

Dr. Robert Dallek

Testimony before House Committee on Government Reform

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Thank you, Mr. Chairman, for inviting me to testify at this hearing about your proposed legislation nullifying President Bush's Executive Order 13223 revising procedures for release of presidential documents established under the Presidential Records Act of 1978.

As I understand matters, the Executive Order would give a sitting president as well as past presidents and their heirs the power to withhold presidential documents for as long as they believed necessary. This control of historical papers would also extend to vice presidents. I read President Bush's Executive Order as essentially nullifying earlier legislation making presidential papers public rather than private property. If Mr. Bush's Order is left standing, I believe it will return us to the era when presidents owned and controlled access to the documentary record generated during their administrations. The committee's amendment to the Presidential Records Act would eliminate this return to a state of affairs the Congress ended in the 1970s.

My work over the last 30 years in five presidential libraries-FDR, Truman, Eisenhower, Kennedy, and Johnson-for books on presidents Roosevelt, Kennedy, and Johnson leaves me unconvinced that President Bush's Executive Order, as the administration alleges, will contribute to a more orderly release of presidential documents, particularly greater assurance against breaches of national security and of privacy rights. To the contrary, the President's directive will make the study and understanding of recent

presidential history more difficult. It will undermine Justice Felix Frankfurter's definition of democratic government "as the government which accepts in the fullest sense responsibility to explain itself."

Attorney General Ashcroft has asserted that the Executive Order was essential for protecting "national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy."

I find the Attorney General's statement unconvincing. The 1978 Presidential Records Act makes ample provision for the protection of both national security and personal privacy. More to the point, in my 30 years of work in presidential libraries, I have never heard of a breach of national security by premature release of presidential documents. Nor do I know of any notable violation of personal privacy by an unauthorized release of documents in the holdings of the libraries.

I will leave it to others with greater expertise than I have to comment on the claims of executive privilege asserted by the President as an additional basis for his Order of November 1. I can say, however, that, to the best of my knowledge, it is unprecedented to claim that presidents maintain executive privilege after they have left office. Nor will I speculate on what exactly motivated President Bush's Executive Order, except to say that it is hard to believe that either national security or personal privacy are genuine central considerations.

I would like to focus instead on the importance of opening presidential records to journalists and historians in a timely fashion. No one interested in the country's well-being favors inappropriate release of presidential materials. Some matters relating to

national security and personal privacy should remain secret for the proper functioning of our government. As my colleague Arthur Schlesinger, Jr. said in a letter to this committee last November, "A measure of secrecy is certainly essential to executive operations. But secrecy should be rigidly reserved for specific categories - weapons technology and deployment, diplomatic negotiations, intelligence methods and sources, personnel investigations, tax returns, personal data given the government on the presumption that it would be kept confidential. Secrecy, carried too far, becomes a means by which the executive branch dissembles its purposes, buries its mistakes, manipulates its citizens, escapes its accountability and maximizes its power."

Holding back presidential documents impoverishes our understanding of recent history and handicaps a president wrestling with difficult contemporary policy questions. The more presidents have known about past White House performance, the better they have been at making wise policy judgments. President Franklin Roosevelt's close knowledge of President Woodrow Wilson's missteps at the end of World War I were of considerable help to him in leading the country into and through the Second World War. Lyndon Johnson's effectiveness in passing so much Great Society legislation in 1965 and 1966 partly rested on direct observation of how Roosevelt had managed relations with Congress. President Truman's problems in the Korean war following the move across the 38th parallel into North Korea was one element in persuading George Bush not to invade Iraq in 1991.

Every president uses history in deciding current actions. The principal victim of President Bush's directive will be himself and the country. The study and publication of our presidential history is no luxury or form of public entertainment. It is a vital element

in assuring the best governance of our democracy. No one has a monopoly on truth or wisdom in the making of public policy. Nor can historians or history offer a foolproof blue print on sensible courses of action. But it is a useful guide in helping an administration make decisions about domestic and foreign affairs. The more we know about our past the better we will be able to chart a sensible future. Your amendment to the PRA will serve the nation.

Thank you for listening to my remarks. I will be happy to answer any questions that could in any way be helpful to your deliberations.

Robert Dallek

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