - The contract type is cost plus award fee.

  - Originally, did you have a time and materials contract in place? Did this change along the way? If so, why?

Answer - The contract type has not changed.

- Agencies often estimate the amount of money that a project will cost, but revise (or re-baseline) that cost upwards later. Have you ever re-baselined the project?

Answer - Given the delay in initial deployment of a system NARA and other agencies could use, NARA did not re-baseline the ERA acquisition. Rather we created an Over Target Budget and Over Target Schedule. They enable us to identify, track, and evaluate the tasks the contractor needs to perform to achieve the delayed milestone for initial operations, while simultaneously tracking its cost and schedule performance against the targets in the original baseline.

  - If so, what was the original baseline and what is the new baseline for the entire Electronic Records Archive?

Answer - The original baseline for the entire Electronic Records Archive was comprehensive for the entire seven year acquisition, including a one year design competition, five yearly options for incremental development, and a final year of operational support but no development. However, except for the design competition, the original baseline was only at a high level. The plan was and is to have the contractor lay out a detailed work breakdown structure and integrated schedule for each increment in the development, as appropriate given the funding available in each increment. Thus, the delay in reaching initial operating capability has not necessitated re-baselining the entire project.

  - Why did you re-baseline the project?

Answer - Not applicable.

  - Do you believe that you may have to do this again in the future?

Answer – We have not re-baselined this project. We will continue to track our original baseline and compare any Over Target Budgets or Schedules that original baseline.

- Is it true that most repairs for Presidential Libraries are currently funded by congressional earmarks?

Answer – Starting in FY 1996, Congress established the Repair and Restoration Appropriation for the National Archives. This account of "no-year" money was established to cover the on-going requirements to maintain and repair the facilities owned by the National Archives. Those facilities include Archives I (in the District of Columbia) Archives II (College Park) the Southeast Regional Archives (Atlanta), and all of the Presidential Libraries. In FY 2008 $8,663,000 was appropriated in the Repair and Restoration account for ongoing repair and maintenance. Priorities for use of this funding are based on Building Condition Reports that are prepared on a rotating cycle. Each facility is studied every five years to identify necessary repairs and to prioritize their urgency. For the most part the Repair and Restoration funds are used to cover individual repairs of less than $1.5 million each. Major renovations or additions are often funded through member requests.

  - If so, why is this done?

Answer – As stated above, the base funding available through the Repair and Restoration appropriation is used for ongoing repairs and maintenance and funding for major additions or renovations is often added through member requests.

  - Do you think it is appropriate for the National Archives to maintain Presidential Libraries on such an ad hoc and parochial manner?

Answer – A more systematic approach would be to set long-term priorities using our capital improvements plan that prioritizes improvements based on the Building Condition Reports that we produce.

  - Doesn't this system of funding for Presidential Libraries mask the true cost of maintaining Presidential Libraries in the annual budget request sent to Congress from the President?

Answer – Operations and maintenance costs for the Presidential Libraries are covered in the President's budget submission to Congress as are the routine repairs necessary to keep the buildings operational. Since money added to the request is for major renovations or additions that are above what is needed to keep the buildings operational, we don't believe any of the costs relating to the Presidential Libraries are masked.

- You have responsibility to the nation to ensure that both paper and electronic records are available well into the future. What is the overall strategy at the National Archives to make sure you can do this not just for 4-5 years out, but rather 20-50 years out?

Answer - The first element in NARA's strategy for ensuring long term preservation of its paper records is to maintain the records in a storage environment that slows deterioration and minimizes damage over time. The second broad strategy is to rehouse records into archival quality boxes and folders so they will have chemical and physical safety during storage and in use. We assess the condition and needs of our records to determine the risks to their preservation and to prioritize the work necessary to ensure their preservation. Conservation treatment, reformatting and digitization, and custom housing are utilized to address specific record issues. Our goals in expanding the digitization of our records are to ensure records preservation and to provide improved access. Furthermore, through education, we provide NARA's constituents with the tools they need to minimize damage when they use the original records.

NARA's strategy for ensuring sustained access to electronic records is the Electronic Records Archives system. In addition to specific requirements supporting management, preservation and access to records, the Electronic Records Archives system has infrastructure requirements for evolvability, scalability, and extensibility. The system must be able to evolve, replacing any or all of its hardware and software components as they become obsolete with no negative impact on the authenticity or availability of the records preserved in it. The system must scale to accommodate ever increasing volumes of electronic records, and it must be extensible to handle new types of electronic records that will be invented in the future. The architecture of the Electronic Records Archives system was designed to address these fundamental requirements.

  - How are you going to authenticate electronic documents into the future? How are you doing it now?

Answer - While we must anticipate repeated and even drastic changes in the technologies available for authenticating electronic records over the next century, the "chain of preservation" approach – described in response to the next question – is grounded in long established principles of archival science and articulated in a formal process model which is independent of any particular technology.

NARA authenticates permanent electronic records by first ensuring that the records have been appraised and scheduled for permanent retention. When agencies transfer records to NARA they must cite a valid disposition schedule item on the Standard Form (SF) 258, Agreement to Transfer Records to the National Archives of the United States. The SF 258 documents the records transfer and conveys information about the nature and origin of the records.

