

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

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

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

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

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

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

The Stakes for Democracy and Presidential Records

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

It seems to me [he said] that the dedication of a library is in itself an act of faith. To bring together the records of the past and to house them in buildings where they will be preserved for the use of men and women in the future, a Nation must believe in three things.

- It must believe in the past.
- It must believe in the future.
- It must, above all, believe in the capacity of its own people so to learn from the

past that they can gain in judgment in creating their own future.

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

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

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

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

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

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

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

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

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

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

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

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

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

Presidential Transition and Missing White House E-mails:

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

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

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

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

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

Resources

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

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

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

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

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

National Historical Publications and Records Commission (NHPRC):

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

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

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

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

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

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

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

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

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

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

The Need for Additional Archival Staff

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

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

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

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

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

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

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

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

Recommendations for Expediting Research at NARA Facilities

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

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

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

- a) All of the inventories of the archives' Record Groups finding aids and descriptions should be digitized and made available on-line which, among other advantages, would allow researchers to order records for use 24 hours ahead of time via the web. This will save time for both archivists and researchers and allow researchers who can only visit the archives on Saturdays to have records pulled for their use.
 - b) Archivist Weinstein should convene a Digital Records Advisory Committee composed of diverse group of historians who would set priorities for the order in which the national archives' collections would be digitized, and recommend other actions to promote this process.
2. Declassification: The declassification of records continues to be a serious problem. For example, a researcher working in the Eastern Europe collection has informed me that RG 59 (SD) is declassified only through 1974 in spite of the 30-year rule. Many documents are pulled out from already declassified boxes including from the 1940s and 50s. There are no documents in those collections that originated from secretaries, assistant and deputy secretaries in the 1960s making it difficult to figure out how policy was made. This is one specific examples intended to highlight a general problem.
 3. CIA records: Allen Dulles' papers were cleared for declassification in 1992, but only released to Mudd Library at Princeton University last year – in the form of excised PDF files. Even OSS material is heavily excised and very patchy. Its easy to see that most of it is still withheld. This researcher reports that the Hungarian archives have been far more forthcoming. Hungary has done far more.
 4. Wireless Access: I would also recommend that wireless access to the web be installed in all archives and presidential library reading rooms in order to enable researchers to look use the web to supplement and expedite their research.

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

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