

## CONSTRUCTING MEMORY AND RESTRAINING POWER: THE CASE OF THE WHITE HOUSE E-MAIL

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Jeremy Belknap, the founder of the first historical society in the United States in Massachusetts in 1791, once said, "There is nothing like having a good repository, and keeping a good lookout, not waiting at home for things to fall into the lap, but prowling about like a wolf for the prey."<sup>1</sup> That is our motto at the National Security Archive. We have to prowl because the documents we focus on—contemporary national security and international relations documents from inside the US government—are by definition usually classified. It takes real effort to break them loose, sometimes even lawsuits.

What do we do at the National Security Archive? Over the course of eighteen years, we have filed 27,000 Freedom of Information Act (FOIA) and mandatory review requests. This has allowed us to pry loose six million pages, half of which are already accessioned. We have published over 500,000 of these on the web, fiche, CDs, and in books. We register one million visitors per month to our open web site; collectively, they download 25,000 pages per day from our site. Their "consumer behavior" indicates some change with the times. Until recently, the single most downloaded item was the file of documents on Elvis Presley and Richard Nixon's famous meeting, which produced the well-known photograph of "the King" shaking hands with the president.<sup>2</sup> But the popularity of Elvis and Nixon was superseded in 2003 by the videotape of Donald Rumsfeld's handshake with Saddam Hussein.<sup>3</sup> We have published more than thirty-five books, and have a two million-dollar budget which is raised mainly from foundations but also from university library subscriptions. We have partners in some thirty-five countries who are trying to initiate or widen the same openness in their countries. We filed thirty-three lawsuits, of which about twenty-seven (depending on how you count) resulted in a favorable outcome for our institution; "favorable" in the sense that, even if we lost the suit, we nonetheless forced some documents to be released. The longest of those lawsuits was the White House e-mail case; it took seven years.

Before I turn to the White House e-mail case, however, I must confess that the National Security Archive is actually not an archive. We violate every known archival norm. We rip documents loose from their moorings in record groups, we sunder the integrity of the file by going after individual items, and we create artificial collections that reflect no single

agency in reality. Ours is probably the worst possible way to document contemporary history except, paraphrasing Churchill, for all the others. But there are many good reasons for this. We face enormous overclassification, or, as the 9/11 Commission called it, “knee-jerk secrecy.”<sup>4</sup> A majority of the material they saw during their investigation should not have been classified. Classification impairs communication between the agencies that try to prevent terrorist attacks. Instead of allowing them to piece together a puzzle, it only produces huge costs. Resistance to declassification is more often than not simply irrational. The CIA fought for years in court to prevent the release of its internal history of the 1953 coup in Iran only to see it on the front page of the *New York Times*, leaked by a CIA staffer. Even the spies don’t respect their own secrecy system.<sup>5</sup>

We try to draw attention to the ongoing destruction of records. Archivists have known about this problem for a long time and rightly say that they save only one or two percent of what governments create. Put more dramatically, we lose 98 percent! Just think of the more ephemeral type of records that came about with the computer age, for example, the PowerPoint briefings used to run operations in Iraq. Even if we get these, we are not getting any of the context and very few of the slides. If we do not intervene now, we risk losing even more. FOIA might be a crude tool to intervene in preservation decisions, but as long as there is no better way, we will continue to use it.

We fight delays. Our archive issued an audit on the implementation of FOIA—by using FOIA. We set out to find the oldest Freedom of Information Act requests still gathering dust in the government bureaucracy. One of the major agencies we queried was still sitting on a request from 1987. The first-year graduate student who filed it is now a tenured professor of law. On two occasions, the FOIA request has outlived the requester.<sup>6</sup>

Documents lie. We cannot rely on one sole agency’s files to reconstruct a story. We need to track the interagency process, to compare memos, to consult the recollections of those who wrote them, used them, or covered their rear ends with them—and then compare memories with the documents again, in order to reveal what policymakers knew.

