

**STAKEHOLDERS' VIEWS ON THE NATIONAL AR-
CHIVES AND RECORDS ADMINISTRATION
[NARA]**

HEARING

BEFORE THE
SUBCOMMITTEE ON INFORMATION POLICY,
CENSUS, AND NATIONAL ARCHIVES
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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**STAKEHOLDERS' VIEWS ON THE NATIONAL
ARCHIVES AND RECORDS ADMINISTRATION
[NARA]**

THURSDAY, MAY 21, 2009

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

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

Present: Representatives Clay, McHenry, Norton, Watson, and Westmoreland.

Staff present: Darryl Piggee, staff director/counsel; Michelle Mitchell and Alissa Bonner, professional staff members; Jean Gosa, clerk; Ron Stroman, staff director, full committee; Carla Hultberg, chief clerk, full committee; Adam Hodge, deputy press secretary, full committee; John Cuaderes, minority deputy staff director; Adam Fromm, minority chief clerk and Member liaison; Howard Denis, minority senior counsel; and Jonathan Skladany, minority counsel.

Mr. CLAY. The hearing on Information Policy, Census, and National Archives will come to order.

Good afternoon, and the subcommittee of the Oversight and Government Reform Committee will now come to order. Without objection, the Chair and ranking minority member will have 5 minutes to make opening statements, followed by opening statements not to exceed 3 minutes by any other Member who seeks recognition. Without objection, Members and witnesses may have 5 legislative days to submit a written statement or extraneous material for the record.

Welcome to today's oversight hearing entitled, "Stakeholders' Views on the National Archives and Records Administration [NARA]. The purpose of today's hearing is to examine issues that President Obama's administration should consider in selecting the next Archivist of the United States of America. We will consider several important topics, including NARA's strategic plan, the Freedom of Information Act, the Presidential Library Donation Act, the Office of Government Information Services Act, the collection and storage of historical records and the staffing of NARA facilities.

The National Archives and Records Administration is the Nation's record keeper. Its stated mission is to serve American democ-

racy by safeguarding and preserving the records of our Government. As we will hear from our witnesses today, the next Archivist must have the requisite knowledge and skills to fulfill this mission using 21st century tools. It is this subcommittee's hope that our hearing today will provide the President with some valuable information that he can use in selecting the next Archivist.

Before we go to our witnesses, I would like to address the recent findings of NARA's Inspector General on the loss of records. The NARA Inspector General has repeated a serious security breach at the National Archives concerning certain Clinton administration documents. Chairman Towns has stated the committee's position on the matter, that the committee will do everything possible to protect the integrity of the FBI's criminal investigation while we fulfill our constitutional duty to investigate the compromised security protocols at the National Archives and work to prevent future incidents.

The committee will hold briefings into this matter with NARA and the FBI so committee members can begin to understand the magnitude of the security breach and all the steps being taken to recover the lost information. It is my hope that we can work with the minority to accomplish this.

Now, onto today's topic. I now yield to the distinguished ranking minority member, Mr. McHenry of North Carolina.

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

Opening Statement

Of

Chairman Wm. Lacy Clay

Information Policy, Census, and National Archives Subcommittee

Oversight and Government Reform Committee

Stakeholders' Views on Issues for the National Archives and

Records Administration (NARA)

Thursday, May 21, 2009

2154 Rayburn HOB

2:00 p.m.

**WELCOME TO TODAY'S OVERSIGHT HEARING ON
"STAKEHOLDERS' VIEWS ON ISSUES FOR THE NATIONAL
ARCHIVES AND RECORDS ADMINISTRATION OR NARA"**

**THE PURPOSE OF TODAY'S HEARING IS TO EXAMINE
ISSUES THAT PRESIDENT OBAMA'S ADMINISTRATION
SHOULD CONSIDER IN SELECTING THE NEXT ARCHIVIST OF
THE UNITED STATES OF AMERICA.**

**WE WILL CONSIDER SEVERAL IMPORTANT TOPICS,
INCLUDING NARA'S STRATEGIC PLAN, THE "FREEDOM OF**

DONATION ACT,” THE “OFFICE OF GOVERNMENT INFORMATION SERVICES ACT,” THE COLLECTION AND STORAGE OF HISTORICAL RECORDS, AND THE STAFFING OF NARA FACILITIES.

THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION IS THE NATION’S RECORD KEEPER. IT’S STATED MISSION IS TO “SERVE AMERICAN DEMOCRACY BY SAFEGUARDING AND PRESERVING THE RECORDS OF OUR GOVERNMENT.” AS WE WILL HEAR FROM OUR WITNESSES TODAY, THE NEXT ARCHIVIST MUST HAVE THE REQUISITE KNOWLEDGE AND SKILLS TO FULFILL THIS MISSION USING 21ST CENTURY TOOLS.

IT IS THIS SUBCOMMITTEE’S HOPE THAT OUR HEARING TODAY WILL PROVIDE THE PRESIDENT WITH SOME VALUABLE INFORMATION THAT HE CAN USE IN SELECTING THE NEXT ARCHIVIST.

BEFORE WE GO TO OUR WITNESSES, I WOULD LIKE TO ADDRESS THE RECENT FINDINGS OF NARA’S INSPECTOR GENERAL ON THE LOSS OF RECORDS.

**THE NARA INSPECTOR GENERAL HAS REPORTED A
SERIOUS SECURITY BREACH AT THE NATIONAL ARCHIVES
CONCERNING CERTAIN CLINTON ADMINISTRATION
DOCUMENTS.**

**CHAIRMAN TOWNS HAS STATED THE COMMITTEE'S
POSITION ON THIS MATTER; THAT THE COMMITTEE WILL
DO EVERYTHING POSSIBLE TO PROTECT THE INTEGRITY
OF THE FBI'S CRIMINAL INVESTIGATION WHILE WE
FULFILL OUR CONSTITUTIONAL DUTY TO INVESTIGATE
THE COMPROMISED SECURITY PROTOCOLS AT THE
NATIONAL ARCHIVES AND WORK TO PREVENT FUTURE
INCIDENTS.**

**THE COMMITTEE WILL HOLD BRIEFINGS INTO THIS
MATTER WITH NARA AND THE FBI SO COMMITTEE
MEMBERS CAN BEGIN TO UNDERSTAND THE MAGNITUDE
OF THE SECURITY BREACH AND ALL THE STEPS BEING
TAKEN TO RECOVER THE LOSS INFORMATION.**

**IT IS MY HOPE THAT WE CAN WORK WITH THE
MINORITY TO ACCOMPLISH THIS.**

NOW, ON TO TODAY'S TOPIC.

Mr. MCHENRY. Thank you, Chairman Clay. Thank you for holding this hearing, especially in light of the recent reports we have out of the National Archives. I appreciate your leadership in working with the minority side of the aisle as well.

The National Archives is an agency with extremely important functions, we all know that. The archiving of our Government's valuable records requires a methodical approach to guarantee the preservation of documents within continuing value to the American people. Some of these records contain highly sensitive information and these records must be secured to protect national security and personally identifiable information as well.

The effectiveness of the Archives as protector of the records under its control is a piece of the national security puzzle. This is why I am so troubled by the pattern of careless handling of sensitive material by the Archives. This week, the Inspector General of the Archives described a potentially catastrophic loss of data to our committee staff. The Inspector General, with the assistance of the Justice Department and the Secret Service, is currently investigating the loss of a hard drive containing one terabyte of data derived from records from the Clinton Presidency that went missing from the Archives' College Park facility.

A terabyte of data is approximately equivalent to several million books. We are trying to get an exact description of how many pages of text that would be, but it is certainly hundreds of millions of pages of data. Data on drives include more than 100,000 Social Security numbers, contact information and home addresses for various Clinton administration officials, Secret Service and White House operating procedures, event logs, social gathering logs, political records and other highly sensitive information. The full extent of the contents of the drive is still being investigated. The IG characterized the violation as "the greatest loss ever and troubling and amazing."

The IG described to us an environment at the College Park facility where hundreds of employees have access to sensitive data, where janitors, visitors, interns and others with no clearance are able to walk through areas where hard drives containing national security secrets are just lying around. In fact, Archives employees use the area where the hard drives were left out as a shortcut to the bathroom. Now, apparently another room is too warm and they have to keep the door open for cooling purposes, a bizarre enough story.

This incident should be troubling if it weren't isolated. But it is even more alarming because of its part as a larger pattern. All you have to do is read the reports released by the IG over the last few years to see the loss of this hard drive as just the latest example of carelessness at the Archives. Archives employees were accidentally or intentionally throwing away original Bureau of Indian Affairs records so frequently that a rule was put in place that required security officers and janitors to check the trash before it was taken out. These records are irreplaceable, and they were being thrown in the trash by Archives employees and personnel.

The failures of the Archives' security protocols are seemingly endless. In 2007, an annual inventory identified as missing approximately 559 pieces of equipment, including items with memory

storage capabilities and the potential of storing sensitive personal identifying information on them. A report published in 2006 revealed that the CIA and other Federal agencies had to reclassify over 55,000 pages of records taken from the open shelves of the Archives.

But we can't forget the incident in 2005, with former President Clinton advisor Sandy Berger, National Security Advisor, and he plead guilty to unlawfully removing documents from the Archives. Apparently he was stuffing them in his socks. There are proper protocols here, and this shouldn't be a partisan issue. Historians want access to these records to give an original account and an accurate account of American history. It is not simply a Clinton administration issue or a Bush administration issue. It is truly preserving our Nation's history.

Yesterday the Partnership for Public Service and American University's Institute for the Study of Public Policy Implementation released their report of best and worst places to work in the Federal Government in 2009. Not surprisingly, the National Archives was one of the worst. It ranked 29 out of 30 overall. Now, this is unfortunate. Not only are the employees unhappy, but we are not even protecting our Nation's history.

In the categories of leadership supervisors and strategic management, the Archives ranked a paltry 22, 20 and 21 respectively. This is unfortunate. We have to change the culture in the Archives and make sure that we protect our Nation's data. Acting Archivist Adrienne Thomas was invited to appear here today but she declined. Ms. Thomas decided that her presence at a ribbon cutting ceremony was of far greater importance.

Mr. Chairman, I hope that we will be able to invite her in and have a hearing on that, or at the very least, the new Archivist that the President appointments.

Now, back to Ms. Thomas, her failure to grasp the gravity of the situation is shocking. She certainly has something to explain. She has a lot of explaining to do here to Congress and the American people and her employees.

And there are immediate questions that she needs to be here today to answer. Has an inventory been done to determine if any other records are missing? That is a very important question. And what immediate security measures have been taken to prevent further loss or theft?

Given the pattern of mismanagement and careless at the National Archives, I look forward to working with Chairman Clay and the committee majority to schedule a hearing with Ms. Thomas as soon as possible. We have to give her the opportunity to account for the negligence within the Archives and account to Congress what we must do to fulfill our obligations to future generations.

We are here today to discuss the qualifications that President Obama should be looking for in a new Archivist. It is clear that a replacement for Ms. Thomas can't come fast enough. The input of professionals from the Archives would be helpful, but there is not, unfortunately, a single representative from the Archives here today. And that is unfortunate.

I thank the witnesses for being here. You are certainly experts in the field and we certainly appreciate that, for the record, in giving us guidelines going forward.

Thank you, Chairman Clay, for your leadership and thank you for your hard work on this matter and the Census as well.

[The prepared statement of Hon. Patrick T. McHenry follows:]

EDOLPHUS TOWNS, NEW YORK
CHAIRMAN

DARRELL E. ISSA, CALIFORNIA
RANKING MINORITY MEMBER

ONE HUNDRED ELEVENTH CONGRESS
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House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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Statement of Congressman Patrick McHenry, Ranking Member
Subcommittee on Information Policy, Census, and National Archives
"Stakeholders' Views on the National Archives and Records Administration (NARA)"
May 21, 2009

The National Archives is an agency with an extremely important function. The archiving of our government's valuable records requires a methodical approach to guarantee the preservation of documents with continuing value to the American people. Some of these records contain highly sensitive information, and these records must be secured to protect national security and personally-identifiable information. The effectiveness of the Archives as protector of the records under its control is a piece of the national security puzzle.

This is why I am so troubled by a pattern of careless handling of sensitive material by the Archives. This week, the Inspector General of the Archives described a potentially catastrophic loss of data to our Committee's staff. The Inspector General, with the assistance of the Justice Department and the Secret Service, is currently investigating the loss of a hard drive containing one terabyte of data derived from records from the Clinton presidency that went missing from the Archives' College Park facility. One terabyte of data is the approximate equivalent of several million books.

Data on the drive includes more than 100,000 social security numbers, contact information and home addresses for various Clinton administration officials, Secret Service and White House operating procedures, event logs, social gathering logs, political records and other highly-sensitive information. The full extent of the contents of the drive is still being investigated. The IG characterized the violation as "the greatest loss ever and troubling and amazing."

The IG described for us an environment at the College Park facility where hundreds of employees have access to sensitive data; where janitors, visitors, interns and others with no clearance are able to walk through areas where hard drives containing national secrets are just lying around. In fact, Archives employees use the area where the hard drive was left as a shortcut to the bathroom. The door to that room is left open because the room gets too hot.

This incident would be troubling if it was isolated, but it is even more alarming because it is part of a pattern. All you have to do is read the reports released by the IG over the last few years to see that the loss of this hard drive is just the latest example of carelessness at the Archives. Archives employees were accidentally or intentionally throwing away original Bureau of Indian Affairs records so frequently that a rule was put in place that required security officers and janitors to check the trash before taking it out to the dumpster. These records are irreplaceable and they were being thrown in the trash by Archives personnel.

The failures of Archives security protocols are seemingly endless. In 2007, an annual inventory identified as missing approximately 559 equipment items with memory storage capability and the potential for storing sensitive personal identifying information. A report published in 2006 revealed the CIA and other federal agencies had to re-classify over 55,000 pages of records taken from the open shelves at the Archives. In 2005, President Clinton's former National Security Advisor Sandy Berger pled guilty to unlawfully removing documents from the Archives.

Yesterday, the Partnership for Public Service and American University's Institute for the Study of Public Policy Implementation (ISPP) released their report of best and worst places to work in the federal government for 2009. Unsurprisingly, the National Archives and Records Administration ranked 29 out of 30 overall. In the categories of Leaders, Supervisors, and Strategic Management, the Archives ranked a paltry 22, 20, and 21, respectively.

Acting Archivist Adrienne Thomas was invited to appear today but she declined. Ms. Thomas decided that her presence at a ribbon-cutting ceremony was of far greater importance. Her failure to grasp the gravity of the situation is shocking. She certainly has some explaining to do. And there are immediate questions that she needed to be here today to answer. Has an inventory been done to determine if any other records are missing? What immediate security measures have been taken to prevent further loss or theft?

Given the pattern of mismanagement and carelessness at the National Archives, I look forward to working with Chairman Clay to schedule a hearing with Ms. Thomas as soon as possible. She must be given the opportunity to account for her negligence and Congress must fulfill its obligation to provide meaningful oversight of the National Archives.

We are here today to discuss what qualifications President Obama should look for when he names a new Archivist. It is clear that a replacement for Ms. Thomas cannot be named soon enough. The input of professionals from the Archives would be helpful but there is not a single representative from the Archives present.

I thank the witnesses for appearing and I only wish they were joined by the people we most needed to hear from today.

Mr. CLAY. Thank you, Mr. McHenry, and you can be assured that the committee members will be briefed on everything that took place at NARA as well as we will eventually get the Acting Director here.

Are there any other committee members that would like to make an opening statement? Ms. Watson of California, you are recognized for 3 minutes.

Ms. WATSON. Thank you so much, Mr. Chairman, for holding today's hearing to bring together various stakeholders to share their views on the issues that are of particular concern as the Obama administration selects a new Archivist of the United States to lead the National Archives and Records Administration.

As the guardian of the historical record of the United States, it is imperative that the NARA is run effectively and innovatively to protect our Nation's civic narrative for current and future generations of inquisitive Americans who seek greater understanding of who we are. Finding a new Archivist who advocates for transparency, who understands and who anticipates the challenges that the NARA may face, and who possesses the expertise to implement technology which can expedite access to our Nation's records are all critical to guaranteeing the NARA is capable of protecting the integrity of our national records.

The next Archivist of the United States must ensure that the NARA is equipped with an effective and consistent system for electronic records management. And we do hope that the Obama administration may have as its legacy an accurate record of America's policies, activities and a bit of its history.

An effective electronic records management system, which can process this massive backlog, should also possess the ability to assist in the declassification of eligible Federal and Presidential records. With approximately 400 million pages of valuable documents frozen in a system which grows by 25 million pages per year, it is critically important that the next Archivist takes a proactive approach to modernizing this system so that Americans can have timely access to the documents which bring context to our national experience.

I would like all of today's witnesses, I would like to thank them for appearing before this committee and their testimony will provide invaluable insight into the criteria the Obama administration should consider in selecting a new Archivist of the United States.

Thank you so much, Mr. Chairman. I yield back.

[The prepared statement of Hon. Diane E. Watson follows:]

Opening Statement

Congresswoman Diane E. Watson

*“Stakeholders’ Views on the National Archives and Records
Administration (NARA)”*

*Subcommittee on Information Policy
Oversight and Government Reform Committee*

*Thursday, May 21, 2009
2154 Rayburn HOB
2:00 P.M.*

Thank you Mr. Chairman for holding today’s hearing to bring together various stakeholders’ views on the issues that should be of particular concern as the Obama Administration selects a new Archivist of the United States to lead the National Archives and Records Administration (N.A.R.A.).

