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THE NEWS LENGTH: 1736 words HEADLINE: PREPARED TESTIMONY OF SENATOR DANIEL PATRICK MOYNIHAN
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS SUBJECT - HEARING ON GOVERNMENT
SECRECY BODY: I am most grateful to Chairman Thompson, Senator Glenn, and the other members of this
Committee for providing this opportunity to testify on the subject of government secrecy and, in particular, on
the work of the Commission on Protecting and Reducing Government Secrecy. I am here this morning with
my esteemed Commission colleagues, all of whom have had longstanding interest in these matters: Senator
Jesse Helms; our Vice Chairman, Representative Larry Combest; and Representative Lee Hamilton. Your
invitation provides an opportunity to describe what we believe the Commission accomplished in its unanimous
report, and what we now hope the Congress and Executive Branch officials can do to implement our key
findings and recommendations. We begin by defining our subject. Secrecy is a form of government regulation.
It can be understood in terms of a now considerable literature concerning how organizations function. Begin
with the German scholar Max Weber, writing eight decades ago: Every bureaucracy seeks to increase the
superiority of the professionally informed by keeping their knowledge and intentions secret.
Bureaucratic administration always tends to be an administration of 'secret sessions'; in so far as it can, it hides
its knowledge and action from criticism. The pure interest of the bureaucracy in power, however, is efficacious
far beyond those areas where purely functional interests make for secrecy. The concept of the 'official secret' is
the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy as this
attitude, which cannot be substantially defended beyond these specifically qualified areas. "Normal"
regulation concerns how citizens are to behave. As the administrative state developed in the United States,
beginning with the Progressive Era at the turn of the century and expanding greatly under the New Deal, legal
scholars began to ask just what these new rules were. Were they laws? If not, then what? In 1938, Roscoe
Pound, Chairman of the American Bar Association's Special Committee on Administrative Law and former Dean
of the Harvard Law School, attacked those "who would turn the administration of justice over to administrative
absolutism ... a Marxian idea," and inveighed against those 'progressives,' 'liberals,' or 'radicals' who desire to
invest the national Government with totalitarian powers in the teeth of Constitutional democracy ... "We
managed to get a handle on that system, in no small measure through the efforts of Erwin Griswold, also a
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