Timothy Garton Ash gave an excellent critique of the “thirty-year rule” in a conference speech in Budapest for the fortieth anniversary of the 1956 Hungarian uprising.<sup>7</sup> Remarking that “Eastern Europe has always produced more history than it could consume,” Garton Ash theorized a kind of supply-and-demand dynamic, in which the archival supply increases gradually while, at the same time, the eyewitness supply decreases. Eventually, an historian can say anything without fear of contradiction from a living witness. Garton Ash proposed that the best time

to write history is the intersection of the two lines, before the eyewitnesses are gone, because only they can provide context.

There is a tangible quality to confronting an artifact, a real document. I remember visiting the first exhibition of former Soviet documents in Moscow in 1992; there, one veteran of the “Great Patriotic War” leaned over the glass case for a closer look then fainted to the floor. As he was carried away on a stretcher, he said that although he knew about the Molotov-von Ribbentrop pact, actually seeing it was too much for him.

Of course, there is also the danger that an artifact can reshape memory. Everybody knows that the Fourth of July marks the Continental Congress’s declaration of independence from Great Britain. But in fact, the Congress made that declaration on July 2. John Adams wrote to Abigail on July 3 that “the Second of July, 1776, will be the most memorable [day] in the History of America . . . . I am apt to believe that it will be celebrated by succeeding Generations, as the great anniversary festival.” A nineteenth-century scholar quietly “corrected” this letter for publication, which should serve as a warning to us about our sources.

This is a case in which the document announcing the event—the independence of the United States—has come to overshadow the event itself. The Congress did adopt the Declaration document on July 4, but most delegates did not sign until a clean copy was produced by a clerk on August 2; several did not sign until later; and the names were not released publicly until January 1777. Congress itself celebrated independence in Philadelphia on July 8; George Washington’s army heard about it and celebrated on July 9; folks in Georgia heard and celebrated August 10; and the British, the target of the declaration, only heard about it on August 30. And what of the famous painting of all the delegates signing? David McCullough, in his biography of Adams, assures us that no such scene ever occurred.

Memory is a construct, not a revelation. Recent advances in brain science tell us that memories do not exist like computer files, to be recalled more or less intact. Rather, they are like narratives that are constructed at the moment of recall, including feelings, context, clues, shortcuts, symbols, and ideology.<sup>8</sup> Vision itself is a construct, scientists tell us; it is not a motion picture reel of frames rolling forward but the brain’s constant readjustment of the eyes’ input. Scientists say that if we saw reality as it actually came in—quick cuts and blurs—we’d become nauseous. This is a wonderful metaphor for writing contemporary history. We must constantly revisit and reconstruct our recent history in order to keep from becoming dizzy (alas, nothing to prevent our becoming nauseous).

We have a new flood of sources to aid in this reconstruction, notably from international archives, but most of all from the digital age. In 1971,

an engineer named Ray Tomlinson invented a program that could send a computer message across a network. By 1972, another engineer had added the delete function and, by 1975, a third engineer had created the cc and bcc functions, right about the time some folks in Palo Alto were inventing the personal computer. This, of course, meant the imminent collapse of the Soviet Union. I'm only partly kidding. Looking at the Stasi files, one might conclude that totalitarianism foundered on its own surveillance system, choked on its own files. More broadly, the personal computer replaced the possibility that the future would be dominated by centralized computer banks administered by an elite—which would have fit more closely with the Soviet organizational model.