As the guardian of the historical records of the United States it is imperative that the N.A.R.A. is run effectively and innovatively to protect our nation’s civic narrative for current and future generations of

inquisitive Americans who seek greater understanding of who we are.

Finding a new Archivist who advocates for transparency, who understands and anticipates the challenges the N.A.R.A may face, and who possesses the expertise to implement technology which can expedite access to our nation's records are all critical to guaranteeing the N.A.R.A. is capable of protecting the integrity of our national records.

The next Archivist of the United States must ensure that the N.A.R.A. is equipped with an effective and consistent system for electronic records management. N.A.R.A. officials estimate that the Bush Administration left an electronic record 50 times larger than that left by the Clinton Administration, and that

the electronic record of the Obama Administration may be another 50 times larger.

An efficient electronic record management system which can process this massive backlog should also possess the ability to assist in the declassification of eligible federal and presidential records. With approximately 400 million pages of valuable documents frozen in a system which grows by 25 million pages per year it is critically important that the next Archivist takes a proactive approach to modernizing this system so that Americans can have timely access to the documents which bring context to our national experience.

I would like to thank each of today's witnesses for appearing before this Committee. Your testimony

**today will provide invaluable insights into the criteria
the Obama Administration should consider in selecting
a new Archivist of the United States.**

Thank you Mr. Chairman and I yield back.

Mr. CLAY. Thank you, Ms. Watson, for the opening statement.

If there are no additional opening statements, Mr. Westmoreland has indicated to me he does not have one, the subcommittee will now receive testimony from the witnesses before us today.

I want to start by introducing our panel. Our first witness is Dr. Patrice McDermott, director of OpenTheGovernment.org. Our next witness is Ms. Meredith Fuchs, and she is the General Counsel for the National Security archives. And our final witness will be Mr. Lee White, executive director of the National Coalition on History.

Welcome to all three. As a note, before we begin, two witnesses scheduled today were unable to attend. They are Acting Archivist Adrienne Thomas and Dr. Thomas C. Battle, from Howard University, who represents the Society of American Archivists.

I thank all of our witnesses for appearing today and look forward to their testimony. It is the policy of the Oversight Committee to swear in our witnesses before they testify. Would you all please stand and raise your right hands?

[Witnesses sworn.]

Mr. CLAY. Let the record reflect that the witnesses answered in the affirmative. You may be seated. And I ask that each of the witnesses now give a brief summary of their testimony. Please limit your summary to 5 minutes and the little light on the desk will indicate when your 5 minutes is up. Your complete written statement will be included in the hearing record.

Ms. McDermott, please begin with your opening statement.

STATEMENTS OF PATRICE McDERMOTT, DIRECTOR, OPENTHEGOVERNMENT.ORG; MEREDITH FUCHS, GENERAL COUNSEL, NATIONAL SECURITY ARCHIVES, GEORGE WASHINGTON UNIVERSITY; AND LEE WHITE, EXECUTIVE DIRECTOR, NATIONAL COALITION ON HISTORY

STATEMENT OF PATRICE McDERMOTT

Ms. McDERMOTT. Thank you, Chairman Clay, Mr. McHenry and members of the subcommittee, for the opportunity to speak today on the issues that the Obama administration should consider in selecting the next Archivist of the United States.

My name is Patrice McDermott, and I am director of OpenTheGovernment.org, a coalition of more than 70 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 strengthen public trust in Government, make us safer and support our democratic principles.

One of my former colleague who recently retired from NARA said, "I believe in NARA—as an ideal." I think that is where those of us on this panel and our colleagues in the public interest community stand as well. We do this because 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.

NARA has primarily understood its mission to encompass information that, for a variety of reasons, is historically significant. This understanding of its mission is reflected in its leadership and its

staff. While the employees of NARA are dedicated civil servants, and there are many talented individuals working there, the agency does have a tendency to be inward-looking and focused on the past. The perception of NARA is that it is primarily reactive, not proactive. And we know that NARA has preferred to take a collegial, rather than a leadership stance, with the agencies and within the Government overall.

The critical position of NARA in both the life cycle management of the records of our Federal Government and the mounting challenges the Government faces in this area necessitate that the culture and stance of NARA change. NARA is increasingly being asked to take on new challenges and is looked to as a site to locate new initiatives and offices pertaining to public access to contemporaneous Government information. These include the Office of Government Information Services, created by the Open Government Act, 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.

Moreover, NARA has another primary mission that receives an insufficient amount of the agency's attention and resources: records administration. Many of us in the public access community are deeply concerned about how NARA is addressing its responsibility for records management and provision of access to the records of our Nation. This is especially true for e-records.

NARA's 2006 to 2016 Strategic Plan is indicative of the reasons for our concerns. It has a total of 1.5 pages on records administration and one vague strategy for electronic records management. That is accompanied by a strategy on physical records storage.

Indeed, the strong and evident focus on the Strategic Plan is on the Archives portion of NARA's mission, the first A, combined with an emphasis on civic education and exhibits. The perception reinforced by conversations with current and former NARA staff is that the agency increasingly understands itself as a museum.

The former Archivist, Dr. Weinstein, moved the agency in some good directions with the use of technology. NARA's use of technology, though, appears to be focused on, again, making NARA a museum, rather than a lead agency on life cycle management of records for public access. Recent history shows, however, that we need an Archivist who has a proven record of standing up for open government. Dr. Weinstein took good positions on open government when crises arose, but did not put the agency in a leadership stance.

That is an approach we can no longer afford. We need an Archivist who understands NARA is not just a museum of historical documents, but is a steward responsible for securing the integrity of Government records. He or she must be able to lead NARA to embrace the role of catalyst for the information revolution and enunciate clear, consistent and practical electronic record policies.

More important, most importantly, we need an Archivist that will lead the Government to meet the new challenges of managing and preserving electronic records, including emails. Records management must not be about cleaning up messes after they occur,

but taking the proactive steps necessary to prevent the loss of our documentary record.

The new Archivist needs to be a visionary in terms of the importance and public use of Government records in all forms and formats and throughout their life cycle, and so needs to have a strong familiarity with technology as a tool. She or he also needs to be someone who understands and appreciates records management, again, throughout the life cycle, not just of records that will be archived.

The public and the Government need an Archivist who can provide vision and leadership for the Federal Government and foster successful partnerships with history and access professionals inside and outside Government. The key qualification is his or her commitment to maintaining the record of our national Government and meeting the mandates of law.

Because the next Archivist will have so many challenges—am I out of time? I have one more page. We recommend that a second tier political appointee be created to serve a chief of staff type position and to manage and enliven the bureaucracy at NARA. This would free the Archivist to assume the needed leadership role and might attract candidates who have the vision to move the agency and to assist the President in moving forward.

The new Archivist and this second person should give the CUI office and the Office of Government Information services the support and independence that the Information Security Oversight has. For OGIS, this independence is particularly important, because OGIS must also oversee NARA's own significant involvement with FOIA.

In order for President Obama's day one promises on transparency to have any meaningful impact, immediate steps must be taken to protect the integrity of Government records throughout their life cycle, from creation to permanent preservation or authorized destruction.

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

[The prepared statement of Ms. McDermott follows:]

**Statement
Of
Patrice McDermott
Director
OpenTheGovernment.org**

**Information Policy, Census, and National Archives Subcommittee
Oversight and Government Reform Committee
On
The National Archives and Records Administration
Thursday, May 21, 2009
2154 Rayburn HOB
2:00 P.M.**

Thank you, Chairman Clay, Mr. McHenry, and Members of the Subcommittee, for the opportunity to speak today on the issues that the Obama Administration should consider in selecting the next Archivist of the United States.

My name is Patrice McDermott. I am the Director of OpenTheGovernment.org, a coalition of more than 70 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 strengthen public trust in government, make us safer, and support our democratic principles.

A National Archives and Records Administration for the Future

One of my former colleagues, who recently retired from NARA said, "I believe in NARA – as an ideal." I think that is where those of us on this panel and our colleagues in the public interest community stand as well. Perhaps we hold the agency and its staff to an impossibly high ideal. We do this because 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.

NARA has primarily understood its mission to encompass primarily information that, for a variety of reasons, is historically significant. This understanding of its mission is reflected in its leadership and its staff. While the employees of NARA are dedicated civil servants and there are many talented individuals working there, the agency has a tendency to be inward looking and

focused on history. The perception of NARA is that it is primarily reactive, not pro-active. And we know that NARA has preferred to take a collegial rather than leadership stance with the agencies and within the government overall. The critical position of NARA in the life-cycle management of the records of our federal government and the mounting challenges the government faces in this area necessitate that the culture and stance of NARA change.

NARA is increasingly being asked to face new challenges and is looked to as the site to locate new initiatives and offices pertaining to public access to contemporaneous government information. These include the 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 has 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.

Importantly, though, NARA has another primary mission that receives an insufficient amount of the agency's attention and resources: records administration. Many of us in the public access community are deeply concerned about how NARA is addressing its responsibility for records, and especially, e-records, management and provision of access to the records of our nation. NARA's 2006-2016 Strategic Plan is indicative of the reasons for our concerns: it has a total of 1.5 pages on records administration and one vague strategy for electronic records management –

We will expand the demand for records management in the Federal Government by advocating for it at senior levels. By providing guidance, training, and assistance throughout the Government, we will support agencies' business needs and embed records management in the agencies' business processes and systems.

accompanied by a strategy on physical records storage.

Indeed, the strong and evident focus on the strategic plan is on the Archives portion of NARA's mission combined with an emphasis on civic education and exhibits. The perception, reinforced by conversations with current and former NARA staff, is that the agency increasingly understands itself as a museum.

The Next Archivist of the United States

The former Archivist, Dr. Allen Weinstein, started moving the agency in some good directions with the use of technology. NARA's use of technology, though, appears to be focused on making NARA a museum, rather than a lead agency on life-cycle management of records for public access and government accountability.

Recent history shows, however, that we need an Archivist who has a proven record of standing up for open government. Dr. Weinstein took good positions on open government when crises arose, but did not put the agency in a leadership stance. That is an approach we can no longer afford.

We need an archivist who understands NARA is not just a museum of historical documents, but is a steward responsible for securing the integrity of government records. He or she must be able to lead NARA to embrace the role of catalyst for the information revolution and enunciate clear, consistent and practical electronic record policies.

Most importantly, we need an archivist who will lead the government to meet the new challenges of managing and preserving electronic records, including e-mails. Records management must not be about cleaning up messes after they occur, but, rather, taking the proactive steps necessary to prevent the loss of our documentary record.

The new Archivist needs to be a visionary in terms of the importance and public use of government records in all forms and formats, and throughout their life-cycle, and so needs to have strong familiarity with technology – as a tool. She or he also needs to be someone who understands and appreciates records management throughout the life cycle, not just of records that will be archived.

The public and the government need an archivist who can provide vision and leadership for the federal government on information and records management, and foster successful partnerships with history and access professionals inside and outside government. A successful archivist may be a historian, an archival professional, an editor or publisher, a legal reformer, the head of a major library, or a longtime government servant. The key qualification is his or her commitment to maintaining the record of our national government and meeting the mandates of law.

Because the next Archivist will have so many challenges to meet, we recommend that a second-tier political appointee be created to serve in a chief-of-staff type position and to manage and enliven the bureaucracy at NARA. This would free the Archivist to assume the needed leadership role, and might attract candidates who have the vision to move the agency and to assist the President in moving the government forward.

The new Archivist and this second person should give the Controlled Unclassified Information Office and the Office of Government Information Services (OGIS) support and independence that the Information Security Oversight Office (ISOO) has. For OGIS, this independence is particularly important because OGIS must also oversee NARA's own significant involvement with FOIA. Additionally, NARA needs to be particularly proactive in ensuring it implements FOIA well, as any failure by NARA will impact the credibility of OGIS.

In order for President Obama's day one promises on transparency to have any meaningful impact, immediate steps must be taken to protect the integrity of government records throughout their lifecycles, from creation to permanent preservation or authorized destruction.

NARA's Responsibility for Records Administration

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.

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 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 problem is not just life-cycle management of the documents and information. We are also concerned by what we understand to be the preservation policies promulgated by NARA. 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 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. Now, however, 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.

The issue of records management of e-mail is the iceberg below this tip, of course. NARA's policy in this area is fatally flawed. It allows the agencies to not schedule e-mail communications in the way that other communications, such as letters and memos. NARA does not tell the agencies that they can treat all letters sent or received in the course of government work in exactly the same way, but that is exactly what it has told them they are permitted to do with e-mail. Tellingly, NARA's guidance on IM (instant messaging) – which is essentially e-mail that you must be logged in to receive – says:

If an agency determines IM content to be a Federal record, the record must have a NARA-approved disposition authority. *Do not identify IM content as a single series of records with a universal disposition. Instead, evaluate IM content within the context of the overall records of the*

program to which the IM relates and the business rules that may apply. Disposition instructions for IM should be consistent with similar agency records. Schedule in accordance with the agency's established records management policy. *IM records may already be scheduled as part of other series, such as records typically found in a case file or a correspondence system.* (Emphasis added)

This is the polar opposite of NARA's guidance on e-mail and it is precisely what its policy on all electronic communications, including the new social media, should be.

The Federal Records Act also gives NARA clear authority (44 USC 2904) including for also conducting 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 in 2007, NARA was told by agency personnel that the failure to audit meant a failure of records management.

As I noted, the next Archivist of the United States must restore NARA's presence and reaffirm its leadership in the life-cycle management of the records of the federal government in all their forms and formats and regardless of whether they are the 1-3% that will eventually be accessioned into the Archives and preserved by NARA as permanent.

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

MANAGING THE PUBLIC'S RECORDS FOR ACCOUNTABILITY AND HISTORY

This report was created through the efforts of policy advocates, including current and former government employees, concerned about the preservation and management of government records. A list of endorsing organizations and individuals can be found beginning on page six.

INTRODUCTION

The American public has much to gain from a well maintained electronic record keeping system. If, rather than silos of agency information, government websites made it easy for citizens to find information and put the data into context by linking it to other programs that are affected by the information, then citizens could see how the components of federal government relate to their own lives. If electronic records were stored with appropriate meta-data that made it easy for search engines to find them, it would be easier to point out waste, fraud and abuse in the federal government. There also would be long-term access to the historical data necessary to validate current work and to write a faithful account of our nation's history. Today, however, the information necessary for accountability and history is at risk. 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, and to trace who knew what, read and edited what document, are being preserved.

Executive leadership is absolutely necessary to create a system where our nation manages and uses its information in the most efficient and useful way. Agencies must be given the message that records management is important from the very top of the organizational chart. However, executive leadership is not sufficient to make this vision a reality.

Below, we identify persistent challenges to creating a reliable electronic record keeping system, and suggest solutions.

Government-Wide Problems

Lack of Leadership

Most agency Chief Information Officers (CIOs), who should be in charge of the agency's information policies, are more oriented toward acquiring and implementing new technology. Because there are no longer specified file keepers, agency personnel must act as their own records managers. Given that top agency management gives little attention to electronic records management, it is not surprising that non-managerial staff also do not make good record keeping a priority—viewing it as an added burden rather than as a part of their jobs. Further, agency personnel currently receive little to no training on proper records management.

The Administration of George W. Bush set a poor example for the executive branch with its failure to properly manage both its presidential and its federal records in the White House. Comprehensive e-records management needs to be implemented from the top of the government on down.

Proposed Solutions

The President should

- Create a position akin to a “Chief Transparency Officer” (CTO), on an equivalent level to the CIO to share responsibility in a clearly defined relationship for maintaining trustworthy knowledge assets.

Alternatives include:

- Requiring that the office of each CIO should have a high-level manager solely in charge of information policy. The upper-level manager must ensure adequate training for personnel on all aspects of information policy, including records management.
- Revising the standard job descriptions for Chief Information Officer (CIO), Supervisory Chief Technology Officer, and Supervisory Chief Records Officer to make the positions less technology-centric.

The President should also

- Require agency CIOs/CTOs to give much higher priority to the importance of records management. In addition, give agencies both adequate resources to purchase, implement, and train personnel on an electronic records management system and ensure that investing in this effort is a priority.

Notably, while up-front costs may be high, a reliable electronic records management system is likely to elicit long-term savings once internal efficiencies and all of the costs associated with complying with the Freedom of Information Act (FOIA) are considered. A mandated date for full functionality of a usable electronic records management system, and strong reporting requirements, will prompt agency officials to make this task a priority.

- Create a high-level panel of Chief Information Officers (CIOs) and CTOs, under the auspices of the Office of Management and Budget (OMB), to reiterate that DoD 5015.2 is a mandatory procurement standard across the executive branch; establish a baseline for a system all agencies should have in place; and set benchmarks for agency compliance.

In addition to looking at DoD 5015.2, which has been endorsed by NARA, this panel should look at the significant amount of work on creating a uniform standard for government electronic management systems that has been done internationally (notably, standards developed by New Zealand and Australia have been approved by the International Council on Archives).

