

Possible Testimony Issues

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1. Secrecy as a habit vs secrecy as a national security necessity.

- Agencies tend to err on the conservative side.
- Declassification is usually relegated to retired annuitants and reservists
 - Annuitants are evaluating the material which was important during their careers. While this gives them familiarity with the material, it also may color their judgement as to the sensitivity of the material.
 - The military uses reservists who have no familiarity with the material and who would especially tend to err on the conservative side.
- Agencies wait to be challenged before proposing any changes or compromises.
- Declassification dates which exist now are rarely enforced until challenged by a member of the public.
- Multiple equity referral system currently in place allows for lengthy delays which de facto serve to delay issues until the urgency of the question passes.
- Major “we never release” issues can be negotiated through a set of guidelines and are often agency dependent.
 - Names of staff employees--many of whom now retire and openly acknowledge their previous employment with the approval of their former employers.
 - Liaison relationships with other foreign agencies.
 - Source/asset/ informant identities--does include crypts or only names and identifying information?
 - Foreign government information
 - Locations of facilities

- Bulk declassification has led to the withholding of entire records or blocks of records if any phrase contained within needs to be protected. State and military both use this system. States withholding rate of STATE records is less than 1% but this figure does not include records which contain equities from other agencies.
2. Review needs to be overseen by an independent agency which can demand evidence and which is seen as a significant decision maker.
- No intelligence officer has ever been promoted for releasing information. Every part of their careers is geared to the protection of information. Thus, there is no incentive to release it.
 - By demanding evidence the Board has been able to make informed choices by listening to the argument of the concerned agency and by examining the documents in question.
 - E.O. requires a challenge by a member of the public.
 - How does the public challenge the continued classification of material it cannot know it has been denied?
 - Further, the public may challenge specific documents or redactions but not whole areas or subject of documents (JFK, Bay of Pigs, Korea, etc.)
 - In 22 months of its existence ISCAP has voted on fewer than 100 documents. There is no backlog of appeals.
 - FOIA litigants do not have the ability to challenge specific redactions because they have no way of knowing what is under the black box.
 - FOIA requests generally linger for years before a response is given or documents are received.
 - FOIA litigation requires considerable cost and time.
 - Judges have neither the time nor the access to research specific FOIA challenges and tend to accept the Government's word as to whether the information in question has national security implications.

- ISCAP does not deal in volumes of information though decisions are supposed to set precedents which all agencies would follow through a trickle down theory to the declassifiers. To date, this has not been very successful.
 - An independent agency would also be able to set priorities for the review of historically significant information.
3. Agencies need to be made accountable for their justifications for withholding information.
- The issue of presumption is of critical importance. Who has the burden of proof for determining release? Practically the agency has the burden of proof and the presumption is to open the material but this only works if the agency is challenged.
 - Life cycle of sensitivity of information varies tremendously but can be determined by review.
 - Evaluation of potential harm from release needs to be done with a realistic risk assessment and judged by a neutral Board.
 - Seventy percent of the documents appealed to ISCAP were opened in full over the objections of agency heads. In 13% of the remaining documents, significant additional information was released.
 - To date, not one ISCAP decision has been appealed to the President.
 - Referrals are difficult and standards are different or unevenly applied based on the clarity of the agencies guidelines and the conscientiousness of the individual reviewers.
 - Most agencies have historical records declassification advisory boards which universally claim they are ignored.
4. Totally exempting certain block of records provides an inaccurate view of decision making and the past.
- Entire blocks of records are exempted under the E.O. though ISCAP has not yet officially approved exemptions submitted by Agency heads.

- FBI--received a wavier from E.O.
 - NSA --all SIGINT production reports.
 - CIA--all Directorate of Operations documents
 - Secret Service--all documents
- Documents exempt under the E.O. have been released under the standards of the JFK Act.
 - NSA--all documents released under JFK were exempt from E.O. and had never been released under FOIA. Most were released with redactions but many are open in full.
 - CIA--Directorate of Operations documents have been released with redactions or open in full.
- Documents exempt under the E.O. have been released through voluntary programs from the agencies using specific declassification guidelines and driven by requests from the public or specific tasking.
 - NSA--Venona, Guatemala, POW-MIA, and UFO's
 - CIA--Bay of Pigs and Guatemala
 - Secret Service--The Record, Protective Survey Reports to 1960,