

TESTIMONY OF ANNA K. NELSON

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International Relations
Committee on Government Reform**

The conclusion of the GAO report, *Managing Sensitive Information*, begins with the statement that the lack of clear policies, effective training, and oversight can lead to either over or under protection of sensitive but not classified information. This statement could also apply to problems associated with classified information. Certainly the recent removal, in effect re-classification, of documents that had long been open to the public indicates that those working with the documents had no effective training, just as the agencies who employed them did not have clear policies or useful oversight, given the fact that they had previously approved the publication of several of those re-classified records. Because of the questions surrounding this re-classification effort and because I am a historian of American foreign relations, I would like to turn our attention for a few minutes to the problem of classified national security records.

The first point I would like to make is that those protecting national security documents tend to over react to current events, even though the records they protect are 25, 30 or even 50 years old. Thus the case of Wen Ho Lee, who in 1998 and 1999 was accused of passing information to the Chinese, brought an extensive investigation by the Department of Energy of all previously opened historical nuclear energy documents in the National Archives. It took an enormous amount of money and time to go through the 200 million pages that already resided in the National Archives, especially since only 21,514 documents were withdrawn, a percentage almost too low to register. Bear in mind that all of these records had been carefully examined by Energy officials before being sent to open shelves in the National Archives. Before the Wen Ho Lee affair they did not present a security risk.

Similarly, the increasing number of terrorist attacks in the late 1990s as well as the events of 9/11 have led to a re-examination of thousands of pages of documents from the Cold War era. These documents hold information about a Soviet Union no longer in existence, countries in the Soviet orbit that are now in NATO, and policies long abandoned. Before the events highlighted by the media outlets and political leaders, some of these documents were

available in printed collections of government agencies. The re-examination was a clear result of current concerns, not those noted in the documents. There is a vast difference between leaks, release of yesterday's confidential discussions and twenty-five or thirty year old memoranda. Unfortunately, confusion persists to the detriment of our nation's history.

Second, I would like to point out that in the case of classified records the lack of clear policies is largely the result of a lack of consistency. Not only do president's change or amend the rules through new Executive Orders, agency guidelines also vary when current events intercede. In 1994, the CIA did not worry about the release of an embarrassing document that clearly indicated an intelligence failure. At that time, the CIA published a series of documents in a volume entitled, *The CIA under Harry Truman*. One document dated October 13, 1950 assured the president that the Chinese would not send troops to Korea, but as we know, the Chinese did just that six days later. Sometime between 1999 and 2006, the agency reclassified two documents that had basically the same information. The reason for this change is a mystery. Is it now necessary, for purposes of national security, to close this 1951 document because of current policy issues with

North Korea, a potential member of the nuclear club? Or is it necessary to close it because the CIA doesn't want to admit old intelligence failures given the new ones that have cropped up?

In fact, the document may have been reclassified simply because those re-examining the documents did not know of the previous release. But the questions I've asked above indicate a third problem with seemingly irrational declassification decisions; they breed notions of cover-up and conspiracy.

Fourth, those of us who use national security records in the National Archives know that whereas the government distinguishes between Confidential, Secret and Top Secret, the declassifiers generally do not. They certainly treat all records that were originally classified Secret and Top Secret the same, and often include those marked Confidential among those withdrawn. An unanswered question in the GAO report relates to this problem. Will the "Sensitive but Unclassified Records" and those "For Official Use Only" be ultimately placed on the same footing as classified records. When is it no longer necessary to protect these records. Without a clear answer, the federal government will be establishing a new category of records headed for a twenty or thirty year stay in the security

vaults at great cost to the American taxpayer. The records under these categories should be clearly marked for opening within a short time period and given a short residence within the security vaults.

From 1994-1998, I was a member of the Kennedy Assassination Records Review Board. We received top secret clearances and examined classified records in their original form. The records we reviewed were over thirty years old. In the course of those four years, we released countless documents that had been closed by the CIA, including those that discussed intelligence methods. We protected names and agreed to protect certain symbols and technical information. However, we sent thousands of pages of CIA, FBI and even NSA records to the open shelves of the National Archives. To my knowledge, no foreign government protested, no one was killed, and the intelligence agencies are still intact. Old records, with a few clear exceptions, do not threaten our national security.