

Testimony

OF

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My name is Anna K. Nelson. I am the Distinguished Adjunct Historian in Residence at the American University. I have done research in five presidential libraries, Roosevelt, Truman, Eisenhower, Kennedy and Johnson. I have also used the Nixon papers and done extensive research over the years at the National Archives in Washington. I was a staff member of the Public Documents Commission, 1976-77. Their report was partly responsible for the passage of the Presidential Records Act. From 1994-1998 I was a member of the John F. Kennedy Records Review Board.

Today I am representing the members of the American Historical Association, the Organization of American Historians, and the Society of American Archivists.

Influenced by the actions of former president Nixon, Congress passed the Presidential Records Act in 1978 for two reasons that are very apparent in the statute. First, to insure the protection of these records so they could not

be destroyed. Second, to insure the records of the incumbent president would be open within a reasonable period of time. Declaring presidential records to be Federal Records, they protected the documents through Archives oversight. Establishing a time for disclosure, the statute gives a president twelve years to protect his records before they become available to the public.

Meanwhile, other safeguards within the Act guaranteed that certain records, including national security records, could continue to be exempt from public scrutiny for many years to come. This law also deliberately excludes many personal papers of the president including diaries and private, political papers. With these exemptions, the Congress felt it had duly protected each former president.

Unfortunately, two days before he left office, President Ronald Reagan issued Executive Order 12667 which is now being used to nullify the Congressional intent to open presidential papers within a reasonable time. This Executive Order (E.O) required the U.S. Archivist to notify both the former and incumbent president when records are to be released after the 12 year period. After examining the records, the incumbent and former president can invoke Executive Privilege if they find records they do not wish to open. An incumbent president was given 30 days after

notification by the Archivist to make his decision and respond. In other words, this E.O. allows Executive Privilege to be invoked long after the president has left office.

Taking advantage of the Reagan Executive Order, the Bush administration took 9 months to make their decision thus delaying the release of the Reagan records three times since taking office. Although the original E.O. provides for the president to "identify any specific materials," the Bush administration proceeded in a different way. Rather than examine the records, they began reviewing legal and constitutional issues raised by the potential release of sensitive documents, including, one assumes, the use of Executive Privilege to keep 12 year old records closed. The result of that review is new Executive Order dated November 29, 2001 which confirms the previous order while adding an additional set of regulations.

The papers of President Reagan are the first to be organized and opened under the Presidential Records Act. Thus the Reagan papers will set the precedent for all other papers opened under the Act. It is difficult to know just why President Reagan chose to allow the incumbent to review these records but by capitalizing on this review and further extending its provisions, the Bush Administration,

unwittingly perhaps, has thwarted the intention of Congress to open these government records to the public. We should also note that neither Mr. Reagan nor President Bush put a time limitation on the incumbent's ability to review. For example, theoretically a president in 2050 can continue to review for closure the records of the current Bush Administration.

Mr. Chairman, now more than ever we need to know the history of our recent past. The policies made more than 12 years ago still affect us. We need to know about those policies, the failures as well as the successes so that we can understand our own recent history. The release of 12 - 25 year old records is not the same as yesterday's leak to a favorite journalist. Nor need we fear the release of national security information which is protected by the Presidential Records Act, the Freedom of Information Act and other statutes.

The records in presidential libraries have become more important to American history as the power of the presidency has grown with each passing year. Unfortunately, it is not unusual for past presidents and their staffs to worry about the content of papers they no longer remember. Yet, most presidents gain stature from an examination of their records which tend to highlight pervasive problems

and illustrate the competence and skills of the president and his staff.

Congress passed the Presidential Records Act so that the American people could learn about their recent past. Congress acted wisely. This E.O. should not be allowed to nullify that Act.