After setting a baseline and benchmarks, this panel should convene a meeting of technology companies in order to prompt the market to develop a common, interoperable functionality for governmentwide use and versions that fit agency needs. To assure the technology companies that agencies will buy the system, there should be a date-certain mandate for agencies to have electronic record keeping systems in place, and penalties for agencies that fail to meet the deadline.

- Direct that, if the responsibility for records management continues to fall only on the individual employee, agency systems should be automated using software at the server level to make the records management decisions. Such a system should be transparent to the user, but not require his or her attention. Different automated systems have been used with great success—a sample of such projects is described in Appendix B of this report.

Lack of Agency Incentive to Implement Interoperable Electronic Management Systems

Challenges

Despite the fact that technologies to create documents electronically have been employed by the government for over 25 years and e-mail has been in wide use for over 15 years, federal agencies have yet to implement widely-available tools that would improve agency function and information sharing. The benefits of a fully-interoperable federal (and state and local) electronic record keeping system are diffuse and may not be immediately apparent to the federal official charged with allocating some of the agency's scarce resources to purchasing such a system.

Moreover, records management systems only receive and manage information objects that are declared to be records, which are created or received elsewhere (e.g., word processing systems, email systems, image management systems, case management systems, etc.) and transferred to the Electronic Records Management (ERM) system control. ERM only works when it interoperates with other software systems where records are created/received. The totality of all the software systems that create/receive/manage information "content" (as it is called to distinguish it from technology) is now called an Enterprise Content Management System (ECMS). An Electronic Records Management Systems only makes sense when it is a component of an interoperable ECMS.

In the face of immediate, centralized, costs and future, dispersed, benefits, agencies have failed to invest in systems that that are individualized to meet agency-specific needs *and* are interoperable with other systems both within the agency and government-wide—opting instead to buy the cheapest package on the shelf, when they purchase any system at all.

Proposed Solutions

The President should

- Ensure that the cost for a records management system that meets federal standards and requirements, as identified earlier, is built in to agency technology purchases. In the short term, the Executive, through the Office of Federal Procurement Policy, should require that a portion of resources used for IT contracts for information services be set aside to pay a percentage of the cost of purchasing electronic records management systems *if* the system meets federal standards. The service fee would be collected by the General Services Administration (GSA).

Alternatively, a fund dedicated to enhancing record keeping capabilities and the delivery of citizen services can be made up of monies collected by adding a nominal fee onto some record service, as was done by New York State in the 80's. (See Appendix A)

The President and the Congress should work together to

- Identify and/or create a fund that federal, state and local public institutions, in the long term, can have access to for the purchase of knowledge asset (e.g., records) preservation and access systems that are interoperable. Some states have created such pools, resulting in interoperable systems at the state, county, and municipal level—a sample of such projects are discussed in Appendix A. A federal program that led toward federal systems that could interoperate with state and local governments could generate strong congressional support as Members could identify it as a boon to their constituencies. It would also advance the President's goal of an interconnected government and public access to government information.

Lack of Oversight

Challenges

The National Archives and Records Administration (NARA) ceased inspecting and auditing agencies' record keeping—ending all assumption that agencies should make record keeping a priority. The reasons NARA ceased the audits are telling: in general, agencies refused to allow NARA to audit their record keeping (despite the law) or agencies let the audit go ahead and then ignored NARA's findings because NARA had no enforcement capabilities. Political resistance to devote scarce resources to electronic record keeping from agencies will not be overcome without real effective oversight.

The benchmarks and reporting requirements discussed above would focus agency attention on the issue; oversight will ensure agencies adequately address it.

Proposed Solutions

Congress should:

- Charge agency Inspectors General (IG) with the responsibility to enforce e-records management. To take on this responsibility, the IG statute may need to be amended and, of course, they would have to be given sufficient resources.
- Yearly agency reports of “Records on Hand,” including e-records and at least the volume of e-mail, should be re-instated and the reports should be reviewed to ensure agencies do not merely adjust the reports by adding an inflation factor year-to-year. When agencies were required to file annual reports of “Records on Hand” and were subject to NARA audits, records management happened; when the reports and audits were eliminated, records management ceased to have agency priority and, in many cases, ceased to occur.
- Require NARA to reinstate yearly audits. To lower the time and cost of these audits (which were abandoned primarily because they took too long and cost too much), NARA could be given the authority to remotely access and check agency files. This solution suffers from the fact that NARA personnel would have to have a deep familiarity with the agency’s individualized systems and their uses.
- Alternatively, agencies could be required to report directly to Congress regarding their progress towards the benchmarks set by the CIO panel and NARA could be required to report to Congress on how it is helping agencies meet those benchmarks. In either scenario, NARA should be given additional personnel to accomplish these goals.

Policy Issues

Challenges

Most agencies are currently operating under General Records Schedule 20 (GRS 20) for managing their e-mail records, meaning that all emails—regardless of what part of the agency they come from or the importance of their content—are allowed to be treated the same. GRS 20 allows agencies to either preserve emails qualifying as records in electronic format or print out e-mail and then destroy the electronic copy. Agencies have almost universally chosen the latter course. Reports show that even if individuals do print out their email, it often is not filed.

Under current law, federal records management is currently governed under a myriad of statutes and multiple agencies are charged with record keeping responsibilities; existing laws should be reconciled (e.g., Clinger-Cohen with the Federal Records / FOIA and other Acts) to encourage agencies to work together and to simplify and clarify overlaps in governance. When reconciling existing law, the following ideas should be considered:

Proposed Solutions

Congress should:

- Amend the E-Government Act to require Chief Information Officer's (CIO) to audit records management.
- Revisit the IG statute to give/ensure IGs (have) the responsibility to audit records management and require reports on electronic records management. Poor agency record keeping practices frustrate investigations by Inspectors General (IG) and cause IGs to waste precious resources looking for records that should be readily available. Since good electronic records management will improve IG performance,
- Revisit the legislation governing Chief Financial Officers to require the CFO to work in partnership with other Officers responsible for information policy. An agency's Chief Financial Officer (CFO) cannot audit the agency without proper records, To avoid the information from being stove-piped, there must be a clearly defined relationship and shared responsibilities between the CFO and other offices charged with knowledge management and preservation.

The President should:

- Institute an agency report card (similar to PART -- Performance Assessment Rating Tool) for agency record keeping. Unlike PART, however, when an agency fails to meet standards/ expectations, the agency's record keeping budget should not be cut reflexively. Instead, the primary penalty for failing the assessment should be public embarrassment. NARA, or OMB, should use these assessments to analyze why an agency fails to meet expectations and work with the agency to make improvements.
- Tie electronic record keeping to the job performance assessment for all officials formally charged with records management.
- Institute, through job descriptions and OMB policy, clearly defined relationships and shared responsibilities among the CFO, CIO, Chief Transparency Officer and other offices charged with knowledge management and preservation. This clarity is necessary to avoid the information from being stove-piped in the various offices.

Endorsed By:

**OpenTheGovernment.org
American Association of Law Libraries
Association of Research Libraries
Center for Responsibility and Ethics in Washington (CREW)**

FIRM Council, John Paul Deley, Chair
National Security Archive
OMB Watch
Sunlight Foundation

APPENDIX A

In New York, the State Archives offers grants and awards to support and promote sound records management practices. Between 500 and 700 local governments apply each year, and the competition is tough. The deadline for the next Local Government Records Management Improvement Fund (LGRMIF) grant cycle is December 1, 2004. Information about the program is available online at www.archives.nysed.gov/a/grantsawards.shtml , and grant application information sessions are held in advance of the deadline.

More and more state governments are instituting similar grant programs, often funded by a portion of the document filing fees collected by county clerks. New Jersey is launching its PARIS grant program in 2005, and you don't have to speak French to apply! The Public Archives and Records Infrastructure Support (PARIS) grant program will initially have a narrow focus looking specifically to fund state-coordinated county needs assessment and strategic planning services and grants-in-aid for imaging systems and services; archival records preservation services; and municipal needs assessment. Application forms should be available in January from the Division of Archives and Records Management of the Department of State, which is overseeing the grants program.

The sixteen-month-long planning process that resulted in the PARIS program was principally funded by the National Historical Publications and Records Commission (NHPRC). In states where there is no state-sponsored program for grants, the NHPRC may be the only game in town. The Commission funds projects that deal with the following kinds of material: records of state, county, municipal, tribal, or other non-Federal units of government; manuscripts, personal papers, or organizational and business archives; collections of photographs, motion pictures, sound recordings, electronic records, and/or such visual materials as unpublished architectural, cartographic, and engineering drawings. One example: A grant of \$28,460 to the City of Milwaukee, WI, to establish retention and preservation criteria for tape recordings of city government activities.

In Connecticut, the State Library's Historic Documents Preservation Program purports to be noncompetitive and give every eligible town that applies within the established guidelines an award. As applications increase and with limited funds available, it is expected that this program will become increasingly competitive.

In Pennsylvania, the History and Museum Commission uses an annual appropriation from the General Assembly. Grants are offered up to \$15,000 for such projects as county records improvement or preservation of local government records.

APPENDIX B

- a. The World Bank has invested heavily in document templates that have records retention and disposition schedules embedded in the templates. They have created hundreds of such templates for all kinds of standardized documents – trip reports, project descriptions, cost estimates for projects, reports of findings, etc., etc. All the user has to do is choose the right template, create the document, press Save, and voila! Records management is accomplished!

- b. At the Office of the Comptroller of the Currency, records managers worked with the business process owners and the IT people in OCC's most important division, Large Bank Supervision. They analyzed the highly complex and detailed workflow process a bank examiner goes through in conduct and completing a Bank Examination. They keyed the analysis to OCC records schedules and are in process of tweaking the ERM software system. The result, when completed soon, will be that the bank examiner goes about her or his business; when the examiner reaches precisely the point in the workflow where a record is created – and only at that point – a pop-up appears on the desktop that says “Make Record?” The examiner hits Yes, then Save, and everything else is automatic. So the process is minimally intrusive on the user; the pop-up only occurs where the joint analysis showed a record should be being created.

- c. The most ambitious is the Air Force's Enterprise Information Management Strategy, now almost a year into its implementation, that will extend to all 10,000 AF installations and its 2 million people. AF manages all information as assets as a matter of policy. This includes the corollary that all information is managed according to records management discipline. What does that mean? It means: All information is assigned a retention and disposition schedule from the moment of creation/receipt. How is AF accomplishing this. (i) They are using Automated Metadata Extraction on all information. Commercial off-the-shelf AME systems are well established – 4 of the best known as FAST, Convera, Autonomy, and Teragram. (AF uses the first three, World Bank uses the fourth.) So, AF automatically extracts a 60-item set of standardized metadata that is associated with each piece of information. (ii) AF has its detailed records retention and disposition schedules. (iii) In the only custom-tailored piece of this scheme, AF is building a Rules Engine that, for each and every piece of information (document, email, spreadsheet, image, etc.) will automatically use the metadata set, the detailed records schedules, and the Rules Engine to assign a retention and disposition schedule to that piece of information. This is ALL AUTOMATED. The user sees none of this. It takes care of records management for documents, emails and everything else, and completely handles e-discovery, FOIA, and privacy. All with no intrusion on the user. Is a given piece of information a record? The answer is determined by its retention/disposition schedule; for example, if you've decided to keep it a year, it's a record.

Mr. CLAY. Thank you, Ms. McDermott.
Ms. Fuchs, you may proceed.

STATEMENT OF MEREDITH FUCHS

Ms. FUCHS. Thank you. Chairman Clay, members of the subcommittee, thank you for inviting me to testify today about the National Archives and Records Administration. I have submitted a written statement that details my organization's experience with NARA, so you will be happy to know I am going to only focus on a few points right now.

We understand that the White House is actively currently assessing candidates for the office of Archivist of the United States. I am hopeful that the members of this subcommittee will let the White House know that the next Archivist must be someone who is eager to confront the challenges that are facing NARA and should be someone who has the authority and the management skills to have a significant impact.

I want to preface my remarks to say that my organization works very regularly with NARA officials and we strongly support their mission. In the years that I have focused on information policy, NARA officials have always taken our concerns seriously. They have always been responsive when we have called upon them. But our experience is that NARA has failed to take leadership amongst Government agencies in the area where it has unique expertise, and in my view, responsibility.

My written submission describes the divergence between a view of NARA primarily as a museum of the past and a view of NARA as a critical component in our Government's overall information policy. From the outside, to us, NARA often seems to act like a disengaged bureaucrat, mechanically doing its work, when it should be leading change. Right now, NARA has the opportunity to lead the change that President Obama has called for in his transparency directives.

We believe NARA can only fulfill this mission, however, if it starts its work long before the boxes of old documents make their way to NARA's warehouses. I am going to highlight four critical areas that I think will require the Archivist's immediate attention.

The first is electronic records management and the records life cycle. If there is one knowledge base that the new Archivist should have, it is of electronic records and records life cycle management. NARA must solve the problem of long-term storage and preservation and on that front, I urge this committee to inquire of NARA into the functioning of the electronic records archives.

But NARA also must lead the charge in getting the Federal agencies to learn how to manage their records. Agencies have a legal obligation to preserve records of historical significance. They must have their records disposition schedules approved by NARA, but we know of very few instances where NARA has taken strong action to enforce the law.

The second issue is classified records. I believe most people at NARA would agree with me that the classified and declassified records process is inefficient, time-consuming and ineffective. I am not going to spend much time on it, but I would say that we strongly support the establishment of a well-funded national declassifica-

tion and historical records center at NARA that will make the growing volume of currently inaccessible records available to the public. The new Archivist should spearhead efforts to gain agency cooperation and advance the necessary legislative changes to make this a reality and quickly.

The third area is Presidential records and Presidential libraries. NARA's effectiveness at preserving Presidential records is an area of grave concern. The Oversight Committee has heard over many years about mismanagement of Presidential records and problems with the Presidential library system. I am not going to revisit all of those details today, but I do think that NARA at least does appear to view itself as powerless to oversee Presidential record-keeping. This is their view even in the case of legitimate concerns that records may be missing or destroyed.

It also is faced with tremendous challenges regarding the Presidential library system. NARA is currently undergoing a process to assess alternative models for Presidential libraries. I urge this committee to inquire of NARA on the details of its process and to ensure that they are considering all alternative models in that process.

Finally, I am going to highlight my fourth concern, which is the issue of access. I urge the next Archivist to be someone who can view access through the lens of President Obama's January 21st, Open Government memorandum. He or she should have a vision for Archives 2.0, so that they can serve a new generation of researchers.

So what does this all mean for the selection of the new Archivist? The person who is chosen must be someone who doesn't only care about history, but also understands what is coming in the future. They have to understand the promise of technology and frankly, they should be someone who has some experience implementing technology for preservation and access. Moreover, they must view NARA not just as a museum of the past, but as a resource to serve the needs of our people today and in the future. Instead of looking at the new responsibilities that Congress has been placing on NARA as an interference in their mission, they should view these as opportunities to help agencies do a better job at preserving records.

The next Archivist also must be a skilled diplomat and a manager who can motivate and lead. I was sad to read that NARA had been listed as one of the least favorable places to work in the Federal Government, because most of the people I know who work there are working there because they care about the mission. They should also have the benefit of having a good work environment.

Finally, and for my organization, this is most essential, the Archivist must be an unwavering advocate of transparency and access. They should understand in their core that the National Archives exists to advance our democracy and it can only do so if the Government creates, preserves and permits the public to see records of its activities and its policies.

Thank you again for the opportunity to speak to you. I will be happy to respond to questions.

[The prepared statement of Ms. Fuchs follows:]

**Statement
Of
Meredith Fuchs,
General Counsel
The National Security Archive
www.nsarchive.org**

**Information Policy, Census, and National Archives Subcommittee
Oversight and Government Reform Committee**

Hearing on: “The National Archives and Records Administration”

**Thursday, May 21, 2009
2154 Rayburn HOB
2:00 p.m.**

Chairman Clay, Ranking Member McHenry, 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 with National Archives’ programs, including NARA’s handling of hundreds of Freedom of Information Act (FOIA) and declassification requests submitted for accessioned records; its management of research programs and reading rooms from College Park, Maryland, to Simi Valley, California, that our staff has visited; its classification policy and oversight functions; and its records management and disposition responsibilities across the federal government.

The National Archives is not just the guardian of our nation’s most cherished historical documents – the Declaration of Independence, the Constitution, and the Bill of Rights. It is a singularly important institution dedicated to the creation of and long term access to records about the activities of our government. NARA does not exist just to help us remember what happened in the past, but also to ensure there is a record of our national story that is accessible in the future.

Indeed, while many see the Archives primarily as a “museum” for records that are no longer in current use, that view fails to acknowledge that NARA has many responsibilities with respect to records that are still operational. These include its mandatory role in federal records scheduling and disposition, oversight of the national security classification and the “controlled unclassified information” (CUI) systems, its daily publication of the *Federal Register*, and, with the addition of the Office of Government Information Services (OGIS), mediation of disputes about records that are requested by the public under FOIA.

In its efforts to implement these varied responsibilities, my experience is that the NARA staff has been open to input and eager to be effective. Dr. Allen Weinstein, the former Archivist, was loyal to the mission of the Archives and also responsive to outside stakeholders. Nonetheless, I believe I see NARA differently than the agency sees itself, and in that area of difference resides my hopes for the next Archivist of the United States.

