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Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	re: Archivist of the United States [partial] (2 pages)	03/16/1993	b(6)

COLLECTION:

Clinton Presidential Records
Staff Secretary
John Podesta (Subject Files)
OA/Box Number: 17335

FOLDER TITLE:

Archivist

2018-0662-S

rs3142

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

FRANK G. BURKE
3401 CHARLESON STREET
ANNANDALE, VIRGINIA 22003

Jan 9
YES
3:00
NO

December 30, 1994

Mr. John Podesta
Staff Secretary
The White House
Washington, DC 20500

4/22/27

1-9
no ans.

95 JAN 3 P3:08
(703)573-7308 home

1-17 301-405-2044
office

Dear Mr. Podesta:

Dr. Robert M. Warner, Archivist of the United States from 1980 to 1985, and I, Acting Archivist, 1985-87, are becoming increasingly concerned about the lack of any progress on an appointment to the position that we both once held. We are beginning to see an erosion of the mission of the National Archives as time moves on without any action. As retirees, now in academic positions at the University of Michigan and the University of Maryland respectively, we feel that perhaps we can in some small way aid the process.

A senior member of the Archives staff (not the Acting Archivist) recently suggested to me that the gridlock caused by the American Historical Association, the Society of American Archivists, the Presidential Libraries Committee, the White House, and the Senate all not seeing eye-to-eye may be in need of arbitration - a broker was the exact phrase. The problem is that none of the contestants appears ready to start the process.

Out of loyalty to the Archives, and remembrance of the struggle that it took to obtain its independence from GSA in 1980, we are anxious to see if there are any possibilities for breaking the gridlock and bringing the stalled process to a conclusion. We would, therefore, like to hear your views on the present situation and how to address it. Our thoughts are that as veterans of the Archives who are now above the fray we may be able to sound out each of the factions and perhaps bring them together, at least physically in one location, to seek solutions.

Therefore, would it be possible to meet with you to discuss the process, and to receive your views on how the impasse can be broken? Dr. Warner does not get in from Ann Arbor too often, but he is coming to Washington to join me in a meeting on Capitol Hill on the morning of January 9. If we could see you or one of your staff before he returns to Ann Arbor that evening it may move the process forward more quickly. In lieu of that, I could represent both of us at a later meeting.

The only stake that we have in this is the future of an important institution, and the preservation of our national memory in the National Archives and the Presidential Libraries. We are beyond politics or expectation of professional gain. I hope that you agree with the need for some movement on this issue, and that we can meet to exchange views on how to get that started.

Sincerely,

Frank G. Burke

JP

94 DEC 13 P6:13

MEMORANDUM FOR PEG CLARK

FROM: ROSALIND D. GRAY

RE: SELECTION OF AN ARCHIVIST OF THE U.S.

I. BACKGROUND

The National Archives and Records Administration, a central agency of the government, has as its mission to preserve and make available the historically valuable records of the three branches of the federal system.

The next Archivist of the United States will face difficult challenges. Among other duties, the Archivist must: (1) create a vision for the Archives; (2) lead a staff of nearly 3,000; (3) oversee an annual budget of more than \$200 million; and (4) streamline and decentralize the administration of the far flung national archival and records system.

II. THE CANDIDATES

Four candidates are profiled below. All four were interviewed during the week of November 29, 1994 and are still interested in being considered for the position. I recommend that the Director of Personnel schedule meetings with Nicholas Burckel, Richard Kohn, and George Vogt.

NICHOLAS C. BURCKEL has a Ph.D. in History and a Masters of Library Science from the University of Wisconsin-Madison. Dr. Burckel is Associate Dean for Collections and Services, Washington University, St. Louis, Mo.

Dr. Burckel, historian and archivist, demonstrated a keen awareness of managing historical records. He offered that the "Streamlining Plan" for the Archives must make a closer examination to control the government's resources. In bringing the Archives completely to the "Electronic Age", Dr. Burckel stated that the most difficult task would be to define the record. Legislators, he thought, are not yet ready and the situation has been left to the courts.

Dr. Burckel seems prepared and ready to manage the Archives and is enthusiastic about the possibility. He has an extensive list of publications and is a member of a number of professional organizations.