A famous 1981 study by the General Accounting Office predicted that e-mail would completely replace “snail mail.” By 2001, however, regular mail had doubled in volume as the total number of e-mails climbed and climbed. This also happened at the White House. According to the National Archives, the Reagan administration left 171,200 e-mail messages from 1982–88. The first Bush administration left 263,600 messages originating in the National Security Council from 1989–92. The Clinton White House (all branches) produced 20 million e-mails over eight years. That these e-mails still exist is the result of one of our lawsuits.<sup>9</sup>

In November 1986, President Reagan and Attorney General Meese came to the White House press room to announce they had just fired the president's national security adviser John Poindexter and were sending a staffer named Oliver North back to the Marine Corps, because the two had conspired to sell arms to Iran and use the profits to support the contras in Nicaragua. The White House Communications Agency (known as WOCCA) could have simply conducted business as usual: every Saturday they backed-up the entire White House computer system onto computer tapes—all the e-mail, etc.—and every third Saturday they recycled the oldest tapes, overwriting them with new data. But that week, the WOCCA commander Lt. Col. Patrick McGovern stopped the recycling program for the month. Thinking there might be investigations that would need the information, he set aside all the backup tapes for November 1986, and when investigators came calling, they found out the details of what Poindexter and North had been up to and that they had done almost everything on orders from the president.

The White House started its first e-mail system in 1982, a prototype that linked various cabinet departments. A fully operational system—including the National Security Council staff—began only in April 1985. In 1985–86, e-mail had become North and Poindexter's favorite means of communication, allowing them a back-channel called “Private Blank Check” that avoided the central bureaucracy at the White House. By the end of Reagan's presidency in January 1989, more than a million digital

e-mail messages were stored in the various White House systems (171,200 unique records for the Reagan National Security Council alone).

As two of the most prolific e-mailers in the entire government, North and Poindexter had a lot to hide. Over the weekend before they were fired, Oliver North deleted—he had to do it one at a time—750 out of 758 electronic messages saved in his “user area” of the White House system memory. He believed that they were gone for good. John Poindexter knew about the WOCCA backup process, but he thought he was still covered because of the recycling of the tapes. Poindexter also deleted (again, one at a time) 5,012 out of his 5,062 messages that weekend, and believed that the backup versions would be automatically erased within a few weeks. He was wrong because WOCCA did the right thing. The Iran/Contra-related e-mail was set aside and sent off to investigators, where it provided the core evidence for the whole scandal.

In January 1989, as Reagan was about to leave office, his staff were packing boxes and shipping documents off to the archives. One of the National Security Archive researchers, Eddie Becker, was curious about how the National Archives (NARA) was going to preserve all the other White House e-mail. To his enormous surprise, NARA officials told him they did not consider the White House e-mail to qualify as “records” worthy of preservation. They told him the Iran/Contra-related e-mail was all set aside for the ongoing legal cases, but the other e-mail tapes and hard drives from the Reagan White House were scheduled for “disposal” on the night before George Bush’s inauguration, on the orders of the president’s national security adviser Colin Powell.

This news set off a storm in our offices. The archive’s founder and then-director Scott Armstrong was a veteran of the Senate Watergate committee staff and *The Washington Post*; the parallels were not hard for any of the rest of us to grasp, either. Here was a potential “gap” consisting of years—millions of messages—much more than Nixon’s mere eighteen-and-a-half minutes of tape. After a fruitless meeting with top NARA officials on Wednesday, January 18 (less than thirty hours before the “destruction deadline”), we decided to go to court for an injunction. A frenzied night of preparation followed: we pulled together every piece of information ever published about the White House e-mail system, researched the requirements of the federal records preservation laws, drafted legal papers and affidavits, and designed a series of Freedom of Information Act requests for the entire set of tapes—anything that would stop the destruction.

The judge on call the next day at U.S. District Court, the late Barrington D. Parker, called our hearing to order at 5:15 p.m. We expected an assistant U.S. attorney to represent the government but, to our surprise, in walked the Acting Attorney General of the United States, John Bolton.

We knew we had won when Bolton said the White House staff were “just taking the pictures off their walls,” and Judge Parker replied, “They are not seeking a restraining order against taking pictures off the wall.” Bolton could only claim that “[If the plaintiffs prevail] it would be as if the halls of the White House were filled with furniture from the outgoing administration.” Judge Parker ordered the White House to save the backup tapes. For us, that was the whole case. Once historic material was in the National Archives, no judge would order it destroyed.