NARA’s formal mission statement highlights its roles supporting democracy, promoting civic education, and facilitating historical understanding of our national experience. In my view, however, the agency’s mission statement fails to communicate why NARA was granted those responsibilities. Perhaps that is the source of the disconnect between my vision for the agency and the agency’s own vision. The founders of this country set up checks and balances and structures to ensure an informed citizenry because abuses thrive when there is no one watching the institutions that hold power. Congress created NARA because a functional, effective national archive is a critical component in restraining the arbitrary and unreasonable exercise of government power that is anathema to democracy. So, NARA can only fulfill its mission if it starts its work long before the boxes of old documents are trucked over to its warehouses.

When we view NARA’s mission from this perspective, it becomes clear why it is crucial for the Archives to keep apace with our evolving society. Unfortunately, however, for many years NARA has suffered from a lack of vision, drive, and authority,

and far too little support from the Executive Branch and Congress. The challenges that it now faces are daunting. Let me discuss a few of those challenges.

Electronic Records and the Records' Lifecycle:

Our manner of communicating and recording our communications today is vastly different than it was 20 years ago. Yet, NARA historically has chosen to defend a system that depends on printing and filing hard copies of records for long-term preservation long after it became apparent that such a system failed to adequately preserve records of archival value.¹

Although NARA's efforts to build the Electronic Records Archive (the "ERA") demonstrate that NARA has been preparing for the arrival of digital records (and, much of NARA's own annual reporting about its challenges, goals, and performance acknowledges electronic records as a key focus), the agency has been passive with respect trying to update records management practices at most federal agencies. For example, a recent Government Accountability Office (GAO) study found that the National Archives no longer performs inspections of agency records management programs, and has not conducted any since 2000.² GAO also found that the National Archives has not reported on its oversight activities, either to Congress or the public, preferring instead to work quietly with agencies than to expose problems.³ The result is that not much changes in federal records management until there is a scandal – such as the public exposure of the loss of millions of federal record e-mails at the White House.⁴

¹ For example, a recent Government Accountability Office report found that "for 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. 23, 2008), at 3.

² Government Accountability Office, *Federal Records: National Archives and Selected Agencies Need to Strengthen E-Mail Management*, GAO-08-742 (June 2008), at 21-22.

³ *Id.*

⁴ National Security Archive, White House E-Mail Chronology, <http://www.gwu.edu/~nsarchiv/news/20080417/chron.htm> (last visited May 19, 2009).

In many instances, NARA has had to re-process records down the line, adding expense to taxpayers and delays in access.

How does NARA address these records management problems in its most recent strategic plan? It sets goals that follow the same approach as in the past, to wait for the agencies to come to NARA and ask for help. Specifically, NARA set goals of increasing demand for better records management within the federal government in order to meet the agencies' business needs and offering its own records management services.⁵ There is no recognition that the agencies actually have a legal obligation to preserve records of historical significance and that NARA should do something to remind them of that obligation and enforce the law.

Isn't it past time, however, to start thinking longer term about a new model of records management to meet the new reality? There are new ideas being floated. For example, the National Research Council in its 2005 report on the ERA recommends that "all newly acquired agency systems that produce permanent records [] 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."⁶ The Council's report even suggests 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.⁷

Not all the blame should be placed on NARA, of course, since we need improved Information Technology procurement policies as well as more authority and funding

⁵ The National Archives and Records Administration, *Preserving the Past to Protect the Future: The Strategic Plan of the National Archives and Records Administration 2006-2016*, at 6 (2007), <http://www.archives.gov/about/plans-reports/strategic-plan/2007/nara-strategic-plan-2006-2016.pdf>.

⁶ 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., National Academies Press, 2005), Executive Summary at 8, available at http://www.nap.edu/nap-cgi/report.cgi?record_id=11332&type=pdfxsum.

⁷ *Id.* at 7.

from Congress to allow NARA to play a stronger compliance and oversight role.⁸ But, the time for that is now, not after the challenge becomes completely insurmountable.

Classified Records:

If it is true, as we believe, that public access to historically significant records is vital to ensure accountability and inform the public about government conduct, then these principles take on a heightened importance in the realm of national security secrecy, where access to the information is severely limited and there are strong incentives against disclosure. Unfortunately, there is massive over-classification.⁹ Classification typically hinders the release of historically significant records long after the national security sensitivity in the records has diminished and squanders scarce resources better invested in managing all federal records.

Under Executive Order 12958, as amended, records are subject to automatic declassification after 25 years. NARA currently has a backlog of more than 400 million pages of historical records already declassified by agencies since 1995 to process and review for release. Under current staff and resource allocations, it will take NARA decades before they can place these records on the open shelves or in accessible electronic databases for the public.¹⁰ That is just one part of the story. While the number

⁸ See *National Archives Oversight: Protecting Our Nation's History for Future Generations*, Hearing Before the Subcomm. on Federal Financial Management of the S. Comm. on Homeland Security and Governmental Affairs, 110th Cong. (May 14, 2008) (testimony of Thomas Blanton), available at <http://www.gwu.edu/~nsarchiv/news/20080514/index.htm>.

⁹ Officials throughout the federal government have admitted that much of this classification activity is unnecessary. Former Secretary of Defense Donald Rumsfeld acknowledged the problem in an op-ed: "I have long believed that too much material is classified across the federal government as a general rule[.]" Donald Rumsfeld, *War of the Worlds*, Wall St. J., July 18, 2005, at A12. Under repeated questioning from members of Congress at a hearing concerning over-classification, Deputy Secretary of Defense for Counterintelligence and Security Carol A. Haave eventually conceded that approximately 50 percent of classification decisions are over-classifications. *Too Many Secrets: Overclassification as a Barrier to Critical Information Sharing: Hearing Before the Subcomm. on National Security, Emerging Threats and International Relations of the H. Comm. on Gov't Reform*, 108th Cong. 82 (2004) (testimony of Carol A. Haave); see also *id.* at 23 (testimony of J. William Leonard) ("It is no secret that the government classifies too much information.").

¹⁰ Public Interest Declassification Board, *Improving Declassification: A Report to the President*, at 28 (2007).

of pages reviewed and declassified by agencies has steadily declined in recent years,¹¹ each year new records get added to the end of the queue for declassification.¹² The problem for NARA of handling all of these records has not been addressed, just postponed. The overclassification and extended classification is costly for the public in financial terms as well inhibiting public understanding of important historical government activities.

NARA is the keeper of historically significant records and the home of the Information Security Oversight Office (ISOO), which is charged with oversight of the national security classification program and administration of the Public Interest Declassification Board. Therefore, NARA should be the home of a national declassification and historical records center that makes the growing volume of currently inaccessible records available to the public. Legislation is required to effect the necessary collaboration by federal agencies in the declassification process and to reform the standard for release of historical records so the burden of review diminishes as the national security and privacy interests diminish over time. Such legislation would reduce the burden, expense and delay in processing historical records, improve the effective and efficient functioning of the classification system, reduce the unnecessary expenditure of money on protection of non-sensitive materials, and increase public access to historically significant records that document our national experience.

Today, there is a national declassification initiative that was spearheaded by NARA. It came about because of a scandal involving agency reclassification of formerly available records that was uncovered by my organization and historian Matthew Aid. It

¹¹ Information Security Oversight Office, Report to the President for FY 2008 (“ISOO FY 2008 Report”), at 1, 13 (2009), available at <http://www.archives.gov/isoo/reports/2008-annual-report.pdf>.

¹² In addition, there currently is a backlog of 51 million pages of that qualify for potential declassification but required referrals to multiple agencies prior to declassification. These records were granted a three-year extension of the 25-year declassification date, but require review by December 31, 2009. ISOO FY 2008 Report, at 1, 13 (2009). The declassification of these records is hampered by an inefficient process, lack of coordination, and lack of commitment across agencies to resolution of all the “equities.” *Id.* at 13. In addition, declassification of special media and electronic records has been postponed until December 31, 2011. These types of records pose significant challenges to agencies that do not appear likely to be addressed by the deadline.

is a start, but it should not be the end of the progress and we should not have to wait until NARA is surprised by a front page scandal to get to the next step.

Presidential Records and Presidential Libraries:

NARA's effectiveness at preserving presidential records is another area of grave concern. The Presidential Records Act (PRA) does not give NARA the power it needs to ensure that presidential records are properly maintained, preserved, and ultimately made available to the public. Moreover, NARA appears to consider itself powerless to oversee effective recordkeeping procedures at presidential record agencies, even in the face of legitimate concerns that presidential records may be missing or destroyed. When this subcommittee held a hearing on H.R. 5811, the Electronic Communications Preservation Act, last Congress, NARA took the position that it does not have the constitutional authority to do anything more than recommend that the White House follow NARA's records preservation guidelines.¹³

Assuming, given the lack of oversight authority, that a full set of presidential records makes it to NARA at the end of a presidential administration, there are then additional challenges to the public release of the documents. The economics of the Presidential Library system has proven problematic to NARA for many years. The costs of the facilities are a constant drain on NARA's budget, and the staffing is inadequate. In our own experience at the Reagan Library over the last several years, delays in access to requested records have lengthened from an estimated 18 months (as of April 26, 2001) to an estimated 87 months (more than seven years!) by 2007, according to the letters the Reagan Library sends to requesters upon receipt of a FOIA or declassification review request. While 18 months delay is not unusual in our experience when the records at

¹³ *Hearing on H.R. 5811, the Electronic Communications Preservation Act Before the Subcomm. on Information Policy, Census, and National Archives of the H. Comm. on Oversight and Government Reform, 110th Cong. (April 23, 2008) (statement of Paul M. Wester, Jr. and Gary M. Stern); see also Hearing on Electronic Records Preservation at the White House Before the H. Comm. on Oversight and Government Reform, 110th Cong. 43 (Feb. 26, 2008) (testimony of Allen Weinstein, Archivist of the United States).*

issue are highly classified, seven years of delay (and counting) effectively means denial.¹⁴ The Reagan Library estimates that it will take 100 years before all of the Reagan White House Records will be reviewed for release.¹⁵

Moreover, the presidential library system is experiencing the same challenges as the federal government with respect to electronic records. In terms of expertise and efficiency, we see no alternative to greater centralization of the processing of those records, along the lines of what was recommended by the Public Interest Declassification Board in 2007.¹⁶ For many of the same reasons that NARA has supported the creation of a National Declassification Center (NDC) and that the agencies have cooperated with the Remote Archives Capture (RAC) program, it is increasingly becoming clear that the economics of remote storage and processing of records no longer make sense.

Access:

Just as the formats of records have changed, so too have the public's expectations for access. NARA, like all government agencies, must begin to heed President Obama's call for increased transparency, including the use of new tools to reach a broader segment of the public.¹⁷ This means expanded online access, improved finding aids, and digitization of collections. The actual physical space needed to review electronic records is far smaller than that needed to review boxes of paper records. Yet, to date, NARA has not chosen to aggressively pursue an online records strategy. For example, thousands of records have been digitized and reviewed under the Remote Archives Capture (RAC) program at the presidential libraries, but none of those records are available online to the

¹⁴ For the Archive's prior testimony on Presidential records and the National Archives, 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>; see also *National Archives Oversight: Protecting Our Nation's History for Future Generations, Hearing Before the Subcomm. on Federal Financial Management of the S. Comm. on Homeland Security and Governmental Affairs*, 110th Cong. 28-30 (May 14, 2008) (testimony of Thomas Blanton), <http://www.gwu.edu/~nsarchiv/news/20080514/index.htm>.

¹⁵ PIDB, *Improving Declassification*, at 18.

¹⁶ *Id.* at 18-19.

¹⁷ President Barack Obama, Memorandum on Transparency and Open Government (Jan. 21, 2009), http://www.whitehouse.gov/the_press_office/Transparency_and_Open_Government/.

public. As a result, public access to those very important records in paper form depends on significant staff time and facility space. Given the funding problems that have caused NARA in some instances to reduce its hours and staff, it is critical that NARA increase its virtual availability.

In addition to regularly assessing its inventory of information and disclosure priorities, NARA should consider new methods of determining which historical records are of the greatest interest to researchers, historians, and the public. Several complementary approaches to identifying disclosure priorities make sense, particularly in areas where the Archives is focused on a systematic release program. These include increased use of historical advisors or use of interactive technologies that allow members of the public to suggest priorities and comment on others' suggestions.

* * * * *

To be fair, many of the critiques I have made about NARA today are not the fault of the agency itself. NARA has been treated like a visiting cousin in the executive branch – everyone is polite, but no one has a reason to think their opinion matters much in the long run. A new Archivist who has a vision of independence and outreach by NARA could change this, particularly with new, more specific oversight authority and funding from Congress.

What does this mean with regard to the selection of the next Archivist of the United States? The person who is chosen should not be chosen merely on the basis of how well they regard our national history, but also based on their vision of what is coming in the future. That means the new Archivist must understand the promise of technology and should be someone who has experience implementing technology for preservation and access.

Moreover, the next Archivist must embrace the fact that NARA is not a museum of the past, but a resource that should serve the needs of today and tomorrow. Instead of looking at the many new responsibilities that Congress places on NARA as interference in its mission to systematically process records, the Archivist should embrace these as

opportunities to reach out to agencies and help them to do a better job preserving records for the public.

The next Archivist also must be a skilled diplomat who can interact with senior agency officials as a figure of authority, while also understanding the agencies' perspectives.

Finally, the Archivist must be an unwavering advocate of transparency and access. The Archivist should understand in his or her core that the Archives exists to help advance our democracy and it can only do so if the government creates, preserves, and then permits the public to see records of its activities and policies. The management of all of NARA's programs, from OGIS to CUI, classification to declassification, federal records to presidential records, FOIA requests to presidential libraries, and the rest, should be infused with these goals.

Thank you again for the opportunity to speak with you about these issues.

Mr. CLAY. Thank you, Ms. Fuchs, for your statement.
Mr. White, you may make an opening statement.

STATEMENT OF LEE WHITE

Mr. WHITE. I can assure you, my testimony is 5 minutes and 22 seconds. [Laughter.]

Chairman Clay—

Mr. CLAY. We are keeping score. [Laughter.]

Mr. WHITE. Well, start now.

Chairman Clay and members of the subcommittee, I am Lee White, the executive director of the National Coalition for History. The Coalition is a consortium of over 60 organizations that advocates and educates on Federal legislative and regulatory issues affecting historians, archivists, political scientists, teachers and other public stakeholders. Thank you for the opportunity to discuss the major issues we see facing the new Archivist of the United States.

Let me add to your comments by saying NARA's apparent loss of Clinton-era electronic records is inexcusable. The mismanagement of these sensitive records exemplifies the urgent need for systemic change throughout the agency. It also shows why the Obama administration must move quickly to nominate a new Archivist with the management skills needed to address the serious problems plaguing the agency.

Here is just a brief summary of the key issue I addressed in my written testimony and the ones most pressing we see facing the new Archivist of the United States.

First, resources. Any consideration of the issues facing the National Archives must begin with a discussion of resources, both financial and human. For too long, the Congress and various administrations have given NARA additional responsibilities without a commensurate increase in funding. The top priority for the new Archivist should be to address the growing processing backlog. Congress should give NARA the financial resources necessary to not only process the existing backlogs of historical materials, but also to keep up with the exponential increase of new records.

With regard to human resources, NARA is facing the retirement of a large percentage of its work force. The agency must employ and train an entire new generation of archival professionals. As everyone else has stated, I am disappointed that the National Archives finished 29th out of 30 Federal agencies in measuring employees' job satisfaction. The first challenge the new Archivist will face is improving NARA's organizational culture and restoring morale at the agency.

Second, the Archivist should ensure the creation and preservation of Federal and Presidential records. The Archivist of the United States will need both the full backing of the President as well as vigilant congressional oversight to ensure that all branches of the Government adhere to the legal requirements of the Federal Records and Presidential Records Act.

Third, reform the Presidential library system. Last fall, Congress directed NARA to prepare a report due this summer that suggests alternative models for the Presidential library system. We all, I think, agree that the Presidential library system is broken and re-

forming the operations, maintenance and funding of the library should be a top priority for the new Archivist.

Fourth, a complete deployment of a new system for preserving electronic records. The long-delayed Electronic Records Archive is an essential tool for the NARA of today and tomorrow. Mandatory use of the ERA by all Federal agencies is currently scheduled to begin in January 2011. The new Archivist must ensure that the ERA meets that deadline.

Fifth, pursue efficient declassification and open access to public information. Over-classification of Government information not only denies or delays public access to records, but also squanders resources by adding to the backlog of records that need to go through the convoluted declassification process.

The Archivist should play a key role within the administration in the development of the forthcoming Government-wide controlled unclassified information policy. The new Archivist should also advocate within the administration for the establishment of a national declassification center at NARA, which we were disappointed to see was not included in the President's fiscal year 2010 budget request.

Sixth, improve citizens' access to Government records. NARA must expand online access to finding aids and digitized portions of its collections, as well as maintain extended research hours so that stakeholders can access materials that are only available at NARA facilities.

Seventh, expand NARA's educational and outreach activities. The records and artifacts entrusted to NARA's stewardship are truly national treasures. To improve historical and civic literacy, NARA should continue to expand its excellent educational and public programs.

