

STATEMENT OF
SENATOR DANIEL PATRICK MOYNIHAN
BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

July 26, 2000

Mr. Chairman and Members of the Committee:

Between 1994 and 1997, I had the honor of presiding as the Chairman of the bipartisan Commission on Protecting and Reducing Government Secrecy. The Commission was created under Title IX of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995 (P.L. 103-236) to conduct "an investigation into all matters in any way related to any legislation, executive order, regulation, practice, or procedure relating to classified information or granting security clearances" and to submit a final report containing recommendations covering these areas. The Commission's investigation was the first authorized by statute to examine government secrecy in 40 years, and only the second ever.

The Commission's final report, issued on March 3, 1997, was unanimous. Among its key findings were that secrecy is a form of government regulation, and that excessive secrecy has significant consequences for the national interest when policy makers are not fully informed, the government is not held accountable for its actions, and the public cannot engage fully in informed debate.

On the other hand, this remains a dangerous world. Some secrecy is vital to save lives, protect national security, and engage in effective diplomacy. Yet, as Justice Potter Stewart noted in his opinion in the Pentagon Papers case, when everything is secret, nothing is secret.

When the Secrecy Commission began its work in 1994, it estimated that the United States government had over 1.5 billion pages of classified material that was 25 years old and older. Today, we still have enough classified material to stack up as high as 441 Washington Monuments. Approximately 18 million of the most sensitive and interesting of these are found in our 11 Presidential libraries. The cost of protecting this historically valuable information is enormous.

The first serious attempt to address this mounting problem – a security as well as an access problem – began in 1995, when President Clinton signed Executive Order 12958 regulating national security classification and declassification, the fifth in a series of Executive Orders dating back to 1951 and President Truman. It was much more than

the tuning of a system. The orders by Presidents Nixon and Reagan had made declassification more onerous, occurring possibly only after a citizen made a particular request.

This changed when the Clinton administration established a system to declassify automatically information more than 25 years old unless the Government took discrete, affirmative steps to continue classification of a particular document or group of documents. This mandated program to review historically important documents amounted to over 40 million pages at the CIA alone.

Although considerable progress has been made under Executive Order 12958, problems

in its execution have emerged. One of the most acute is Congress' continuous slashing of the declassification budgets. The House of Representatives voted to cut the Department of Defense's FY 2000 declassification budget from \$200 million to \$20 million. The Senate eventually was able to raise it to \$50 million, just enough for it to limp along. (The CIA's declassification budget is classified.)

Ironically, dwindling dollars have not meant dwindling demands for declassification. In addition to the routine systematic work required by Executive Order 12958, the CIA and the Department of Defense – this includes the Armed Services, the National Security Agency, the Defense Intelligence Agency, and the National Imagery and Mapping Agency – are also required to process Freedom of Information Act requests, Privacy Act requests, requests stemming from litigation, and special searches levied primarily by members of Congress and the administration. FOIA and PA requests are from our constituents; the CIA estimates that the average FOIA request takes 280 days to process from start to finish.

In FY 1998, the CIA alone received 6,121 FOIA and PA requests. This is more than a 100% increase from those sought in the 1980s. During the first nine months of 1997, the CIA was enmeshed in eight new FOIA and PA litigations (involving 20 separate requests), in addition to 33 on-going civil actions (involving 105 separate requests).

The CIA's capital and personnel resources are stretched to the limit. Since 1975, the CIA estimates that it has spent over \$50.7 million in personnel costs for processing FOIA requests alone. The CIA estimated in 1999 that declassification costs ran, on average, \$2.87 per page. The CIA has between 230 and 300 cleared people employed at its declassification factory, where most of its declassification work occurs. This small workforce is stretched to its limit as it tries to comply with all the competing demands placed on it.

One of the most vexing and time-consuming demands placed on our government's declassification efforts are those exerted by so-called special searches. A special search is defined by archivists as the "comprehensive collection, review, redaction, and release of classified information in response to a mandate or request made, for example, by a member of Congress or a Congressional Committee, a Presidential

advisory board, the Director of Central Intelligence, the head of another Federal agency, or an agency's inspector general." Since 1993, the CIA has been the target of 87 special searches.

In an October 18, 1999 letter to Chairman Porter Goss declassified last Friday (July 21), the CIA's director of Congressional Affairs, John Moseman, laid out the focus of these searches and the disruption they have caused. Specifically, he highlights that "each resource directed to a new special search reduces the resources previously dedicated to an existing program," including FOIA requests. "In sum," he concluded, "special searches are a growth industry and compete with the mandates of the many existing information and release programs."

Attached to my testimony are Mr. Moseman's letter and a comprehensive list of what these special searches have involved. For example, murdered churchwomen in El Salvador have been the subject of nine separate special searches. Yet we still have unanswered questions about what happened.

Guatemala has been the subject of 12 special searches. Several of these are noteworthy because of the large amount of personnel hours spent on finding relatively few documents. For example, in 1996 and 1997, the CIA spent over 900 hours in searching tens of thousands of records in response to a request made by the President's Intelligence Oversight Board. In the end, the Agency found 73 documents and released 63 in redacted form. Similarly, an NSC mandated search cost over 500 personnel hours and yielded just 22 documents in redacted form.

There are many more examples of the repetitive nature of these types of searches. Honduras has been the subject of seven special searches and Pinochet of four, by the CIA alone.

Other topics have included UFOs and Roswell, MIAs in Southeast Asia, Operation Tailwind, Nazi war crimes, the Bay of Pigs, campaign finance contributions, human radiation and LSD experiments, Mena, Arkansas, and Contra drug involvement in Los Angeles. Several of these have also consumed the Department of Defense's resources.

What is clear, however, is the need to bring some order to this increasingly chaotic process. The primary function of the board that S.1801 establishes is to advise the President and the heads of Executive branch agencies on how to prioritize declassification efforts. This board of nationally recognized experts will provide the necessary guidance and will help determine how our finite declassification resources can best be allocated among all these competing demands.

Although this board cannot stop a special search from being proposed, it can act as a filtering mechanism and can advise the President on whether a search needs to be undertaken—perhaps it has already been done in one form or another—or how it needs to be done. The board can also insure that the special searches undertaken are done in an archivally and historically correct way, meaning that they only be done once. The two

traits that have characterized most special searches up to now have been that they have been poorly done and have cost a lot of money.

It will also force us to impose some much needed discipline on ourselves by making us consider if our special search requests can survive the scrutiny of a board of experts before we spend potentially millions of taxpayers' dollars.

Thomas Jefferson said it best over 200 years ago: "An informed citizenry is vital to the functioning of a democratic society." S.1801 can help do this by seeing that our limited resources are put to their best use.