For the entire duration of the first Bush administration, the government never came up with an argument to destroy the e-mail beyond John Bolton’s weak reasoning before Judge Parker. In January 1993, Judge Charles Richey ruled that e-mail, including the Bush White House tapes as well, had to be treated like all other government records.

Apparently, the Bush White House staff panicked at this point. Out of arrogance or disdain, they had made no plans to save the tapes, and they dreaded the idea of the new Clinton staff pawing through the system. So on Inauguration Eve 1993, January 19, they staged a midnight ride to round up the computer tapes and put them beyond the law. On White House orders, a task force of NARA employees hurriedly rented vans, raced to the Old Executive Office Building, hand-scribbled makeshift inventories, and worked through the night to load thousands of computer tapes into cardboard boxes and haul them away. A subsequent memo from this group complained that due to haste and the lack of bubble-wrap, a number of tapes were simply stacked in boxes with no padding. Several of the tapes were damaged irreparably. The whole process violated NARA’s own procedures for taking custody of electronic information.

Several weeks later, through discovery, we found out that the midnight ride was a sideshow to the main event: a secret deal between President Bush and the Archivist of the United States, Don W. Wilson. Signed in the last few hours before Bill Clinton’s inauguration, the agreement purported to give Bush control over all the computer tapes, ignoring the Presidential Records Act of 1978 that precludes such a claim. Judge Richey’s January 1993 ruling already held that Wilson had abdicated his duties as archivist by approving the original decision to destroy the Reagan White House e-mail. Under fire for the secret deal and for management problems during his tenure at NARA, Wilson then resigned as archivist and accepted a new job as head of the planned George Bush Presidential Library at Texas A&M University.

The incoming Clinton administration could have opted for openness. Instead, Clinton-appointed officials marched into federal appeals court in the spring of 1993 to support not only the Bush and Reagan arguments for destruction of the e-mail but also the infamous Bush-Wilson agreement.

*The Washington Post* paraphrased top Clinton aide George Stephanopoulos as saying, "like Bush's White House, the Clinton White House does not want a succeeding, potentially unfriendly administration pawing over its computer memos." In August 1993, a unanimous appeals panel ruled that the White House e-mail qualified as records covered by the appropriate laws and had to be preserved. Faced with this resounding legal defeat, the Clinton administration gave up and decided not to appeal to the Supreme Court.

Other important policies and actions were put into place. John Podesta, then White House staff secretary, persuaded the administration to put an electronic record archiving system in place (ARMS). The courts allowed the White House to declare that the National Security Council was no longer an agency covered by the Freedom of Information Act, but a purely presidential creature. Although this was a loss for the FOIA, it was ironically a gain for record preservation, because the Presidential Records Act presumes that the records it covers qualify for history.

Another court allowed NARA to use a general schedule to sanction the destruction of electronic records, as long as the historically valuable items had been printed out. The Society of American Archivists argued against the plaintiffs on this issue on the grounds that it was neither realistic nor desirable to save everything, particularly since long-term archival standards do not yet exist for electronic records. They have a point, yet at the same time a standard that encourages transfer from electronic to paper seems counterproductive, because the electronic links between records are themselves valuable and unique, and future access and searching will require re-digitization at some cost.

Why did three presidents fight so hard, and for so long? There are three levels of answers. The most valid reason was indeed privacy. The authors did not believe that their e-mails would ever see the light of day; precisely for that reason, White House e-mail is an historian's dream, a replacement for all that is lost over the telephone. Historian's dream and privacy nightmare—when I published a selection of White House e-mail in 1995, I tried to address this dilemma by focusing on policy rather than prurience. Even when I did find gossip, I emphasized those e-mail messages that illuminated daily life at the office instead of officials' personal lives. Effective privacy protections are complementary to processes of open government. As plaintiffs, we did not challenge a single one of the government's privacy claims regarding the e-mail.