And finally, Mr. Chairman, this is something that is dear to your heart, the National Historical Publications and Records Commission. The History Coalition strongly supports the grants program of the NHPRC. We urge the administration and the new Archivist to work with you, Chairman Clay, toward the passage of the legislation you introduce to reauthorize the NHPRC at an annual level of \$20 million per year for fiscal years 2010 through 2014.

Thank you again, Mr. Chairman, and I will be happy to respond to any questions you may have.

[The prepared statement of Mr. White follows:]

*Testimony
Of
Lee White
Executive Director
National Coalition for History*

**Information Policy, Census, and National Archives Subcommittee
Oversight and Government Reform Committee
Thursday, May 21, 2009
2154 Rayburn HOB
2:00 p.m.**

Policy Issues Facing a New Archivist of the United States

Chairman Clay, Ranking Member McHenry and Members of the Subcommittee;

I am Lee White, the Executive Director of the National Coalition for History (NCH).

NCH is a consortium of over 60 organizations that advocates and educates on federal legislative and regulatory issues affecting historians, archivists, political scientists, teachers, and other public stakeholders. As historians 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 discuss the major issues we see facing the new Archivist of the United States once he or she is nominated by President Obama and confirmed by the Senate.

On behalf of the constituencies I represent, I want to thank you Mr. Chairman, for convening this hearing. The National Archives is at a critical point in its history. NARA faces major challenges including the transition over the next 18 months to its new Electronic Records Archives system, declassification, the backlog of records that is growing exponentially, and the reality of having more responsibilities placed upon the agency without a commensurate increase in funding.

I want to start by recognizing the service that Dr. Allen Weinstein gave to our country during his tenure as Archivist of the United States. He led NARA through difficult and often controversial times. Archivist Weinstein made the most out of every federal dollar and leveraged NARA's funds through the use of public-private partnerships. He expanded outreach and public education programs to make NARA's holdings more accessible to the American people. He served with integrity, often times in conflict with the Bush administration, to preserve NARA's reputation for openness and non-partisanship. We hope whomever President Obama selects as the new Archivist, he or she will have the integrity and vision of Professor Weinstein.

The new Archivist should possess a skill set that allows the individual to deal with many dichotomies. The Archivist must be non-partisan, but also possess the political skills needed to

serve as an aggressive advocate for NARA's programs on Capitol Hill, within the Administration, and with its stakeholders. The Archivist must be both a visionary and a hands-on manager, committed to providing the maximum amount of public access to NARA's holdings allowed by law yet make difficult resource allocation decisions that may result in delays in the processing and release of records. The individual must address an enormous logjam of records on the back end, while addressing the exponential growth of new records generated every year on the front end. No one person can be expected to do this alone, but he or she must have the management skills needed to build a strong team of archival professionals, historians, and support staff.

If this hearing had been held a year ago, the most pressing issues for our members would have been different from the ones we will discuss today. On January 21st, President Obama announced a sweeping series of transparency reforms that addressed two of our major concerns.

Symbolically, in one of his first official acts, the President issued Executive Order 13489, revoking the Bush administration's Executive Order 13233 that severely limited access by the public to presidential records. The issuance of Executive Order 13489 ended a nearly eight-year effort by historians, archivists, political scientists, and other stakeholders in federal courts and on Capitol Hill to have the Bush EO revoked on legal grounds or by statute.

While we were thrilled with the president's action, we still believe that H.R. 35, "Presidential Records Act Amendments of 2009" needs to be enacted and we will urge the new Archivist to support this effort. The legislation will make it more difficult for future presidents to manipulate the Presidential Records Act through the use of executive orders and will ensure that presidential records are treated more consistently from administration to administration. Hopefully, the Senate will soon follow the House's lead and pass H.R. 35.

In addition to revoking President Bush's executive order on presidential records, President Obama issued a Memorandum on Transparency and Open Government, and a Memorandum on the Freedom of Information Act (FOIA), directing all members of his administration to operate under principles of openness and transparency. On March 19, 2009, Attorney General Eric Holder issued comprehensive new Freedom of Information Act (FOIA) guidelines that direct all executive branch departments and agencies to apply a presumption of openness when administering the FOIA.

While the Obama administration has made much progress with regard to improving transparency, openness, and access to government records, Congress must continue to serve its vital oversight role and press the case with the White House to follow through on its commitments. The selection and confirmation of a new Archivist provides a rare opportunity to bring continuing issues of concern to the table.

The National Coalition for History urges President Obama to nominate an Archivist of the United States who has the professional experience, managerial skill, and political acumen to address the following issues facing the National Archives and Records Administration:

1. **Resources**—At a hearing before the Senate Judiciary Committee on the Papers of the

Founding Fathers projects that are partially funded by 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.”

Any consideration of the issues facing the National Archives must begin with a discussion of resources, financial and human. NARA faces enormous challenges not only in processing and preserving traditional paper records, but also in making the transition to managing electronic records. As the production of records from all types of media proliferates, NARA is forced to do more with already strained resources.

We have been concerned for many years that Congress and various Administrations have placed heavier burdens on the National Archives while not providing the commensurate funding to meet these new obligations. The new Archivist will need to be a tireless advocate to ensure the agency has the resources it needs to meet its primary mission of safeguarding and preserving the records of our Government for the American people.

The top priority for the new Archivist should be to address the growing processing backlog. Congress should give NARA the resources necessary to not only process the existing backlog of historical materials, but also to keep up with the increasing flow of new materials and prevent the development of an even larger future backlog.

2. **Ensure the creation and preservation of federal and presidential records**—The Archivist of the United States will need both the full backing of the President, as well as vigilant congressional oversight, to ensure that all branches of the government adhere to the legal requirements of the Federal Records Act and the Presidential Records Act.

For years, archivists and historians have called for improved coordination between NARA and the White House with regard to the effective transfer of records and artifacts from the Executive Office of the President to NARA. There is room for significant savings over the life-cycle of presidential records and artifacts, if the issues related to the long-term arrangement, description, preservation of, and access to these materials were consistently coordinated between the White House and NARA from the beginning of each administration.

The on-going controversy and litigation over missing White House e-mails and the use of private e-mail accounts to conduct official government business during the recent Bush administration are clear examples of why NARA must work with each new administration to develop consistent records preservation procedures and standards.

3. **Complete deployment of a new system for preserving electronic records**—The long-delayed Electronic Records Archives (ERA) is an essential tool for the NARA of today and tomorrow. Mandatory use of the ERA by all federal agencies is currently scheduled to begin in January 2011. The new Archivist must act immediately to ensure that the ERA is ready to meet that deadline. Without this system NARA will be unable to manage the exponentially expanding volume of electronic records. Effective management of federal records will improve the performance of our government, save tax dollars, and ensure current and future

generations will have access to our nation's documentary heritage.

4. **Pursue efficient declassification and open access to public information**—Overclassification of government information not only denies or delays public access to records, but also squanders resources by adding to the backlog of records that need to go through the convoluted declassification process.

The new Archivist should play a key role within the administration in the development of the forthcoming government-wide Controlled Unclassified Information (CUI) policy. The addition of the Office of Government Information Services (OGIS) and the CUI offices at NARA, as provided for in the President's FY 2010 budget, will strengthen the Archivist's authority in ensuring appropriate open access to public information.

The Archivist should press for adoption of the recommendations of the Public Interest Declassification Board (PIDB) included in its "Improving Declassification" report to the President. The Archivist should support the establishment of the National Declassification Center, as called for by the PIDB, to streamline and expedite the declassification process.

5. **Improve citizens' access to government records**—NARA must expand on-line access to finding aids and digitized portions of its collections and maintain extended hours so that historians, political scientists, journalists, researchers, and members of the public can use materials that are only available at NARA facilities. In the long run, making more information available via the Internet will decrease NARA's costs for maintaining facilities, and may ultimately lead to cost-effective consolidation of storage facilities. This will also facilitate citizen access to the vast and varied historical resources held by NARA.
6. **Reform the Presidential Library System**—Last fall, Congress directed NARA to prepare a report, due this summer, that suggests alternative models for the presidential library system. In seeking public comment this past March, NARA issued a perfunctory, one paragraph notice that failed to address many of the serious challenges facing the presidential library system. The presidential library system is broken. Reforming both the operations, maintenance, and funding of the libraries should be a top priority for the new Archivist to ensure public access to presidential records and artifacts for generations to come.

I request that the National Coalition for History's comments to NARA on the presidential library system be included in the record following our written testimony.

One of NARA's suggested alternatives was, "Presidential records can be processed more efficiently if they are processed systematically rather than under FOIA during the years in which the Presidential Records Act (PRA) restrictions apply. . . ." The work of systematic processing need not, and should not be done at the expense of public access to public records. The new Archivist should reject any alternative that would prioritize efforts to process records systematically over and above public access to presidential records via the FOIA during the 12-year period when the Presidential Records Act restrictions apply. On the contrary, FOIA should be given greater support.

We believe that NARA's proposed alternative accepts the current status quo where limited resources always require substantial trade-offs between preservation and access. Congress has given NARA the mission to do both, and the new Archivist should present a vision, plans, and budgets that will accomplish this objective. The Archivist should move quickly to address the growing backlogs of records at presidential libraries.

Congress last year made a strong statement that the costs associated with the construction and maintenance of presidential libraries have been spiraling out of control. Congress enacted a law increasing the endowment percentage requirement for presidential library foundations for the cost of land, construction, and installing equipment at these facilities from 40% to 60%. Unfortunately, we have seen earmarks for the maintenance of specific presidential libraries tacked on to NARA's annual appropriation at the expense of NARA's core mission. NARA must now provide Congress annually with a ten-year capital improvement plan for the Presidential Library System. The new Archivist should ensure this plan is based on demonstrated needs, not outside political pressure.

7. **Strengthen NARA's organization and culture**— Facing the upcoming retirement of a large percentage of its workforce NARA must train and employ a new generation of archival professionals with the skills and experience to face the complex technical and administrative challenges of the future. The Archivist must provide the leadership and vision to inspire creative and excellent performance throughout the agency, and continue to develop effective partnerships with professional and academic organizations and public and private sector institutions that enhance and extend NARA's ability to accomplish its mission. The archivist needs to enlist a management team that embraces the challenges of the future and brings the range of management and technical skills necessary to drive organizational change.
8. **Expand NARA's educational and outreach activities**— The records and artifacts entrusted to NARA's stewardship are truly national treasures. In recent years NARA has taken important steps to increase public awareness of, and access to, its vast and priceless holdings. To improve historical and civic literacy, NARA should build upon the expansion of its educational and public programs that were made a priority by Archivist Weinstein.
9. **National Historical Publications and Records Commission (NHPRC)**—The National Coalition for History strongly supports the grants program of the National Historical Publications and Records Commission (NHPRC). We urge the Administration and the new Archivist to work with Chairman Clay to enact his legislation (H.R. 1556) to reauthorize this program at an annual level of \$20 million for fiscal years 2010 – 2014.

We fought to preserve funding for this nationally significant program throughout the Bush Administration. The \$10 million authorization, expiring this fiscal year, has not been increased since FY 1997. Even with an authorization, the NHPRC has constantly been threatened and inflation has seriously eroded its funding level in constant dollars. The grants program must be reauthorized to prevent increased future vulnerability.

Additionally, while we are pleased that the Obama Administration's FY 2010 budget request includes \$10 million for the NHPRC, we believe that increased funding is needed. A major

new initiative to digitize and provide free access to the Papers of the Founding Fathers must be funded without threatening the progress of the ongoing NHPRC programs. A challenge for the new Archivist will be to strongly advocate to the Office of Management and Budget and Congressional appropriators that this vital program deserves increased funding.

Thank you again, Mr. Chairman, and I will be happy to respond to any questions you may have.

Mr. CLAY. Thank you, Mr. White.

And now we will move to the question period for Members under the 5-minute rule. I will go in a different order and recognize the gentlewoman from California, Ms. Watson, for 5 minutes.

Ms. WATSON. Thank you so much, Mr. Chairman.

The Open Government Act of 2007 created the Office of Government Information Services within the NARA to review the records management procedures of agencies and to improve the application of the Freedom of Information Act by serving as an impartial mediator toward requestors and agencies. However, experts have argued that the OGIS has never been adequately funded and Allen Weinstein, the previous Archivist of the United States, contended that these responsibilities should not be the NARA's, but within the sole jurisdiction of the Justice Department.

So I ask any of you that would like to respond, if you think the Department of Justice is the appropriate agency for resolving the Freedom of Information Act disputes, and what kind of increases do you think the NARA would need to sufficiently fulfill the statutory responsibilities of the OGIS. Let me just go down the line.

Ms. FUCHS. Sure, I would be happy to respond. I think that it is without question that NARA did not welcome the idea of OGIS being placed there, although I do believe that now that OGIS is going to be NARA, they are sort of stuck with it, and I am hopeful that they are going to take it seriously.

There is no question that the Justice Department is not an appropriate place to have a mediator of FOIA disputes. We have long experience dealing with the Justice Department. They are very professional, but they defend the Government, so there is an inherent conflict of interest in them playing that role.

We are very concerned that it has taken so long to see the appointment of a Director of the Office of Government Information Services. I understand that appointment is eminent. I think that is going to be a significant test on whether they are seriously taking the responsibility to act in that role as a mediator. Because that person can make a tremendous difference in terms of the openness of Government. But if the person who they hire to startup that office is not someone who comes with a vision and a desire to make a difference, well, then, it is just wasted money.

Ms. WATSON. Thank you.

Ms. McDermott.

Ms. MCDERMOTT. Yes, thank you. I agree completely with Meredith. The placement of the Office of Government Information Services was thought through very hard among ourselves and with people on the Hill. And while we know that NARA was not pleased to have it, partly because it was initially unfunded, we do think that is the best place for it, and the Justice Department, for the reasons that Ms. Fuchs gave, is not it.

In terms of how many resources they need, I think that is probably something that the NARA folks and the new Director of the Office, when he or she is hired, are best going to be placed to recommend. We are concerned, though, that enough money be allocated for the office that they are not dependent on detailees from the Justice Department who are good and decent civil servants, but they bring with them, they would bring with them their Depart-

ment of Justice frame of mind. We want a new look at these cases and at these issues.

I would also ask that this office oversee or take a look, anyway, at how NARA, at how the FOIA is being implemented Government-wide. I think that is going to be a very important job. DOJ has responsibility for giving guidance, but nobody has, in the executive branch, has responsibility for ensuring that the agencies Government-wide are actually complying with the law. So we are very hopeful, we are anxious to see who is named, and we will work with them and try to get them the necessary funding.

Ms. WATSON. Thank you.

And Mr. White, I have a question for you. I am sure you concur with what has been said previously.

Mr. WHITE. Yes.

Ms. WATSON. In one of his first acts, President Obama released a memorandum on transparency and open Government and issued Executive Order 13489, which revoked President Bush's Executive Order 13233, which placed limits on access to Presidential records.

So what would you say the record of implementation has been thus far in terms of the Obama administration applying a presumptive openness? And what other actions would you recommend the President take to increase transparency and accountability in the executive branch?

Mr. WHITE. Well, I have to say that the day that the President issued that Executive order was one of the happiest days of my professional life. [Laughter.]

I have been working on it for quite a long time.

I think it is too soon to tell. I know that right after the President issued the Executive order, some records were released, I believe, from the Reagan Library. I think what is still needed, however, is there is legislation pending in the Senate that passed here in the House, H.R. 35, the Presidential Records Reform Act, that needs to be passed. We need to get the changes that the administration made put into law, enacted, codified, so that the Presidential Records Act is not left to the whim of any President, each President that comes in. Once it is codified, it is going to be harder for them to manipulate the Presidential Records Act to their own uses.

So I would say, getting the Senate to pass that bill and sending it back over here if there are any changes, I know that President Obama has already committed himself to signing the bill. So you need to get your colleagues on the other side of the Hill to start moving.

Ms. WATSON. We will be waiting for it.

I will yield back to you, Mr. Chairman. I do have some other questions.

Mr. CLAY. We will do a second round. Thank you, Ms. Watson.

Mr. Westmoreland, you are recognized for 5 minutes.

Mr. WESTMORELAND. Thank you, Mr. Chairman.

Ms. Fuchs, you are an advocate of, or against over-classification, I guess. And I know that in the past, there has been some things that were released and then later on reclassified, I guess, by the CIA or another agency.

How often are documents released by the Archives that are subsequently reclassified?

Ms. FUCHS. A couple of years ago, there was a very significant incident that my organization played a role in covering where there was significant reclassification going on at the National Archives. As a result of that, an audit was done and it was found that most of those reclassifications were either inappropriate or, even if technically legitimate under the Executive order, were questionable. So there had been a lot of unnecessary reclassification, but there was certainly some core that was properly apparently reclassified.

My understanding is that since that time, new procedures were put in at the National Archives and there have been very, very few reclassifications. In fact, I just looked at this number a couple of days ago, and I think within the last year or two, there may have been zero, and the year before that, there were a couple of pages or a couple of documents.

There is a serious question, when you are talking about reclassifying, what was the reason that the thing was mistakenly classified, it is already publicly known, and is there actually going to be harm that requires reclassification. Because reclassifying itself can lead to harm. These are questions which I do believe that the National Archives, in response to the scandal, has been much more professional in handling.

Mr. WESTMORELAND. I know that in 2006, there was a report published, and I don't know who that was by, that said there were 55,000 pages. So if there were 55,000 pages reclassified, and you are saying there was none in the last 2 years, it must be doing a better job of it.

