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Mr. Chairman and Members of the Committee -- I appreciate the opportunity to testify on S. 712 from the perspective of a person who has labored in the declassification trenches for the past three and one-half years. Although I serve as the Executive Director of the Assassination Records Review Board, I wish to emphasize that I am testifying here today not as a spokesman for the Review Board, but as an individual who has been involved in day-to-day declassification interactions with numerous Federal entities, including the CIA, NSA, FBI, the Departments of State, Defense, Treasury, and Justice, as well as the Military Services, Secret Service, Senate and House Committees, and the NSC. The Review Board has provided the American people unparalleled access to information that has been held secret for more than a third of a century.

I applaud the efforts of Senator Moynihan, Senator Helms, and this Committee to reduce government secrecy. I know the obstacles you confront. I wish you success.

My work in declassification has led me to believe that there are Four Noble Truths of declassification:

-- *first*, an independent entity, not the classifying agency, should be the final decision maker on declassification;

-- *second*, the independent declassification entity should be informed, committed to the process of declassification, and skeptical;

-- *third*, in order for declassification to be successful, there must be internal institutional incentives to declassify information; and

-- *fourth*, the key to successful declassification is *not* the articulation of the categories of information exempt from release (although the clear articulation of such categories is important), but the allocation of the burden of proof to the party that seeks to exempt information from release.

I would like to illustrate these four points by referring to some documents that we have declassified.

Exhibit A, which is attached to my prepared statement, is a CIA cable dated November 27, 1963, that has now been released in full. As you can see, the second line of typed text includes the crypts (or cryptonyms) "RYBAT" and "GPFLOOR." These crypts appear in what is called the "slug line" and they are routing and sensitivity indicators. "GPFLOOR" is the crypt that refers to Lee Harvey Oswald. This same crypt appears in the first line of the second paragraph of text.

The CIA originally advised us that GPFLOOR should not be released in the slug line although it could be released in the main body of the cable. I had several discussions with agency officials as they tried to explain why GPFLOOR

could be released in one place but not in the other. I could not understand their explanations. At that time I was fairly new to the work and I did not know whether I was simply not bright enough or experienced enough to understand the explanation being offered. I persisted in seeking an explanation. Finally, a CIA official said: "I don't see why it can't be released. This is an issue for COMMO [COMMO is the Communications Office.] Someone ask COMMO whether it can be released." COMMO was subsequently asked -- and it had no objection to the release.

I now infer that protecting crypts in slug lines -- as is the case with other agency secrets -- was a habit rather than a considered judgment. The disclosure came only after incessant questioning by a skeptical interlocutor.

Let me provide a second illustration. During the course of our review of records from the Secret Service, the Board identified a Warren Commission document that it intended to open over the agency's objection. The Board advised the Secret Service that a copy of the record had actually been published in full in 1964 as an exhibit to the Warren Commission Report. The agency continued to object, arguing that even a subsequent release of an open document would again disclose matters that should be kept secret. The Board subsequently voted to open the record.

Illustration 3. In several FBI documents that were subject to appeal to the President, the FBI argued that certain types of its electronic surveillance had not previously been disclosed. In our opposing memoranda, we showed that Director J. Edgar Hoover, in open testimony to Congress, had effectively disclosed the existence

of the electronic surveillance. Those records are now open.

Illustration 4. **For the next illustration, please *see* Exhibit B. The Review Board was presented with a heavily redacted but provocative document pertaining to an FBI "Internal Security" inquiry into Lee Harvey Oswald in October 1960. The FBI declined to release the information, arguing -- correctly -- that it contained information provided by a foreign government and that the government had declined to release the information. The Review Board, with the assistance of the Department of State, approached the Swiss Government, which subsequently agreed to release the information.**

Illustration 5. **The last illustration I will mention here -- and there are other examples in my prepared statement -- is found at Exhibit C. The Review Board located several Top Secret documents related to military contingency planning for a coup in Cuba. Exhibit C contains one page from a 58-page document from this group that had been "excluded from automatic downgrading and declassification." The Review Board staff arranged for a group of declassifiers from several military and other national-security entities to meet at the Review Board offices in a joint-declassification session. The 58 pages of this document, and many other records from this group, have gone from being completely closed to completely open.**

Illustration 6. Exhibit D. It pertains to a meeting in May 1963, where Secretary of Defense Robert McNamara met with military advisers in the eighth of a series of conferences on Vietnam. Exhibit D includes all of the material that had been publicly

released on the conference prior to Review Board action (a 6-page summary published in *Foreign Relations of the United States, 1961-63* Vol. 3). The Review Board located a 213-page document that is a complete summary of the conference. Prior to Review Board action, the memorandum had been excluded from automatic downgrading and declassification and could presumably have remained classified forever. A stamp on page 1 discloses that the document was systematically reviewed by JCS in May 1989 and the classification of Top Secret was continued. The document was opened in full at a declassification session in July 1997.

Illustration 7. *See* Exhibit E. Like the FBI, the CIA typically is reluctant to release information regarding technical surveillance. Exhibit E is a monthly operational report from Mexico City from September 1-30, 1963, a period that includes Oswald's arrival in the Mexican capital. In 1993, the document was postponed in its entirety. The Review Board voted to open the record in its entirety.

Illustration 8. *See* Exhibit F. The Review Board has also had some success in releasing NSA records. Exhibit F is dated November 26, 1963, and discloses NSA's intercepts of communications related to Cuban military alerts after the assassination. It was originally unavailable to the public in any form and was exempt from declassification. After Board action, the important information has been released.

Illustration 9. *See* Exhibit G. Exhibit G is a National Security Council document that pertains to an alleged plot to assassinate Castro. Although it was originally classified "Secret" and was deemed to be exempt from declassification, the NSC agreed to release it in full after discussions with the Board.