Burckel Support:

Senator John C. Danforth
Representative Richard Gephardt

Thomas Eagleton

Society of American Archivists
National Association of Government Archives
and Records Administration

Mary Maples Dunn concludes her second five year term as President of Smith College in May, 1995. She received her Ph.D. in History from Bryn Mawr and was Dean of the Undergraduate College and Academic Deputy to the President at Bryn Mawr for seven years before assuming the Presidency at Smith. Perhaps for the reason that Dr. Smith has been an academic administrator for the last seventeen years she did not seem in touch with issues related to the Archives. She also stated that she had plans for the summer and would not be available until September, 1995.

President Dunn discussed issues, such as outreach to the public, standards for records and electronic transmission so broadly that she either had not given much thought to the issues or she was not familiar with the state of affairs at the Archives. President Dunn is not recommended for further consideration at this time.

Dunn Support:

Senators John Kerry, Sam Nunn, H. Wofford, E. Kennedy,
B. Boxer
Representative James Moran

Richard Kohn is a Professor of Military History at the University of North Carolina at Chapel Hill, where he chairs the curriculum in Peace, War & Defense and serves as Executive Secretary of Triangle Universities Security Seminar, a consortium of Duke, Carolina and North Carolina State faculty interested in national and international security issues.

Dr. Kohn received his Ph.D. from the University of Wisconsin-Madison. He has taught at several universities and held the position, Chief of Air Force History and Chief Historian for the United States Air Force, where he was a functional manager. Dr. Kohn is a well qualified candidate who understands and discusses the mission and problems of the Archives in a very learned fashion. He would make a persuasive case to Congress, to the archival

societies and to the community of users.

Kohn Support:

Senator J. Lieberman
Representatives Ike Skelton, David Price
Governor Jim Hunt, North Carolina

General Michael J. Dugon, USAF
C.D. Spangler, Jr., President, University of North Carolina

Documentary History of the United States
Society of American Archivists
The Academic Library, Univeristy of North Carolina

Geoffrey Cowan, Voice of America
Professor Thomas Terrill, University of North Carolina
Professor Eric Foner, Columbia University
Professor William H. Chafe, Duke University
Joseph Haraken, Senior Historian, Department of Defense

Arnold Burns, For The Firm: Proskaner, Rose, Goetz & Mendesohn
Donald Fowler, Fowler Communications

George L. Vogt received a Ph. D. from the University of Virginia, Charlottesville, Va., in American History and has a B. A. degree from Yale College. Dr. Vogt is Director of Archives and History, Columbia, S. C., where he manages the state history program which includes archives, records, management, historic preservation and outreach services. From 1984 to 1987, Mr. Vogt served as Director of Records for the National Archives.

Mr. Vogt summarized well the Archivist responsibilities to Congress and its constituencies and felt that the "institution" had not truly prioritized its needs and objectives. His analyses of the political, managerial and policy problems at the Archives revealed the insight of a person who has knowledge of the internal operations of the organization.

Vogt Support:

Senators Ernest Hollings, Paul Simon, James Jeffords,
Jim Sasser, Jeff Bingaman
Representatives Tim Johnson, Butler Derrick, Jimmy Hayes,
Larry Combest, James Clyburn,

Ulysses S. Grant Association
Indiana Historical Bureau
George C. Marshall Foundation

Manuscript Society
Maine Society
Putnam Museum of History and Natural Science
National Trust For Historical Preservation
Arizona Historical Society
Massachussetts Historical Society
Idaho State Historical Society
Tennessee Presidential Center

Alvin Kantor
Scott Peterson, For The Firm: Hill, Steadman & Simpson
Sandra Clark, Michigan Department of State
Peter O'Connell, Old Sturbridge Village, Museum
Professor Harvey Green, Northeastern University

What is my recommendation? If half the of the material in reports that I have read about conditions at the Archives is true, then the Archives probably needs two of these candidates: one for strong managerial leadership and the other for external representation. If a decision is made to obtain a person for strong management, I recommend Nicholas Burckel or George Vogt. Richard Kohn is likely to have the best reception on the Hill and in the community of users.