Ms. FUCHS. That report was in response to the fact that we had uncovered this massive reclassification effort, and that is indeed what the information security oversight was to.

Mr. WESTMORELAND. Do you know how many of those 55,000 pages were then unclassified?

Ms. FUCHS. I don't know whether they were then unclassified.

Mr. WESTMORELAND. That is fine.

Ms. McDERMOTT. If I may, I think it is important to note, too, that it was not NARA that declassified these materials. NARA cannot declassify other agencies' documents. They were materials that were, that various agencies, the CIA and other agencies, had interest in. One of them had declassified it and other agencies were unhappy when they discovered that CIA was unhappy, for instance, when they discovered the State Department might have declassified something that they didn't want.

But these were in NARA's safekeeping, and it happened on NARA's property. But it was not NARA that declassified the information, inappropriately or not.

Mr. WESTMORELAND. And I think that is a good point, Ms. McDermott. I guess the rush to declassify, maybe that process needs to be slowed down, that each one of the agencies has an opportunity to look at it before it is put into the unclassified.

Ms. FUCHS. If I could just comment on that briefly, I think you are absolutely correct that there needs to be a much better process for declassifying. But I don't think that means that we should stop declassifying. What I think that means is we should pursue something that NARA has in fact initiated, but on a much larger scale, which is the National Declassification Center, where every agency

would be there, and every agency would play a role, and so we could make sure that we are not spending taxpayer money protecting old secrets that are no longer important, and instead we are actually protecting things that are really sensitive today.

Mr. WESTMORELAND. OK. I am going to have make the questions shorter, and we are going to have to make the answers shorter.

The National Security Archive, they rely heavily on the Freedom of Information Act to acquire materials. How long do you think is a, or how would you evaluate agencies' responsiveness to the Freedom of Information Act request for the National Security Archive to get this information?

Ms. FUCHS. I would say we see a wide range of practice at agencies. Some agencies are far more professional. When material is classified, it causes a delay in the review and release of information. We have seen some improvement in the last couple of years in terms of customer service at agencies, but we have not seen significant improvements in terms of the speed with which records, or with which they are responding to FOIA requests that we have filed.

Mr. WESTMORELAND. Average time, would you say, if you are asking for something to go through the process to see if it is classified, non-classified or whatever, what is it? Two years? Three months? Four days?

Ms. FUCHS. Nothing that we request has ever been provided in 4 days. [Laughter.]

Although I would say that if it is classified, we would be looking at several months to several years, and at some agencies, many years.

Mr. WESTMORELAND. Can I just have one little followup, and I won't have a second round?

Mr. CLAY. Sure.

Mr. WESTMORELAND. And this is for Ms. Fuchs, too. As you know, I guess in January there was a report, or the Pentagon said there was a report about the detainees in Guantanamo Bay, in the fact that of the 534 prisoners, about 1 out of 7 had been either gone back into militant activity with the Taliban or whatever. They said in January they were going to release it.

Well, as you may know, as of today they have not released it. But yet, the New York Times reported on the story of the Pentagon and actually gave the exact numbers of the ones that had returned to flight.

If you had requested a report from the Pentagon under the Freedom of Information Act, and Pentagon officials promised to release it promptly, would you be upset that the Pentagon dragged its feet on what you had asked and then leaked it to the New York Times? [Laughter.]

Ms. FUCHS. Well, that is a good question. I think the Freedom of Information Act is not always administered as professionally as I would like. It is the appropriate way for members of the public, like my organization, to ask for information from Government agencies.

I can't really speak to the leak, because I don't know who leaked it. But I certainly think that there is a process that should be fol-

lowed when folks like us ask. In this instance, I gather, maybe it wasn't.

Mr. WESTMORELAND. It sounds like to me, though, that I guess the Freedom of Information Act that they submitted counted more than getting the information to the public, as was promised in January.

With that, Mr. Chairman, I yield back the balance of my time.

Mr. CLAY. Thank you, Mr. Westmoreland. Thanks for those questions, too.

A panel-wide question. What are some of the deficiencies in the Presidential library system that you believe must be addressed by the next Archivist? Let's start with Mr. White.

Mr. WHITE. Well, it is funny you should ask, because about a week ago, or 2 weeks ago, we submitted, as you know, Congress asked the National Archives to prepare a report to you that is due this summer, detailing alternative models for the Presidential library system. I have our comments, if I could submit them for the record later on.

Mr. CLAY. Without objection.

[The information referred to follows:]

Response to question to Lee White, National Coalition for History, from Chairman Clay re: problems with the Presidential Library System.

A major problem is that the costs associated with the construction and maintenance of presidential libraries has been spiraling out of control. For the first time, this year Congress is requiring NARA to provide a ten-year capital improvement plan for the Presidential Library System as part of its annual budget request. The new Archivist should ensure this plan is based on demonstrated needs, not outside political pressure.

Mr. WHITE. One of the issues I hate to point out is with Congress. Funding is always an issue with everything. But as we have seen with some of the Presidential libraries, the FDR Library, for example, had horrible conditions, the roof was leaking and everything else. We constantly see appropriators adding earmarks for particular Presidential libraries that have more, how shall we say, politically powerful people behind them.

Mr. CLAY. More popularity? [Laughter.]

Mr. WHITE. More popularity. And it is not the Harry Truman Library, by the way.

Probably the biggest issue, without belaboring the point, is declassification. It is endemic, it affects almost everything that the Archives does. Without dealing with declassification, you are going to have these backlogs. I believe when Tom Blanton, who is the executive director of Meredith's organization, testified a few years ago before you, there was a 5-year backlog. Now it is a 7-year backlog at the Reagan Library, if you put in a request for information.

Now, if you are a historian, or a grad student, even worse, and you are working on your dissertation, you can't wait 7 years to get the documents that you may need, critical documents that you need for your dissertation. So from an historian's point of view, this is an absolute nightmare, these backlogs.

Again, I will make another pitch for the National Declassification Center that was in the report of the Public Interest Declassification Board. If you put declassification in one place with agency representatives who have expertise in declassification for the CIA, Homeland Security, whatever, if they are all in one place, it could speed things up.

So if you ask me to name one, I would say declassification was probably the biggest one.

Mr. CLAY. Thank you.

Anyone else?

Ms. FUCHS. I will just quickly sort of jump on that. It is not just the historians. Sometimes we have fairly current need for information that Presidential libraries have. For example, the nomination of a Supreme Court Justice who may have worked in an administration previously, people want to see those records. Or someone who is running for office, to be President of the United States, and people want to see those records, because they exist.

And the Presidential Library, it is particularly Presidential libraries, because it is such a huge quantity of materials being sent to them, they are just not really, they don't have the capacity, frankly, to get all that, get through it all and get it out in any reasonable amount of time.

So we think that NARA should be allowed to really focus on the records and getting the records out, and they should be looking toward new ways of making things available, including much more online availability, so they don't need as much physical facilities.

Mr. WHITE. Can I add one thing, Mr. Chairman? I went to the budget hearing for NARA the other day before the Appropriations Committee. They have taken in 100 terabytes of electronic records from the Bush administration. In the Clinton administration, they took in 2 terabytes.

You heard Mr. McHenry talk about a terabyte is millions and millions of pages. So you can see how exponentially the electronic records are growing. So it makes another need for why we need to get the electronic records archive system up and running.

Mr. CLAY. I read that one terabyte was equivalent to one million books. Now, with this, with the revelation of a security breach, even with some of the things that Mr. McHenry said in his opening statement, do we have a cultural problem at Archives? Have they advanced with the technology that we are now faced with in the 21st century? Have they kept up with that? Are they prepared to even receive the records of this current administration once that ends as far as being able to catalog and store it and to be the purveyor of those records? Are they prepared for that, or does the new Director have to come in and change the entire culture of an agency?

Mr. WHITE. I think that the Archives has already learned, they called for a number of years for a liaison at the White House General Counsel's office, somebody dedicated to dealing with them on Presidential records. From what I understand, the Obama White House has assigned two people to that task, to liaison with NARA.

So dealing with the issues while they are being created will make it much easier in 4 or 8 years when President Obama leaves office. So dealing with things up front makes things much easier on the back end.

Mr. CLAY. Ms. McDermott.

Ms. MCDERMOTT. I think that the Archives itself, my impression, and again, this is from outside, is that it is sort of the cobbler's children, that they are, and again, this is from conversations, that their own recordkeeping, electronic recordkeeping, may not be terrific, that when people are leaving their offices, they delete their email. And of course, the ERA is under development, although as you know from GAO reports and your own committee work, that there are problems with that.

So I think there are potentially technology issues within NARA in terms of its own ability to manage its own records, much less to manage all the rest of the records. And then there is a leadership issue in terms of the rest of the Government. They do have that responsibility. They don't really want to take it, but they do have that throughout the Government, and they have to provide leadership in moving the executive branch toward electronic records management. That is a big technological challenge and a cost.

Mr. CLAY. Thank you for that response.

Ms. FUCHS. I am happy to add my voice and I will be very quick. I do think there is a need for a cultural change. I think that NARA has not had cooperation from the executive branch. And so there needs to be pressure put on each agency as well, that they should be responsible. They need congressional backup, and in some instances, they need some more authority from Congress, so that they can actually let agencies know, they can be more vocal, perhaps, about the problems.

I think that they need a leader who can manage, and they need a leader who can lead. And that may mean they need more than

one person. So I would sort of support the comment Ms. McDermott said that there should be another political appointee position.

And I urge you, when you do have NARA here, to ask them, what are they going to do when they get the things from the White House at the end of this administration? Do they have any idea how to manage those kinds of records? Because that is a whole new level of complexity that I don't think we even had in the Bush administration that we clearly are going to have in the Obama administration.

Mr. CLAY. Thank you so much.

Mr. Westmoreland, you are recognized.

Mr. WESTMORELAND. Thank you.

President Obama announced this morning that the administration will review the classification policies at every agency. So from what we just talked about, and hearing what Mr. White said, do you think the appropriate evaluator of these Freedom of Information requests would be the OGIS or the agency that was in possession of the requested material? Each one of you can answer.

Ms. FUCHS. I think in the first instance, we think that the one who should be evaluating the classification is the agency that classified it. I don't think that we have any problem with that.

When we talk about the National Declassification Center and historical records, we do think that the authority of one agency to block declassification is a concern. Because we have seen that agencies will simply put up road blocks, even when they can't convince another agency. Then you wonder why it should be classified.

So I think those are two different categories.

Mr. WESTMORELAND. And if they got confused, it could clog up the whole system, is that not right?

Ms. FUCHS. Right, exactly. At the end of the day, the President has ultimate authority about whether something should be classified or not. The President certainly has the ability to declassify records if he chooses to do so.

Ms. MCDERMOTT. I think it is also useful to note that when there is a request for a classified piece of information and an agency turns it down, an individual or the requestor has a choice to go to court or they can go through a process that is a mandatory declassification review. Then there is an appeals process beyond that, where people from outside of the originating agency have a chance to look at the document and make some decisions about whether all or portions of it could be declassified and released. That is more or less effective.

But there are processes in place that it doesn't, for contemporaneous declassification as opposed to after the 25 years or that sort of thing, there are processes that have been put in place and that are overseen by the Information Security Oversight Office that seem to work reasonably well. Although they have a tremendous backlog now, too. Everybody needs more resources.

Mr. WESTMORELAND. Mr. White.

Mr. WHITE. I hate to go back to always saying it helps on the front end. But President Bush issued, I don't know whether it was a policy, called Controlled Unclassified Information, where he wanted to reduce, there is something like 100 different ways things can be classified as sensitive. He reduced that to three.

But we are still waiting for, and then he sent out, the President sent out a recommendation from different agencies as to how to implement this new policy. It still hasn't been implemented. We are waiting for the Obama administration to issue this new policy. I think that hopefully, having it so that things fall into three different stovepipes instead of 100 different stovepipes, where we have to determine, if one agency says this is top secret, it might not mean what top secret means at another agency, hopefully down the road will help the process.

Mr. WESTMORELAND. Do you think the OGIS should be the facilitator or the link between those people to where the CIA may say, "this is classified," and the State Department says it is not?

Mr. WHITE. I think that is somewhat what their role was envisioned as, as being the final arbiter of what goes and what doesn't go. Meredith would know more about it.

Ms. FUCHS. I would disagree. I mean, they are a mediator. So what they will be doing is they will be trying to get the agency and the FOIA requestor to reach some sort of agreement. I think the reason that our community felt it was important to have this office was that we found that agencies were obstructing requests for information, for poor reasons, not for legitimate reasons. And the only alternative you had was to go to court.

Now, my organization, we are happy to go to court. I am a lawyer, I can litigate. But you know what? Your average guy on the street really doesn't have the ability to go to court, and it is not right that they should have to go to court to find out something from their Government.

Mr. WESTMORELAND. OK, one last question. Somebody said that the President set the policy for the declassification of all these things. And I guess he is the final person to decide if it is declassified or not. And he announced this morning he was going to review all these classification policies at every agency.

But from what I am hearing from you, he could make a policy that would automatically set the policy for all the agencies. Do you suggest that the President do that, rather than going through trying to analyze all these classification policies of the different agencies? Or just say, OK, this is going to be the policy?

Ms. FUCHS. Right. I think there are two things going on. I think every President has issued an Executive order dealing with classification policy. Indeed, President Bush's Executive order was in many ways very similar to President Clinton's. And President Clinton's had an innovation that has been retained that I presume President Obama will retain that will declassify the historic records. So that, we should assume that President Obama will appropriately issue a broad memo.

The other thing that I believe he talked about today, although I don't know the details, is that each agency has to have a review of its own policies. Because some agencies do a far better job than other agencies. And that goes with respect to classifying, also with respect to protecting classified, and also with respect to declassifying.

Some agencies have things built into their system to prevent over-classification. People think, why does over-classification matter? Over-classification matters, because people lose respect for the

system when everything is classified. That is why there are so many leaks, because people don't feel that the things that are protected must be protected.

In addition, it costs money, and it obviously prevents the public from getting information. So each agency does need a review of its own policies.

Mr. WESTMORELAND. We just don't want it to be political. Just one final comment, and I will quit. But we don't want it to be political about what is declassified and what is not. Because there are a lot of things going on around Washington right now that are he says, she says kinds of deals. So if we are going to open it up, let's do it.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

Ms. Watson, you are recognized for 5 minutes.

Ms. WATSON. Thank you so much.

I understand that NARA has entered into a \$317 million contract with Lockheed Martin to develop a comprehensive management system for electronic records. Do any of you have reason to believe that a system like that would be capable of adequately processing the massive amount of records in the system? Do you know of any existing program for records management that the NARA could adapt to function on the scale they need? Would you have that information? Dr. Battle is not here.

Ms. McDERMOTT. I don't, personally. I mean, I know what GAO has said and the other reports that have come out. But no, I think there do seem to be some questions about the capacity, capability of the electronic records archive. But I think that's probably a subject for a hearing with parties who are directly involved.

Ms. WATSON. I am sure this committee will be following up with Dr. Battle so we can get the direct information.

Ms. McDERMOTT. Good.

Ms. WATSON. Do any of the other witnesses have something to say?

Ms. FUCHS. I agree, I can't recommend an alternative system. Although a lot of money has been spent already on the electronic records archive. So hopefully, rather than scrapping it, it can be made to work and work quickly. I believe that they are, you would have to talk to NARA but they believe that it will work. I would add from our perspective that there are other things NARA can do before the records even get to them to try to make things be in their proper order and proper formats, to make it easier for them to ingest, so they don't have to do things like buy proprietary software, so that they can hold things before they go into electronic record archives. Things like that, that they could be doing. But again, I agree with Ms. McDermott.

Ms. WATSON. Well, let me throw this out. I have been listening to the three of you. You talk about the time it takes. If we are going to declassify information, what are the steps, what are the procedures that you have to go through? Why would it take years? Can anyone comment on why is the process so lengthy?

Ms. FUCHS. That is a good question, and I ask it regularly myself. Every time I have the opportunity to talk to people at NARA, I try to find out more about the steps.

I think some of it is, you mentioned the 400 million pages that have been declassified that are waiting to get out to the public. Once it has been declassified, that is just one part of the analysis. So at least for the historical records, they still then have to review them for privacy concerns. And there are other processing steps.

My hope is that having a National Declassification and Records Center would facilitate some of that. Certainly part of the problem with the classified records is the referral to every agency. So a record, the Navy might say it is OK to be declassified, but they need the CIA to sign off on that, and they need the State Department to sign off on that. What do they do? They sort of send it from agency to agency and agency, or it sits waiting until someone from that agency comes to take a look at it.

A National Declassification Center would bring all those people to the table and they would have to agree to cooperate. And I think that would save a lot of time and a lot of money, if they approached it that way.

Mr. WHITE. One of the other challenges of the electronic records archive is searchability. When the electronic records archive is up and running, if I want to write a biography of Chairman Clay and I go in and type, Clay, I am going to get a zillion records. How efficient will the system be, so that it is searchable and user friendly? That is a big, that will be a big, big challenge for the system.

Ms. WATSON. I think the technology exists, if we can put a telescope greater than the Hubble, that has to travel millions of miles, I think we can do that. I heard time and time again that the resources were not there, whatever that means. We know it means dollars and people with expertise.