The National Archives, sad to say, did not have any satisfactory answer to the long-term preservation problems posed by electronic records, so they threw up their hands and went along with the White House. Nobody has all the answers, but that shouldn't keep us from taking on the challenge. The lawsuit forced NARA to take steps it might

have put off, and it was a major influence on initiatives like the National Academy of Public Administration study in 1990–91 that identified key federal databases for long-term preservation.

For the White House, it was a matter of power. Reagan, Bush, and Clinton wanted to control the information precisely because it was too candid for comfort. Power in the public arena derives from an ability to control the debate, define the terms, frame the parameters, and control the information. I am proud to say that our little public interest archive helped shake that hold and open some hidden histories that powerful people would rather not see made public.

Archives not only preserve history, they also serve our present democracy. Openness has meant, for example, that no president has taped his conversations since the release of the Nixon tapes. This is a loss for history but a gain for accountability. We no longer have “plumbers” operating out of the White House. Today, their tactic is to leak a CIA official’s name, but not to break into her psychiatrist’s files. An anecdote illustrates this: in 1975, Secretary of State Henry Kissinger met with the Turkish Foreign Minister in Ankara, who requested that America send military parts through the Germans or Dutch. The US ambassador at Kissinger’s side rejoined, “That is illegal.” Kissinger then said, “Before the Freedom of Information Act, I used to say, ‘The illegal we do immediately; the unconstitutional takes a little longer.’ But since the Freedom of Information Act, I’m afraid to say things like that.”

## Notes

<sup>1</sup> <http://www.gwu.edu/~nsarchiv/japan/1995foiaconferencetranscript.htm>

<sup>2</sup> <http://www.gwu.edu/%7Ensarchiv/nsa/elvis/elnix.html>

<sup>3</sup> <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB82/>

<sup>4</sup> For a recent example of coverage of the issue, see Scott Shane, “Since 2001, Sharp Increase in the Number of Documents Classified by the Government,” *New York Times*, July 3, 2005. See also the transcript of the March 2005 hearing of the House Government Reform Subcommittee “Emerging Threats: Overclassification and Pseudo-Classification” at (<http://www.fas.org/sgp/congress/2005/030205overclass.html>), and Jeffrey Richelson, William Burr, and Thomas Blanton, eds., *Dubious Secrets: National Security Archive Electronic Briefing Book No. 90* (with contributions from Michael Evans and Robert Wampler) (May 21, 2003), available online at (<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB90/index.htm>). For a list of organizations fighting government secrecy, see (<http://www.openthegovernment.org/article/subarchive/64>). All web sites accessed February 28, 2007.

<sup>5</sup> See James Risen, “Secrets of History: The C.I.A. in Iran—A Special Report: How a Plot Convulsed Iran in ‘53 (and in ‘79),” *New York Times*, April 16, 2000.

<sup>6</sup> See the National Archive’s report, “Justice Delayed is Justice Denied: The Ten Oldest Pending FOIA Requests,” The National Security Archive. Freedom of Information Act Audit at (<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB102/findings.htm>).

<sup>7</sup> Timothy Garton Ash, "Hungary and the World, 1956: The New Archival Evidence," Budapest, September 26–29, 1996.

<sup>8</sup> See Hans J. Markowitsch and Harald Welzer, *Das autobiographische Gedächtnis. Hirnorganische Grundlagen und biosoziale Entwicklung* (Stuttgart, 2005); Johannes Fried, *Der Schleier der Erinnerung. Grundzüge einer historischen Memorik* (Munich, 2004).

<sup>9</sup> See Tom Blanton, ed., *White House E-Mail: The Top-Secret Computer Messages the Reagan/Bush White House Tried to Destroy* (Washington, DC, 1995); and ([http://www.gwu.edu/~nsarchiv/white\\_house\\_email/index.html](http://www.gwu.edu/~nsarchiv/white_house_email/index.html)).