

## **Comments by Terry Anderson before the U.S. House Committee on Oversight and Government Reform**

**2 Jun 15**

Mr. Chairman, Members of the Committee, Ladies and Gentlemen

Thank you for inviting me here today to comment on a subject I consider among the most important of the many issues facing this body and this country – government transparency and government secrecy. As a teacher of journalism at several of America's finest universities, I have often begun my classes by reminding my students of something they learned in the fifth or sixth grade: The guarantee of Freedom of Speech, of the press, and all the other freedoms we have enjoyed for 240 years mean little without freedom of information. If we do not know what our leaders are doing in our name, how can we possibly know how to hold them responsible for those actions? How can we know which leaders to choose? How can we claim to have a government of the people, by the people and for the people?

Yes, there are certain things we should not know too much about – the movements and strategy of our armed forces in wartime, for instance, or the exact methods by which our intelligence agencies gather information. But in actual fact, such cases arrive seldom. So why is our government and its agencies currently protecting millions of individual documents, hundreds of thousands of actions and decisions made by our elected and appointed officers, at the cost of somewhere upwards of \$11 billion dollars a year, and rising drastically?

Yes, I know the world is a dangerous place. Yes, I know that 2,700 people were murdered at the World Trade Center on Sep. 11, 2001, and hundreds or thousands more in attacks on embassies and individual Americans around the world since. But I also know, through experience and research that the vast majority of those millions of secrets have nothing to do with terrorism, or our national or individual security. Instead, they involve automatic, kneejerk decisions by the horde of bureaucrats who have the authority to stamp "Top Secret" on the flow of papers that come before them (after all, what good is authority if it's not exercised?); or just as often some minor functionary trying to protect himself or herself, or their bosses from political or personal embarrassment.

How do I know this? Well, when I came home from Lebanon, I was given a generous fellowship at Columbia University by the Freedom Forum so my wife and I could write a book about our experience. Incidentally, I have a copy here for the chairman, and would be happy to furnish copies to any of the committee members who would like one. In the course of preparing to write that book, we decided to ask under the Freedom of Information Act for whatever information on my kidnapers might be held by the various intelligence agencies – CIA, FBI, NSA – in all, 13 government agencies. We listed nine actual names of members of the kidnap band, furnished to us by journalistic and other sources, as well as asking for our own files. As you know, FOIA sets time limits and parameters for official responses to such requests, as well as procedures for appeal, ultimately to a court of law. After two and a half years of messing about with denials and denials of appeals and outright failures to respond, I finally took advantage of that last provision, and file suit in U.S. District Court in Washington. Included in the legal submission was the initial response from the DEA (made long after the FOIA deadline expired), which informed me that they could not furnish the information I requested because it would violate the privacy rights of the individuals concerned. However, if I was able to get a signed, notarized release

from my former hosts, they would be happy to cooperate. Need I point out that I was not greatly interested in finding my kidnapers and asking them for permission to peruse their files, nor did I think I could find them, since the U.S. government had placed million-dollar rewards on their heads.

The DEA never backed down from that bit of farce, though the Attorney General quickly disavowed the response. Eventually, after the judge appointed a special master to review the requested files, I began getting actual documents. Most were heavily redacted, including one that had only the title left, with dozens of pages carefully blacked-out completely making up the rest of the document. So we fought on – for four years, at the end of which, in accordance with repeated judicial orders, I had dozens of boxes of files to look through to try to understand the events that had engulfed me and my family. I read them all, carefully. They included copies of my own stories for the AP, which had already of course appeared in thousands of newspapers; copies of publicly available reports stamped “Confidential,” and masses of irrelevant paper or discussions of diplomat faux pas, or less-than-diplomatic comments on foreign leaders. And so on. So the government spent millions of dollars and four years of effort trying to protect secrets, not one of which concerned actual security interests of the United States. If you doubt me, by the way, all those documents are on file at Iowa State University and the National Security Archives.

We never did get any of our personal files. The urge of curiosity was not strong enough to overcome the publishers’s deadline, so we just dropped those requests.

Coincidentally, during this period, the late Sen. Daniel Moynihan conducted at the president’s request a two-year study of government secrecy. He concluded in his 1995 report that the U.S. had fallen into a “culture of secrecy” which had become dangerous to our democracy.

Sen. Moynihan, a great statesman, brilliant mind and a personal friend, said this: “Excessive secrecy has significant consequences for the national interest when, as a result, policymakers are not fully informed, government is not held accountable for its actions, and the public cannot engage in informed debate. This remains a dangerous world; some secrecy is vital to save lives, bring miscreants to justice, 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. Even as billions of dollars are spent each year on government secrecy, the classification and personnel security systems have not always succeeded at their core task of protecting those secrets most critical to the national security. The classification system, for example, is used too often to deny the public an understanding of the policymaking process, rather than for the necessary protection of intelligence activities and other highly sensitive matters.”

Sen. Moynihan noted that the culture of over-classification, along with frequent political decisions to release classified information for political advantage, had destroyed public trust in the classification system and the government as a whole. “Secrecy is a form of regulation,” he said, “and while we’re all familiar with government over-regulation, the public cannot know of over-regulation when the regulation is kept secret from them.”

The senator also noted that while the then-controlling presidential finding authorized a mere 20 officials to use the “Top Secret” designation, meaning the information’s disclosure could be expected to cause major damage to our national security, some two million government officials and a million private contractors had been given “derivative authority” to do so.

Three million bureaucrats stamping “Top Secret” on the flood of documents crossing their desks, at their sole decision.

The commission recommended some changes in the law, including an office of declassification and a time limit on classified documents. Nothing was acted upon. In fact, when President Clinton ordered a mass declassification of documents from World War II and before, he was largely ignored by the bureaucrats who run the system. By the way, the oldest known classified document in the system at that time was a report on troop movements in WW I. As far as I know, it’s still classified.

In 2006, the CIA and other agencies, in an operation that was itself classified, pulled 55,000 documents from the public domain at the National Archives, and reclassified them. Presumably, they have continued to do that.

And so we come to the opening of the Obama administration. On Inauguration Day, the new president announced his commitment to a new era of openness and transparency.

“My Administration is committed to creating an unprecedented level of openness in Government,” he said in a message to all government agencies. “We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.”

Today, reporters describe the administration as “control freaks,” and the most closed they’ve ever covered. The Obama administration has prosecuted more whistle-blowers than any other, and used the Espionage Act more often than any other administration to prosecute reporters’ sources. It has also spied on reporters, and even their parents.

The result? Inevitable, I believe. We now have a society in which large areas of government decision and action are routinely kept from the public. Think of Abu Gharib and the torture of prisoners, official and unofficial. Think of massive spying on American citizens, whose phones, computers, vehicle movements and bank accounts can be monitored without their knowledge. Oh, and distinguished committee members, don’t think that doesn’t include you. When you call the head of the NSA in here and ask him, and he says, no, we don’t spy on members of Congress, are you going to believe him this time?

Our fear is overwhelming the system of government that has served us for 240 years. Half of the Bill of Rights is now regularly ignored. Our own government agencies violate the Constitution at will and with impunity. And we can do nothing, because we know nothing. I believe that young Mr. Snowden should not be hiding in Moscow, and poor Pvt. Chelsea Manning should not be serving a long prison sentence. Yes, they broke the law – but they did so in accordance with their conscience, which told them that what they saw going on was wrong. They should be here in Washington, wearing black ties and receiving awards. Because of them, we are now having a public debate over serious issues we would not otherwise even know about.

We need this debate, and more than that, we need some action that will return us to the principles we have held to since the founding of the United States. We need to control our fear, and control our government.

Thank you