Mr. WHITE. But it also means expertise, right.

Ms. WATSON. But I think what I am hearing, you are not saying it, but I am gathering it, a lot of it is political.

Ms. McDERMOTT. I don't know if I would say that it is political. I think to the extent, if there is a problem with the electronic records archive, I think it really has to do with NARA's internal capability to oversee somebody like Lockheed Martin and an enormous contract of that nature.

I think in terms of access to Presidential records, I think maybe there are sometimes political decisions being made. But I think mostly NARA has a very professional staff, very committed to making the record open. So I don't think that for the most part it is politics, in the way we normally understand it.

Now, leaking of classified information, that is political.

Ms. FUCHS. I just want to mention, it might be small political, it may not be political, which party wants something to happen. But it may be agencies jockeying for position and not willing to cooperate and not willing to do what they ought to be doing and NARA not being in a position to push them the right way.

Mr. WHITE. And all I would add is any time any Government agency buys a new computer system of any size, I just read an article the other day about the Copyright Office has this huge backlog at the Copyright Office because they put in a new system and people can't get their copyrights because it is so backlogged. Not to excuse NARA, but I think it happens routinely when the Government is procuring big information systems.

Ms. WATSON. When we then created Homeland Security, an agency that took in 750 different agencies underneath, and I thought, oh, my goodness, people come, they had budget conflicts, and procedural and steps that are so on that are unique, I thought, how are we going to manage this. Right now, the reality, after it has been created, is that we need to pull some of the agencies out, such as FEMA. But that has nothing to do with this.

But I am thinking of the magnitude of it. Is there anything out there that can serve as a model of how we would be able to expedite? Do you know if anything?

Ms. McDERMOTT. I don't know off-hand. I think the only place to look would be to some of the big corporations. It is possible that at some of the very big law firms that are sort of nationwide and have national offices all over, or some very big corporations, they are facing many of the same challenges that the Government has in terms of managing records.

Now, ingesting massive volumes of electronic data is really probably something that is, if not totally unique, essentially unique to the National Archives, in that every 4 or 8 years, they get this massive influx of information, which they have to process and make available.

So there may be some models for records management. But in terms of this, I really don't know that there would be anything. I don't know what other agency really faces this kind of problem.

Ms. FUCHS. I guess I would add, that is one of the reasons that we have advocated that NARA's concerns need to be addressed at the beginning, at the records creation, as opposed to waiting until the other end. Because it makes much more sense to build into the information technology that all the agencies are putting in place the long-term preservation concerns. I think in the long run, that would save money for the taxpayers and would certainly make it easier, I think for NARA, if things came in in the format that is easiest for them to deal with. That is something my organization has stated a fair bit, that we think it should be built into all sorts of IT funding, the long-term life cycle of the record, including ultimate access.

Ms. WATSON. Thank you. I yield back.

Mr. CLAY. Thank you, Ms. Watson.

Let me ask you, NARA officials have developed a detailed 10-year strategic plan. Some of you note deficiencies in the plan. What must the next Archivist do to make the plan operational and effective? We will start with you, Ms. Fuchs. Or who wants to start?

Ms. FUCHS. The plan does address the kinds of things that NARA should be addressing. But what I would do is for every strategic goal, I would make it into an action item. I feel like that is the main deficiency of the plan, is that most of the strategic goals are stated in, in my view, passive terms. The next Archivist should actually view their job as much more of an active position.

Mr. CLAY. And actually have benchmarks.

Ms. McDERMOTT. Well, they do have performance plans that they also post. I don't know if you have read them, but they are not terribly informative.

I agree with Meredith that the strategies are fairly passive. For records management, for instance, they say we will expand the de-

mand for records management in the Federal Government. There is no explanation of what that means. By advocating for access to it at senior levels, advocating for electronic records management is not the same as providing leadership and direction and clear policies.

So I think they need more concrete steps about what specifically they are going to do, not these vague statements that most agencies' strategic plans are, that is the language, it is vague and it is aspirational, but it is not concrete. So I think the next Archivist, if there is a second tier political appointee, really needs to take the agency through a serious thinking of how they are going to move, not only the agency, but the Federal Government, the executive branch forward.

Mr. WHITE. I would just say that I think the Archivist needs to be an agent of change. I think we discussed changing the organizational culture. The Archivist needs to be, I think, more aggressive in making sure benchmarks are met, not only that. And No. 2, working with you up here and with the GAO on oversight. Oversight in the end is what makes the train go. And having an Archivist in there that is dedicated to aggressively meeting the Strategic Plan is very important.

Mr. CLAY. Well, thank you all for your testimony today. If there are no further questions, I move that the subcommittee adjourn. And the question is on the motion to adjourn. All those in favor say aye.

[Chorus of ayes.]

Mr. CLAY. All those opposed, no. In the opinion of the Chair, the ayes have it. And the motion is adopted, and the subcommittee stands adjourned. Thank you.

[Whereupon, at 3:15 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]



For the Record
National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

May 20, 2009

The Honorable William Lacy Clay
Chairman, Subcommittee on Information
Policy, Census and National Archives
Committee on Oversight and Government Reform
House of Representatives
Washington, DC 20515

Dear Mr. Clay:

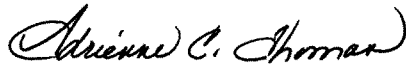
I am writing in response to your letter of May 13, 2009, inviting me to appear before the Subcommittee on Information Policy, Census and National Archives. Unfortunately, I am unable to attend the hearing entitled "Stakeholders' Views on the National Archives and Records Administration (NARA)" on May 21. On that day, I have a long-standing commitment to be in Kansas City, MO, for the official opening of the National Archives at Kansas City.

My written testimony is currently in OMB for clearance, and we expect to submit it to you for the record within the 5-day period. I would, however, like to submit the enclosed copy of NARA's strategic plan for 2006-2016. This plan details our vision and mission; it outlines our goals and the strategies to achieve them.

On another matter, NARA's Inspector General recently briefed the staff of the Committee on Oversight and Government Reform about an investigation into the loss of a computer hard drive containing copies of a large amount of data – including social security numbers – from the administration of President William J. Clinton. I want to assure you that NARA is taking this matter very seriously and is working together with the FBI and the Secret Service in the ongoing investigation. I understand that NARA will be invited to provide a complete briefing to the Committee in the near future and I am looking forward to working with you in that regard.

Thank you for your continued support of the employees and programs of the National Archives and Records Administration.

Sincerely,

A handwritten signature in cursive script that reads "Adrienne C. Thomas".

ADRIENNE C. THOMAS
Acting Archivist of the United States

CC: The Honorable Patrick McHenry
Ranking Member

The Honorable Edolphus Towns
Chairman, Committee on Oversight and Government Reform

The Honorable Darrell Issa
Ranking Member

**STATEMENT
Of
ADRIENNE C. THOMAS
Acting Archivist of the United States**

**Information Policy, Census and National Archives Subcommittee
Oversight and Government Reform Committee**

“National Archives and Records Administration”

**Thursday, May 21, 2009
2154 Rayburn HOB
2:00 p.m.**

Chairman Clay, Ranking Member McHenry, and members of the subcommittee, I regret that I could not attend today’s hearing, and I am pleased for this opportunity to submit written testimony on the implementation of NARA’s strategic plan relating to the Presidential Libraries Donation Act, the Office of Government Information Services Act, records management, and staffing

As you know, NARA is a small independent agency with a workload that grows on a daily basis as the records of our three branches of government are continually created and passed on to us. Seventy-five years ago, President Franklin Roosevelt signed the Act of Congress creating the National Archives. The National Archives provides the transparency needed for a healthy and vital democracy by preserving and providing access to information that documents the rights of citizens, chronicles the actions of government, and records our national experience. Today, NARA employs 3,000 people working in 44 facilities in 18 states. While most people think of the “Archives” as the neoclassical granite and limestone building at 700 Pennsylvania Avenue, we are also the Federal Register, the Presidential Library system, the National Personnel Records Center in St. Louis, and a national network of Federal Records Centers and Regional Archives.

At our locations, we make our holdings accessible and provide reference services – both in person and on-line – to a wide variety of stakeholders including veterans seeking information about their benefits, historians, filmmakers, lawyers, scholars, and people of all ages with a passion for learning more about the story of our nation, the workings of our government, and their own family’s heritage. In Washington, DC, and at our Presidential Libraries and Regional Archives, we maintain a busy schedule of free programs for the public to attend. These include genealogy and archival research workshops and lectures by authors, historians and political figures. At our Boeing Learning Center in Washington, DC, Presidential Libraries, and Regional Archives – and through our web site – we offer history and civics educational experiences for students and professional development programs for teachers. Finally, we open our doors at 700 Pennsylvania Avenue seven days a week so that more than one million annual visitors can view the Charters of Freedom -- the Declaration of Independence, the Constitution,

the Bill of Rights – and dozens of other original documents and exhibits in our award winning Public Vaults.

Records Management, Preservation, and Access

Mr. Chairman, in the past year NARA has had great success in addressing our strategic goals relating to records management and records preservation and access.

- We made significant progress with the Electronic Records Archives (ERA) that will ensure we can preserve and provide access to electronic records far into the future. ERA achieved Initial Operating Capability for basic records management functions and we took in and provided search capability for the electronic records of the George W. Bush Administration. This year, we have begun development of ERA functions which will provide public access, records preservation, and extension of the system to additional federal agencies and Congress.

The Electronic Records Archives (ERA) program is NARA's signature program to provide a means to preserve and make accessible the electronic records of the three branches of our Federal government. In concert with expansion of ERA services to the public, ERA will also be extended beyond the current four pilot federal agencies and the 2010 Budget provides for expansion of storage and collaboration services to host more agencies.

ERA and the technology it will harness are enormously important—not just to the National Archives, but to Congress, other Federal agencies, state and local governments, and the American public. It will preserve and provide continuing access over time to any type of electronic record, regardless of its original format. Without ERA and its technologies, many of the records of the Federal Government will be at risk and could be lost forever.

- We completed the successful move of the Presidential records and gifts from the George W. Bush Administration to a temporary facility in Lewisville, Texas. The move, undertaken with the support of numerous NARA offices as well as the Department of Defense, ensured that the textual Presidential records, audiovisual materials, and the foreign and domestic gifts received by President Bush are in NARA's legal and physical custody. The materials will remain at the Lewisville site until the privately-funded George W. Bush Presidential Library is completed. As part of the move, we also completed the successful transfer of the Richard B. Cheney Vice Presidential records and artifacts to NARA's facility in Washington, DC.
- In support of the Remote Archives Capture (RAC) Project, we scanned more than 500,000 pages of Presidential records for declassification review in FY 2008. From its origin in 1997, the RAC project has resulted in the referral of more than four million pages of classified Presidential Library holdings for declassification

review, and as such has been the most successful declassification project for the National Archives.

- Last October, we opened a new records storage facility in Valmeyer, Illinois. This underground facility provides economical storage for temporary Federal records and has a storage capacity of two million cubic feet.
- Working with the General Services Administration (GSA), we signed a lease for a new Federal Records Center and Archives building in St. Louis. The building design is nearly complete and construction will begin this spring, with initial occupancy in late 2010. The move of more than 2 million cubic feet of military and civilian official personnel files will be completed in 2012. This will enable NARA to store the records in space which meets archival standards.
- We continued to work with GSA to bring several of the Regional Archives buildings (San Bruno, California; Seattle, Washington; and Waltham, Massachusetts) into compliance with NARA's improved standards for storing archival material. In Kansas City, we recently moved the Regional Archives from a Federal depot to a renovated facility in the city's historical and cultural center to increase public awareness and provide better service and educational opportunities.
- On May 9, 2008, President Bush released a Memorandum for the Heads of Departments and Agencies on the Designation and Sharing of Controlled Unclassified Information. The Presidential Memorandum "(a) adopts, defines, and institutes 'Controlled Unclassified Information' (CUI) as the single, categorical designation henceforth throughout the Executive Branch for all information within the scope of that definition" and "establishes a corresponding new CUI Framework for designating, marking, safeguarding, and disseminating information designated as CUI." The Memorandum designated NARA as the Executive Agent for overseeing and managing the implementation of the CUI Framework, which includes developing standards and guidance, chairing the CUI Council, publishing a CUI registry, establishing baseline training, and monitoring department and agency compliance. In addition, the Memorandum requires full implementation of the CUI Framework within five years.

On May 21, 2008, the Archivist of the United States established a CUI Office within the Information Security Oversight Office (ISOO). Since that time, we have established aggressive milestones to implement the CUI Framework. We have led and supported regular meetings of the CUI Council since August 2008. With the advice of the CUI Council, we have drafted CUI guidance for each of the key policy areas. Additionally, an outreach strategy was created and implemented to provide policy and progress updates to stakeholders. A significant targeted effort is being made to obtain the participation of non-Federal CUI users and partners through the CUI Council as well as special meetings and outreach events to ensure their involvement. Planning has been undertaken to

support the development of training requirements and materials as well as the CUI registry. The CUI Framework will require constant attention, maintenance, and oversight to ensure its effectiveness. We are developing and implementing changes necessary to transform the present Sensitive But Unclassified policies and practices into a standardized CUI Framework.

- At the beginning of the Barack Obama Administration, the Federal Register replaced its printed Weekly Compilation of Presidential Documents – the official records of the words and writings of the President – with an easy-to-access on-line version. The new Daily Compilation is not only freely available to anyone with internet access, but it also provides earlier access to Presidential documents and saves the time and money involved in publishing these documents.
- Earlier this year, NARA's Center for Legislative Archives opened the initial set of records of the 9/11 Commission. These records include a unique collection of high-interest materials created by the Commission, such as summaries of interviews conducted with high-ranking federal, state, and local officials, as well as with private citizens who recounted the events preceding the fateful day of September 11, 2001. The Center will continue to work on processing the remaining closed records of the Commission, which require intensive screening by Center staff and extensive declassification review by equity agencies.
- Beginning in the 110th Congress, Center information technology staff worked closely with the House and Senate Archivists on a major outreach initiative targeted at committee staff and other official records creators to identify and survey their holdings of electronic records. As a result of these meetings, this year 20 terabytes of data will be transferred to the Center from the House and Senate. This is a significant transfer of electronic records but only a small proportion of the total volume we will soon begin to receive on a regular basis.
- Since 2001, the Center for Legislative Archives has been actively involved with the planning and development of exhibits at the Capitol Visitor Center (CVC). Last year, NARA staff worked with CVC staff and other groups to create the exhibit content and film presentations. The partnership will continue in order to produce interesting exhibits and programs for the visiting public.
- In the past year, we have made many millions of pages of documents available on-line. However, many of our users are surprised that the National Archives' holdings are not completely available on-line. When we tell them we have about 10 billion pages of records, they understand, but still expect the documents they need to be available online. In NARA's strategic plan, we recognize that our current and future users expect us to deliver our records to them anywhere, anytime. We are taking multiple approaches to digitization to optimize benefits, in a cost effective way, from access to and preservation of our unique and vast holdings. This includes establishing partnerships to digitize and make available some of our most popular and heavily-used historical materials. We now have

several digitization partners, including Footnote.com, The Generations Network, and FamilySearch.org. Through these and other partnerships, in a little over two years we have made more than 120 million pages of our holdings available to the public on-line. This massive number of documents is available to the public through our partners via subscriptions, and for free in all of our research rooms nationwide.

- This year, the National Historical Publications and Records Commission (NHPRC) has focused on a pilot project to develop strategies and new methods for putting transcribed versions of the papers of the Founding Fathers online to expedite their availability to the American people. In December, the Commission awarded a \$250,000 grant to develop new approaches to document transcription that will expedite this core process without loss of quality. The Commission is also developing a comprehensive report that will detail the work remaining among these five editorial projects. To complement this work, we are in the process of establishing the Founding Fathers Advisory Committee. As called for in the Presidential Historical Records Preservation Act of 2008, Public Law 110-404, this Committee will be comprised of three nationally-recognized historians. The Committee will advise the Archivist of the United States on matters pertaining to those editorial projects associated with the papers of John Adams, Benjamin Franklin, Thomas Jefferson, James Madison, and George Washington. We expect that this newly-formed Committee will meet for the first time this summer and issue its first report in October.

Presidential Libraries Donation Act

NARA is supportive of H.R. 36 which requires the disclosure of information on contributors to Presidential fundraising organizations. The Presidential libraries and their support organizations have demonstrated a commitment to public service and have displayed an entrepreneurial willingness to rely upon financial sources other than the American taxpayer. The required disclosure of donations of \$200 or more made to a Presidential foundation for the purpose of building a Presidential Library should not in our view impede the development of a new Presidential Library. NARA has previously testified that extending that requirement beyond the building of the Library could make future fund-raising more difficult for a Presidential foundation and would place a costly long-term collecting and reporting burden on the National Archives. The requirement in the present bill for disclosing donations for four years after the President leaves office or until the Library is transferred to the Archivist - whichever is later - will not pose any difficult burden on the National Archives. The Administration does have certain suggestions regarding how to improve H.R. 36 and looks forward to working with Congress to implement these improvements.