National Archives and Records Administration

7th St & Pa. Ave, NW • Washington, DC 20408 • 202-501-5130 • 202-501-5244 fax

October 5, 1994

*File
Archivist*

The Honorable Leon Panetta
Chief of Staff
The White House
Washington, D.C. 20500

Re: Archivist Nomination

Dear Mr. Panetta:

The position of Senior Advisor to the Archivist of the United States, which I have held since October 27, 1993, was created in the summer of 1993 as a 6 month limited term SES appointment. The position was created in anticipation of the nomination of a new Archivist and to provide a White House presence at the National Archives during a time of extreme turmoil following the forced resignation of the previous Archivist in March and the adverse public reports on the Archives by the Senate Committee on Governmental Affairs and the President's Council on Integrity and Efficiency. My predecessor, William Gilcher, as a member of the staff of the Office of Presidential Personnel, had led the search for, among others, the new Archivist for nine months before leaving for the private sector. I, having just arrived as the trailing spouse of Louise Frankel Stoll, Assistant Secretary of Transportation for Budget and Programs, was asked to fill in until a new Archivist was in place.

When I took the position of Senior Advisor, an Archivist nomination seemed imminent and a 6 month limited term appointment seemed appropriate. However, the imminent nomination failed to materialize and my assignment quickly focused entirely on supporting the Acting Archivist with respect to the myriad of personnel, legal, management, budget and organizational issues which urgently needed her attention. The Senior Advisor position was renewed in April 1993 for an additional 6 months. There is still no nominee for Archivist and a decision has been made not to continue the Senior Advisor position.

During the year I have been at the Archives, I have learned a great deal about the complex character of the Agency and its unusual, difficult management, fiscal, organizational and personnel issues, including the impact on records management of the electronic creation of Executive branch records; the demands of Congress; unavoidable major records access litigation; a small senior management highly resistant to change; an aging building anchoring the federal presence on Pennsylvania Avenue; and the overwhelming issues of preservation of and access to electronically created and maintained federal and Presidential records. It has

become abundantly clear to me that, whatever else the National Archives should or may be, it should not be treated as a "culture" agency in formulating the criteria for selection of a new Archivist.

My knowledge of the conditions at the Archives and the character and qualities which those conditions demand of a new Archivist should be transmitted to whomever will carry the portfolio for the appointment of the Archivist after Phil Lader leaves for the SBA, to be put to use in the search. I am available at any time to brief whomever you designate. If my services can be of assistance as the search for an Archivist continues, I would, of course, be happy to help in any way appropriate.

Very Truly Yours,



Marc H. Monheimer

Senior Advisor to the Archivist of the United States

cc: ✓ John D. Podesta, Assistant to the President and Staff Secretary
J. Veronica Biggins, Assistant to the President and Director of Presidential Personnel

May 12, 1993

file
Archivist

MEMO TO THE RECORD

On May 11, 1993, Marianne Smith and I briefed John Podesta, Steve Neuwirth, Bill Gilcher, and Susan Reichman on the steps that I was taking in response to the HHS/PCIE report. Marianne opened the meeting by reporting that we at NARA had been briefed by the HHS Deputy IG, Mike Mangano, about the report and that we had met with Mary Goetten of the Department of Justice who would have to defend any personnel-related actions that might arise.

I said that I had referred the payment of attorney's fees question to the Comptroller General and was having a memo prepared that will require options be presented to me for splitting the procurement and program functions.

On the personnel issues, I stated that I am concentrating now on process questions. Because the National Archives has no written penalty guide for SES-level personnel, Justice has advised that we put in writing the precise process that we will follow. Justice also advises that a proposing and a deciding official must be specified at the time the process begins. Neuwirth raised questions about the degree of objectivity required and the distance that could be achieved in a small agency between the officials taking the action and the events that led to the actions. He advised that I seek further guidance from Justice on the degree of independence and separation required. He specifically wondered whether someone outside the agency could be designated.

We then discussed the timeframe in which the process would occur. Gilcher stated that from the viewpoint of Presidential Personnel, it would be good if any actions had been taken by the time a new Archivist is on board. I said that Justice had advised that I could brief the White House and the Congressional oversight committees about the process to be followed, but once the actual decision-making process is underway a "wall" must be erected around the process and the actors in it. All agreed.

Finally, I stated that we could not yet determine the process to be used in the case of the former Inspector General because I have not yet read the settlement agreement with him and the person in the National Archives who keeps the agreement in his locked safe is currently on vacation.