NARA reviews and confirms the content of this transfer document and examines the records to make sure that they are consistent with it and comply with the disposition instructions contained in the agency's records disposition schedule.

NARA's examination of transferred electronic records begins with preparation of a preservation copy of the transferred records. As the copy is made, NARA assures, via byte-by-byte comparison, that the result is a true, readable copy. NARA then applies software algorithms and manual tools that compare the preservation copy with accompanying documentation for the purpose of verifying the authenticity and integrity of the records. After analysis, NARA completes the accession by describing the records in its online catalog and accepting responsibility for permanent preservation of the records by signing the transfer document (the SF 258).

After accessioning is completed, NARA assures continuing authenticity and identity by executing a byte level comparison of the input and output whenever a file copy is made - whether it is a subsequent preservation copy or a copy made for reference purposes.

- In 100 years from now when someone is accessing a document produced today, will NARA be able to authenticate the "chain of custody" of electronic documents?

Answer - The authenticity of electronic records involves a tension between the need to provide future access to authentic electronic records and the need to make access easy. We assume that citizens wanting access to the records of their government will not want to learn to use antiquated technologies to find and access them. However, using the best current technologies for these purposes will often require producing version of the records in different formats, which might compromise authenticity.

At a strategic level, the Electronic Records Archives system is being developed to implement the "chain of preservation" approach. This concept of a "chain of preservation" is an enrichment of the traditional chain of custody on which archives have relied. The concept was developed in the multi-disciplinary, international InterPARES project, which focused on the issues of preserving authentic electronic records. It recognizes the special difficulties and risks of digital preservation and articulates a set of requirements that an archival system for electronic records must satisfy to ensure the records remain authentic.

At a tactical level, NARA intends to preserve all permanently valuable electronic records in their original formats. While it would be technologically, financially, and humanly impossible to provide access to these records using the original software, preserving the original formats will enable us to start at the source in applying improved preservation and access methods that are developed in the future. In order to make electronic records accessible at any given time in the

future, NARA will probably need to transform the records into contemporary formats. Deriving such transformations from the original formats will minimize the number of links in the chain and facilitate authentication. This tactic also enables anyone who is not satisfied with the way NARA makes old electronic records available to use alternative approaches starting from the records in their original formats.

At the physical level, NARA will build on its decades of experience preserving digital files free from change, as well as on improvements offered by the digital storage industry, to ensure the integrity of electronic records while in storage.

- This year the Office of Management and Budget did not provide any printed copies of the budget to Congress, but instead transmitted the documents electronically. How do you plan on storing something like this in the future when there are different types of systems in existence?

Answer – The Electronic Records Archives system is being built to be able to preserve the content (what it says) and the presentation (how it looks) of any textual records, based on digital adaptation technique that will convert the original format into a more generic and standardized long term preservation format. While the systems in the future will certainly change, the long term adaptation format is expected to survive many generations of systems before evolving itself.

NARA's vision for the Electronic Records Archives system is that it be capable of preserving any type of electronic record independently of the technology originally used to produce it. Across NARA's four decades of experience in preserving electronic records the most common problems have been (1) getting them out of the systems in which they were produced; (2) adequately and accurately documenting their attributes; and (3) getting them into formats suitable for sustained access. Developments in the recent past, especially the expansion of the Internet, have significantly reduced the first type of problem. Prior to the Internet, computer systems were typically designed on the assumption that information in the system would not go out of it except when printed on paper. The emergence of the next generation World Wide Web – dubbed the "semantic web" – and the increasing adoption of the eXtensible Markup Language family of standards promise to alleviate the second type of problem by making electronic records self-describing. However, the increasing variety of applications of computers and the increasing complexity of digital formats are making the third type of problem more difficult. This third difficulty is obviously a moving target. In addition to building extensibility into the architecture of the Electronic Records Archives, as described above, NARA is approaching this difficulty through a large and growing set of collaborations with other institutions involved in digital preservation around the Nation and the world.

- There are many federal documents being created now electronically but that don't have any historical significance – how are these documents being identified and classified?
    - Is there a categorical classification for the significance of documents?

Answer - Federal agencies use standard records management practices and NARA guidance and regulations to systematically manage records in all formats from the time of their creation, maintenance and use within the agency, until they are no longer needed for current government business. These practices include the identification of Federal records as defined in statute and regulations (44 U.S.C. 3301; 36 CFR 1220), organizing the records into logical file units or series, and determining how long they are needed for conducting agency business.

Records needed only to conduct agency business are categorized as "temporary." Agencies also evaluate records to determine if the information has long term value to protect the rights of citizens, provide government accountability, or document the national experience. Records that meet these criteria are categorized as "permanent."

Agencies use this information to request disposition authority from NARA, the authority to transfer records of permanent value to the legal custody of the National Archives or to carry out the disposal of temporary records at the appropriate time. NARA appraises the records and either agrees with the agency recommendations or works with the agency to reach a mutual decision on the disposition of the records. The final document granting disposition authority to the agency is a records schedule and is signed by the Archivist of the United States.

Only about 5% of government records are determined to be of permanent value.

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