Office of Government Information Services Act

The OPEN Government Act of 2007, Public Law 110-175, provided NARA with the authority to establish the Office of Government Information Services (OGIS). The primary functions of OGIS are: (1) to review FOIA policies and procedures of administrative agencies; (2) to review FOIA compliance by administrative agencies; (3)

to recommend policy changes to the President to improve the administration of FOIA; and (4) to offer mediation services to help resolve disputes between persons making FOIA requests and Federal agencies as a non-exclusive alternative to litigation, and to issue advisory opinions if the dispute cannot be resolved through mediation.

We have interviewed candidates for the director position and are in the process of making a selection. Once the new director is on board, we can move to fully establish this important new office.

Staffing

As you can see, the National Archives may be a “small” agency, but we have a big mission. Our 3,000+ employees work diligently across 44 facilities in 18 states to ensure that the records of the Federal Government are managed, preserved, and accessible to all who need them. We do this in an environment characterized by rapid changes in technology and ever increasing demands by our customers.

To be successful in our mission, we recognize the need to strategically manage and invest in our workforce. To that end, over the past several years we have undertaken a number of strategic human capital efforts designed to:

- Better align workforce management with the strategic priorities of the agency;
- Develop workforce planning capabilities and analysis tools;
- Identify NARA’s mission critical occupations and the core competencies associated with those occupations;
- Establish an active, professional recruitment outreach function in order to effectively market NARA to potential job-seekers;
- Enhance the diversity of NARA’s workforce by establishing partnerships with minority-serving organizations to help increase the pipeline of minority applicants for NARA positions;
- Create a continuous learning culture at all levels of NARA;
- Develop future leaders through structured management development programs; and
- Leverage technology to support how we recruit, develop, and retain employees.

In addition, we have recently completed our first agency-level Strategic Human Capital Plan, which identifies five goals and twenty-five strategies that we will employ over the next five years to enhance the management of NARA’s human capital. We also initiated in Fiscal 2008 a formal Archivist Development Program to help enhance NARA’s archival workforce in advance of pending retirements. The purpose of this two-year training and development program is to recruit the “best and brightest” archival graduates from across the United States in order to start building the next generation of archival talent – a generation that will be looked upon to help solve increasingly complex challenges in archives and records management that will affect how the records of the Federal Government are managed both now and in the future.

Missing Hard Drive

The National Archives and Records Administration (NARA) takes very seriously the loss of an external hard drive that contained copies of electronic storage tapes from the Executive Office of the President of the Clinton Administration. The drive contains an as yet unknown amount of personally identifiable information (PII) of White House staff and visitors. As soon as NARA staff confirmed in early April 2009 that the hard drive was missing, they reported it to NARA senior officials, including the Acting Archivist of the United States, the Inspector General (IG), and Senior Agency Official for Privacy/General Counsel.

The IG immediately commenced a criminal investigation, and has had the lead investigative responsibility on this matter ever since. In accordance with OMB Memo 07-16, NARA informed the U.S. Computer Emergency Readiness Team of the Department of Homeland Security and is preparing to issue a breach notification to affected individuals. NARA also informed the White House Counsel's Office, staff of our House and Senate Oversight Committees, and the representative of former President Clinton. In addition, NARA immediately undertook a review of our internal controls and we have implemented improved security processes.

NARA has also set up a Breach Response Call Line to answer inquiries from potentially affected individuals about the missing data NARA. The number is 1-877-281-0771 or 301-837-3769. Alternatively, persons may contact NARA via e-mail at breach_response@nara.gov. NARA is also in the process of obtaining credit monitoring services that will be available to affected individuals.

We continue to await the results of the IG's investigation in order to determine who must be notified and any other actions we should take.

Conclusion

In this 75th anniversary year of the National Archives, it is only fitting that an institution dedicated to preserving the history of our government look back with pride at its own history of accomplishments; however the work we do everyday with your support is as much about the future as it is about the past. I am proud to say that the dedicated civil servants at the National Archives never lose sight of the fact that protecting and preserving the American record is in service to the enlightenment of future generations.

This concludes my testimony. I would be happy to provide written answers to any questions for the record.

*Testimony
Of
Dr. Thomas Battle*

*Moorland-Spingarn Research Center, Howard University
Representing the Society of American Archivists*

**Information Policy, Census, and National Archives Subcommittee
Oversight and Government Reform Committee**

**Thursday, May 21, 2009
2:00 p.m.**

A New Archivist of the United States

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

My name is Dr. Thomas Battle. I am the Director of the Moorland-Spingarn Research Center of Howard University. The Moorland-Spingarn Research Center is one of the world's largest and most comprehensive repositories for the documentation of the history and culture of people of African descent in Africa, the Americas, and other parts of the world. The MSRC collects, preserves, and makes available for research a wide range of resources chronicling the Black experience.

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 5,700 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.

On behalf of SAA and the wider archives community in the United States, I thank you, Mr. Chairman, for convening this hearing.

In the speech that he delivered on the evening of his election, President-elect Obama spoke eloquently of the true strength of our nation: "... the enduring power of our ideals: democracy, liberty, opportunity, and unyielding hope." He added that, "Our stories are singular, but our destiny is shared."

Our stories are preserved and our destiny is recorded in the archives of the United States. It is within the archives that we document our democracy, our liberty, our opportunities and, most importantly, the hope of our nation's people. The Archivist of the United States is among the most senior individuals in the archives profession. He or she is

invested with many legal obligations, but perhaps most importantly with the moral responsibility to see that this great mission of preserving and remembering our nation's history is accomplished in a way from which our citizens can and will learn.

Because the mission of recording and remembering is of such importance – not only for our generation but for those who will follow – we believe a person of character and wisdom, whose decisions are made with a firm knowledge of archives, records management, and history, should be nominated as the next Archivist of the United States.

The four largest national archival organizations in the United States, together with ARMA International (the nation's largest organization of records management professionals), and the National Coalition for History (and its more than 60 history- and archives-related member organizations) came together to develop a document that outlines the qualifications that we believe are essential in the person whom President Obama will appoint to serve as the next Archivist of the United States. We present it here for your consideration:

A New Archivist of the United States: Qualities of a Successful Candidate

A nominee for the office of Archivist of the United States will be selected following the legal obligations and responsibilities under the National Archives and Records Administration Act of 1984 (Public Law 98-497). In addition to these requirements, the Society of American Archivists, the Council of State Archivists, the National Association of Government Archives and Records Administrators, the Academy of Certified Archivists, ARMA International, the National Coalition for History, and the undersigned believe that the following personal and professional qualities are important in order for a nominee to be successful in this essential position of public trust:

Vision

- Ability to present a compelling vision for the mission and work of the National Archives and Records Administration (NARA) and, more broadly, for the archives and records management professions in the United States.
- Ability to envision NARA's stewardship role in preserving America's historical and cultural heritage.
- Ability to envision a leading role for NARA in ensuring that our government's record-keeping processes provide for accountability, transparency, and openness.

Values

- Commitment to the principle of public ownership of government records.
- Commitment to open and equal access to government records by all citizens, as defined by law and custom.
- Commitment to expediting the declassification of historical records and documents.
- Commitment to protecting the public's right to privacy, as defined by law and custom.

- Commitment to protecting NARA's professional integrity and political non-partisanship.
- Commitment to furthering NARA's leadership in the advancement of electronic records management.
- Commitment to the ongoing mission of the National Historical Publications and Records Commission.
- Commitment to working creatively with other federal offices, with state and local governments, and with other archival programs, including those in foreign countries, to identify and address shared responsibilities and concerns.
- Commitment to ensuring diversity among the individuals who serve in NARA and the archives and records management professions, as well as in the documentation of America's multi-cultural society.

Expertise

- Experience and excellence in leadership, program advocacy, and management of a complex organization.
- Ability to listen, communicate effectively, and partner with a wide range of stakeholders, including archivists, historians, journalists, political scientists, and the general public.
- Understanding of critical issues confronting government records and the archives profession generally, particularly the challenges of new information technologies, and the competing demands of access to government records, privacy, and national security.
- Ability to provide leadership and advocacy on behalf of NARA's roles to the public, government officials, and NARA staff, and on behalf of the archives, records management, and historical communities.

Endorsed by:

Society of American Archivists
 Council of State Archivists
 National Association of Government Archives and Records Administrators
 Academy of Certified Archivists
 ARMA International
 National Coalition for History
 American Association for State and Local History
 Association for Documentary Editing
 Gilder Lehrman Institute of American History
 National Council for History Education
 National Council on Public History
 Chief Officers of State Library Agencies
 Association of St. Louis Area Archivists
 New England Archivists
 Archivists and Librarians in the History of the Health Sciences
 Association of Catholic Diocesan Archivists
 St. Louis Area Religious Archivists
 Association of Centers for the Study of Congress

Issues of Concern to the Archives Community

The Council of State Archivists (www.statearchivists.org), the National Association of Government Archives and Records Administrators (www.nagara.org), and the Society of American Archivists (www.archivists.org) are the three major national associations representing the interests of archivists. These three organizations – and the National Coalition for History (www.historycoalition.org) of which we are a part – have a broad interest in federal archival issues and the general health and well-being of the National Archives and Records Administration (NARA), and we have specific and vested interests in NARA and the National Historical Publications and Records Commission as partners in preserving and making accessible America's documentary heritage nationwide. In addition to ensuring that the next Archivist of the United States has the qualifications and qualities that we believe are essential for this position of public trust, the following are issues of concern to the archives community as they pertain to NARA and NHPRC.

Presidential Records Act and Revocation of Bush Executive Order 13233

Because presidential "papers" (including electronic communications) represent the official records of activity by the executive office and thus are the property of the American people, we believe that the Archivist of the United States should be responsible for the management, custody, and access to such records on behalf of the nation as a whole. The archives, records management, and history communities were delighted to see passage by the House of Representatives on January 7, 2009, of H.R. 35, "Presidential Records Act Amendments of 2009," as well as President Obama's revocation of Executive Order 13233 on January 21. We hope that the Senate will move swiftly – in further demonstration of a will to ensure transparency in government – to pass the "Presidential Records Act Amendments of 2009."

The National Historical Publications and Records Commission

During the past 40 years, NHPRC has awarded \$175 million in grants to more than 4,500 state and local government archives, colleges and universities, and other institutions and non-profit groups. Funds are used for various purposes – preserving historical records, digitizing collections, producing oral histories, publishing documentary editions, establishing new archives programs – to preserve and provide access to records of national impact and importance. These grants make accessible records and documentary editions for use by classroom teachers, students, biographers, local historians, lawyers, genealogists, surveyors, documentary filmmakers, and many others. NHPRC is the *only* federal program that focuses on records programs and projects, and thus the only federal program that supports Americans' right and need to know both their heritage and the workings of their public offices.

Appropriations. NHPRC's authorization of \$10 million was consistently zeroed out in President Bush's proposed budgets and was restored by Congress at less than the fully authorized amount. The agency's annual authorization level has not been increased since 1997. We believe that, as modest as this funding is, it is vital to the cultural health of the nation, and we are grateful that President Obama has included the fully authorized amount in the administration's proposed budget.

Reauthorization. The NHPRC has a distinguished record of supporting innovation at the state and local level that has a major impact on federal records. Given the importance of the grants administered by NHPRC and the remarkable return on investment that this agency has realized, we strongly endorse reauthorization of NHPRC at an annual level of \$20 million. This modest amount for archives and records would complement other national initiative grants, such as \$250 million for libraries through LSTA, \$50 million for museums through IMLS, and \$35 million for historic buildings.

Preserving the American Historical Record Act

H.R. 6056, "Preserving the American Historical Record Act," was introduced with bipartisan support in the House of Representatives on May 14, 2008; was referred to the Operations and Government Reform Committee; and obtained 24 co-sponsors as of October 1, 2008. The legislation was not acted on in the 110th Congress.

Reintroduced in the House on May 5, 2009, as H.R. 2256, this legislation would provide authorizing grants (in the amount of \$50 million per year for five years) to support the information infrastructure in state and local governments, historical societies, and libraries, enabling them to preserve and provide access to essential documents and archival records in many forms, from paper to electronic media. The formula-based funding program, administered by NARA, would provide seed money to states for redistribution to local governments and other institutions. The program would facilitate statewide planning and target state and local needs. It would also leverage millions of additional dollars to preserve and make accessible records at the state and local level via a 50% cost-sharing requirement for every federal dollar granted.

The Council of State Archivists, the Society of American Archivists, and the National Association of Government Archives and Records Administrators encourage swift passage of this legislation in order to ensure the preservation of and access to our nation's complete record.

Declassification

Historians, researchers, journalists, and the general public expect to have access to records of their government for purposes of historical research and government accountability. NARA currently holds approximately 400 million pages of historically valuable federal and presidential records, most of which are more than 30 years old and require further declassification action in order to be made available to the American people or protected to ensure national security. The volume of paper records requiring declassification is growing by 25 million pages per year; the volume of records in electronic or other special media formats is growing even more rapidly. Further exacerbating this grave situation is failure across other federal agencies to coordinate policies and procedures for declassification of the records that they create and hold.

We believe that implementation of a National Declassification Center, as proposed by NARA and endorsed by the Public Interest Declassification Board, could provide the necessary authority and structure to support a government-wide declassification process

that 1) ensures public access to historically valuable records, 2) protects appropriately vetted national security information, and 3) resolves emerging technology challenges related to electronic and other special media records containing national security information. Effective implementation of a National Declassification Center would require compliance across agencies and sufficient funding, most likely from revenues currently appropriated for declassification work in the Executive Branch.

NARA's Electronic Records Archive

Although there has been some questioning of NARA's capability to ingest and provide access to the massive electronic records of the Bush administration (eg, "Bush Data Threatens to Overload Archives," by Robert Pear and Scott Shane, *New York Times*, December 27, 2008), it is important that the incoming Administration understand the enormous pressure posed by these materials. NARA officials estimate that the electronic record of the Bush years is 50 times larger than that left by the Clinton White House in 2001. That of the Obama administration may well be 50 times larger again. Although NARA has acknowledged the critical importance of managing such records, most significantly by contracting for \$317 million with Lockheed Martin to develop a comprehensive management system capable of handling a known universe of record formats, the difficult fact is that the archives profession has not yet agreed on either the theory or the practice of electronic records management. If the current (or contracted) system is not capable, then the new Archivist of the United States, working with the Administration, must find and implement a solution that is. Specifically, if NARA's system is inadequate, more resources will be necessary – not because funds alone will solve the problem, but because creative, flexible approaches must be supported by allocations. The need for NARA to develop a workable electronic records preservation and access system is significant not only for historical documentation; such a system would have practical implications for management of active government records as well. Further, many state archives are experiencing similar challenges with electronic records. States have far fewer resources than does NARA and thus look to the agency for guidance in scaling or other adaptation of NARA's solution.

Compliance with the Freedom of Information Act

In 2008 the National Security Archive (NSA) released a report on federal agencies' compliance with the 40-year-old Freedom of Information Act (FOIA). The report described a pattern of long delays in responding to some requests from NSA and other parties – so long, in fact, that no normal circumstances could explain the decades-long lapses. (Of 57 agencies and offices surveyed by NSA, 53 had backlogs of unmet requests and 12 still had requests that were more than 10 years old. The report revealed a "dishonor roll" of 5 agencies that were sitting on FOIA requests that were 15 or more years old.)

By requiring government offices to respond to requests for records within 20 days, FOIA plays a critical role in maintaining access to federal records that are still in agencies' custody. To paraphrase a crucial truth, access delayed can be access denied. Denial of access to public records damages the trust of citizens in their government and ultimately undermines democratic governance itself. Rather than viewing FOIA requests as a

burden, federal agencies must understand that FOIA is an essential element of their responsibilities. We call on all U.S. government offices to clear up their backlogs and to comply with FOIA requirements, and we are grateful for both President Obama's January 21 Memorandum on the Freedom of Information Act and Attorney General Holder's comprehensive new FOIA guidelines (issued on March 19) that direct all executive branch departments and agencies to apply a presumption of openness when administering FOIA.

All citizens depend on public records to guarantee their rights and entitlements, to hold their government accountable, and to understand the history and workings of our country. The Society of American Archivists advocates equal and open access to records, consistent with maintaining confidentiality and protecting individual privacy. We believe that the federal government must allocate sufficient resources to administer FOIA as intended. Like the Presidential Records Act, this is a matter of public access to the records of the citizens' government. In addition to devoting more staff to paper records, more effort must be made to ensure that electronic recordkeeping systems are created in a way that facilitates FOIA review and compliance, thus gradually reducing the human resources necessary for handling requests.

Guantánamo Records

In 2007 the Society of American Archivists asked for clarification of a U.S. District Court for the District of Columbia protective order, issued in 2004 by Joyce Hens Green regarding the disposition of case files of certain Guantánamo detainees. Several paragraphs appeared to run contrary to federal record schedules for District Court felony cases, specifically by mandating destruction of classified and protected documents that are part of the case files. We asked the judge to clarify whether the protective order will, with certainty, result in the complete case file (including classified and protected documents) being retained permanently – as mandated by the relevant records schedule – and ultimately transferred to NARA.

Although we acknowledge the privilege of the government to classify and protect certain documents, such restriction should not be an excuse for destroying documents under the guise of national security. Rather, classified and protected documents should be administered by the National Archives, which has extensive experience in managing the most sensitive documents produced by government agencies. Given the fundamental constitutional, legal, and policy issues in question, it seems particularly important that the case files of the proceedings regarding detainees at Guantánamo Bay be preserved for eventual access by citizens and scholars.