S. 712 attempts to deal with the problem of classification and declassification, in part, by requiring agencies to articulate their justifications for initial classifications and for exemptions from declassification. For example, Section 4(c)(2)(A) would require the agency to "provide in writing a detailed justification for [an initial classification] decision." Similarly, with regard to the 30-year review, agencies would "certi[fy] to the President at the end of such 30-year period that continued protection of the information from unauthorized disclosure is essential to the national security of the United States . . . ." (Sect. 4(d)(2)). **In our experience, the talented officials who are hired by the agencies will readily be able to draft such justifications. The issue, from my perspective, is not whether agencies are able to articulate justifications, but the extent to which their justifications can withstand independent scrutiny.**

Agencies have the natural disinclination to release information that has been painstakingly acquired; moreover, agencies do not send the message to their personnel that a fast track to career advancement lies with the release of more information than is absolutely necessary. There is, however, an important and encouraging message that comes out of the Review Board's experience: *once agencies come to the understanding that they must declassify records and that there is a presumption that records should be opened, the agencies will cooperate in good faith with the requirements established by law.*

III. The Mechanics of Declassification

Declassification involves more than developing guidelines for the

classification and declassification of information; it also involves confronting the bureaucratic obstacles to declassification. My written testimony provides a few examples, but there is one that I wish to emphasize here: it is what we call the "referral process" for "Third Agency Records."

The "referral process" is one of the most significant, government-wide bottlenecks to the declassification of records. Before an agency will release information in its records that was obtained from another agency, it must refer the record to the agency from which it derived that information. Although this procedure promotes the valuable goal of sharing information, it becomes a costly and time-consuming obstacle to declassification. Very frequently, records become trapped and even lost in the morass of the referral process.

The Review Board developed one particularly effective procedure to help expedite the referral process: convening joint-declassification sessions where several agencies met at the Review Board offices to review records jointly. second, hand-carrying records from one agency to another and having them declassified on-site; and third, giving agencies notice that unless records were reviewed by a certain date, the Board would simply vote to open the records without receiving the benefit of their input. In my opinion, any legislation designed to improve the declassification process must take into account this referral bottleneck by giving to the independent, supervising agency, the authority to set enforceable timetables.

The Review Board's ability to bring agencies together in joint-declassification sessions had a beneficial side-effect. In our experience,

agencies tended to lose some inhibitions when they observed what other agencies were willing to release. Frequently, it is the suspicion that one agency does not want to release information that inhibits other agencies from releasing information. Like the COMMO example from Illustration 1 above, the perception of unwillingness to open records is sometimes greater than the need to keep records closed.

Second, the Review Board profitted from the power, authorized by Congress, to "direct a Government office to make available to the Review Board . . . additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities . . . ." JFK Act, § 7(j)(1)(C)(ii). This power enabled the Review Board to obtain information about the basis for classifications, the existence of records relevant to completing its mandate, and the circumstances surrounding the creation of records. It is important that an agency with supervisory responsibility over declassification have the authority to obtain the information it needs to accomplish its work.

Third, as with the referral process, a frequent bottleneck in the declassification process is the final transfer of records from the declassifying agency to the National Archives. An independent entity responsible for supervising this process should have the authority and responsibility of guaranteeing that once the declassification process is complete, the final step of making records available to the public is taken.

Fourth, although the start-up process is very time-consuming, it is a necessary prelude to more efficient and productive work. The start-up time for the Review Board,

as I understand is also the case for Interagency Security Classification Appeals Panel (ISCAP), required education not only of the Board and staff, but also of the agencies. It is important that any future planning of an endeavor of this nature take into account the initial costs and, importantly, take advantages of the lessons learned by the Review Board. The initial cost can be recuperated in the long run.

When an independent agency, such as the Review Board, has the authority to set the agenda (by establishing timetables), sponsor joint-declassification sessions, require the production of evidence, and ensure the prompt transfer of declassified records from the agencies to the National Archives, declassification can be a success. I strongly urge this Committee to take advantage of the momentum painstakingly developed by the JFK Act and by ISCAP, and create an authority that will be able to bring independence, consistency, and energy to the process of making the government more open and accountable to the people who have paid for it.

IV. Recommendations for Making S. 712 More Effective

Time permitting:

With regard to S. 712, I wish to summarize four of the recommendations that were offered in my prepared statement.

First, the entity responsible for overseeing the declassification process (which, in the current version of the S. 712, is the National Declassification Center), must be genuinely independent of the agencies whose records it oversees. The Center should

be staffed by persons who are both sensitive to the genuine secrets of the agencies, but who also are skeptical and demanding of proof.

Second, the independent entity should have the power to set reasonable timetables by which an agency must complete the declassification review (or referral review). The independent entity should be empowered to release information on its own authority if agencies do not comply with reasonable timetables. The independent agency should additionally be empowered to obtain information from the agencies that is essential for completing its work.

Third, the legislation should incorporate a statutory provision that, at a certain point in time, records will presumptively be opened unless the agencies are able to articulate specific and persuasive reasons for continued redactions. Although it would be sensible to provide agencies with the benefit of the doubt regarding declassification for an initial period (*e.g.*, between 10 and 25 years), once this period has passed the presumption should shift decisively in favor of releasing the information.

Fourth, agencies should be required to do more than provide mere "detailed justifications" (*see, e.g.,* S. 712 § 4(c)(2)(A)) for classifying and refusing to declassify records. The written explanations must be *more than* "justifications," they must be able to convince a skeptical reader who has sufficient information to evaluate the merits of the writing.

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I would like once again to thank the Committee for taking seriously the right of the American people to better understand how their government

functions. I would be pleased to answer your questions.