Testimony
Of
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My name is Anna K. Nelson. I am the Distinguished Historian in Residence at American University in Washington, D.C. I have done research in five presidential libraries, Roosevelt, Truman, Eisenhower, Kennedy and Johnson and in the Nixon Presidential Papers. I have also done extensive research in the National Archives in Washington. I was a staff member of the Public Documents Commission, 1976-77 which was partly responsible for the passage of the Presidential Records Act. From 1994-1998 I was a presidential appointee to the John F. Kennedy Assassination Records Review Board.

Today I am representing the Society for Historians of American Foreign Relations, whose members are among the most active users of presidential libraries and government records.

It was no accident that Roosevelt established both the first presidential library and the Executive Office of the President. The proliferation of New Deal and World War II

agencies moved the records of the President from a collection of personal letters such as those found in the Library of Congress to a unique set of government records.

It took about three decades for the Congress to respond to this increasingly dramatic change because presidents willingly donated their papers after leaving office. It was Richard Nixon's attempt to hide and control his records that finally brought into being the Presidential Records Act (PRA) in 1978.

The two most important provisions of the Act were, first, insuring the protection of these records so that they could not be destroyed; second, to insure that records of former presidents would be open to the public within a reasonable period of time. Equally important were the provisions that removed decisions of access from the heirs of the presidents to the Archivist of the United States.

In establishing a time for disclosure, Congress gave the president twelve years before his records became available to the public. Other safeguards in the Act protected certain categories of records including National Security Records and deliberately excluded any diaries or private political papers. With these exemptions, Congress felt that it had duly protected each former president.

Unfortunately, former President Ronald Reagan and now President George W. Bush decided that records needed additional protection before becoming public. Reagan's Executive Order (EO12667) required the U.S. Archivist to notify both the former and incumbent president when in his judgment, records were about to be released that could be protected by executive privilege. Either could then invoke executive privilege if they found records they did not wish to open. The incumbent president was given 30 days to make his decision.

This revision of the PRA did not come to public notice until 12 years after the Reagan presidency, when the Bush administration took 9 months to make their decision and continued to delay the release of Reagan records. Their solution to the problem was to issue EO 13233, which instituted more restrictions on release. Under this order, the past president has 90 days and the incumbent no limit of time to examine the documents to be released. Executive privilege has been further defined and provision made for the heirs or representatives of the former president to continue the process, presumably for years to come. Thus the EO overturns important access provisions the Congress deliberately provided in the PRA.

Defenders of the Bush E.O. note that except for an original delay, the Reagan records are being released. But that is entirely beside the point. Presidential records are now vast collections that have grown exponentially with each president. There are over 27 million pieces of paper in the Reagan library and over 64 million in the Clinton library (of which 12 million are classified). This veritable tsunami of paper must be processed and opened by understaffed libraries. It will take far more than 25 years for all the records to be released. In 2030, if the president is no longer alive should presidential families or executors of his estate make decisions about releasing government records - records illustrating public policy and paid for by the taxpayer? Should the incumbent president in 2030 have the authority to close or release the papers of a former president as expressed in a headline in the *Washington Post*, "Clinton Papers Release to be Bush's Decision?"

Supporters of the EO argue that it is merely a procedural addition to the Presidential Records Act, but it negates important parts of that Act. While the purpose of the Act was to provide greater and rapid access, the E.O. encourages delay since the incumbent and past president are not bound by the time restrictions as they peruse

documents. Finally, broadening the definition of the president's constitutional privileges and allowing their closure will remove most of the records of the confidential advice a president receives. In other words it will have the potential to remove the core policy-making documents from the president's collection.

The country is at war and major domestic issues loom ahead, why should the Congress and the public care whether a few thousand researchers have access to these records?* Perhaps for those very reasons we need reasonable access to the documents that have shaped our history.

We should think of the presidential papers as raw material for specialized books and articles. The ideas and conclusions gained by these few researchers are refined and become subjects of influential books and articles and ultimately the textbooks that educate our students. Policy makers read these books and articles and are educated by the new insights gained through research in records.

Books on the Cuban Missile crisis based on presidential records have taught us about presidential decision making and the dangers of great power confrontations. When one collection of President Richard Nixon's records was promptly opened in the 1980's we

* There were 11,564 daily visits to research rooms in presidential libraries in 2006.

learned much more about the creation of the first agency entirely concerned with the environment. Even records over fifty years old can still be useful. Many books on the issues of the civil rights movement confronting President Dwight D. Eisenhower elucidate the inherent problems in that struggle. Similarly, President Eisenhower's frustrating attempts to ameliorate the Israel/Palestine issue also provide many insights for the present. Unfortunately, delaying the release of records does not delay the memoirs and self-serving books that fill the gap. Kissinger records in the Nixon presidential papers often dispute Henry Kissinger's two volume memoir. You need only contrast the books written before records are released with those written afterward, to see the importance of presidential records.

It is not difficult to discern that through this EO, President Bush, once he leaves office, can not only control access to his important policy making records but those of his father, as well as those records from the Reagan administration that might be of concern to members of his administration. But the problems with this E0 go beyond the current president.

The United States is now a global power. The records produced by the White House have become more important to

American history - indeed, World History - than ever before. Congress passed the Presidential Records Act so that the American people could learn about their recent past. Congress acted wisely. Executive Order 13233 should not be allowed to nullify that Act.