TRUDY HUSKAMP PETERSON
Acting Archivist
of the United States

*File -
Archivist*
94 JAN 5 AIO: 51

JANUARY 4, 1994

INFORMATION

MEMORANDUM FOR THE STAFF SECRETARY

FROM: MARC H. MONHEIMER, SENIOR ADVISOR TO THE ARCHIVIST
OF THE UNITED STATES *MM*

SUBJECT: MISUSE OF THE PRESIDENTIAL RECORDS ISSUE TO
INFLUENCE THE APPOINTMENT OF ARCHIVIST

- I. **SUMMARY:** The effort to manipulate the appointment of an Archivist of the United States is being fueled by efforts from within the National Archives designed to unfairly and inaccurately cast the Acting Archivist and the other leading candidate for this nomination as enemies of Presidential prerogative and dangerous to the Clinton Presidency. This campaign has been engineered by a handful of National Archives employees close to the former Archivist who failed in their responsibility to properly advise Presidents Reagan and Bush regarding their Presidential records and who, while posing as guardians of Presidents' interests, will be proved to have done Presidents Reagan and Bush a great disservice. Those of us at the National Archives appointed by the Administration¹ believe the President will be best served by an Archivist who will objectively administer the law, which, applied properly, protects the President's prerogatives with respect to his Presidential and personal records. Under present and reasonably anticipated circumstances, the announcement of a nominee whose professional qualifications and political independence are open to serious challenge would be enormously embarrassing to the President.
- II. **DISCUSSION:** The statute establishing the National Archives as an independent agency provides that the President shall appoint the Archivist "without regard to political affiliations and solely on the basis of professional qualifications required to perform the duties and responsibilities of Office of the Archivist." The

¹ Also Shirley Clarkson, Director of Public Affairs, and Brian Thompson, White House Liaison.

Presidential Records Act of 1978 (the "Act")² requires that upon the end of a President's term(s) of office the Archivist shall "assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President" and imposes on the Archivist "an affirmative duty to make such records available to the public as rapidly and completely as possible" in accordance with the Act.

Definition, Categorization of Presidential Records

The Act defines Presidential records as documentary materials "created or received by the President, his immediate staff or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President," expressly including materials relating to the political activities of the President or his staff if they relate to or have a direct effect on the carrying out of constitutional, statutory or other official or ceremonial duties of the President and expressly excluding official agency records ("Federal Records") and "personal records." The Act defines personal records of the President as materials "of a purely private or non-public character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President." The public availability of Federal Records is governed exclusively by the Freedom of Information Act ("FOIA") and other applicable law, not the Presidential Records Act. Personal records of a President are never available to the public.³

The Act provides that "prior to conclusion of his term[(s)] of office" [and quite plainly, therefore, not following his term(s) of office, the President "shall specify durations, not to exceed twelve years, for which access shall be restricted with respect to information, in a Presidential record" within six categories specified by the Act. Four of

² This memorandum assumes, *arguendo*, that the Act will be held constitutional when challenged under the doctrine of separation of powers.

³ Availability of personal records of a President pursuant to subpoena is not within the purview of the Archivist, as personal records of a President are never within the control of the National Archives as a matter of law. The National Archives would be a mere stakeholder with respect to a dispute over public access to personal records voluntarily transferred.

the six categories are essentially the same as the FOIA exemptions: classified information; information required by statute to be withheld; trade secrets; and personal and medical information, the release of which would constitute an unwarranted invasion of personal privacy. The two non-FOIA categories are information relating to federal appointments and **"confidential communications requesting or submitting advice, between the President and his advisors, or between such advisors."** The Archivist is required to restrict public access to categorized information for the period specified by the President. Records which contain information in a category not restricted by the President prior to the end of his term(s) of office are available to the public five years after the end of the President's term(s) of office under FOIA. The Act treats Vice Presidential records in the same manner.

Failure of Presidents Reagan and Bush to Categorize Information While in Office

President Reagan and Vice President Bush failed to exercise their rights to categorize information in Presidential records as described above largely, we believe, because they were poorly advised by those at the National Archives responsible for the eventual custody of their Presidential and Vice Presidential records. Because of this failure, the Presidential and Vice Presidential records of the Reagan Administration will become available to the public under FOIA on January 20, 1994. Presumably, case law interpreting the FOIA exemptions will be applied; however, the confidential communications among Presidential and Vice Presidential advisors will be wholly unprotected because that category of information was not specified for a period of non-disclosure and there is no equivalent FOIA exemption. It is reasonable to believe that within the next month and for some time thereafter, there will be a great deal of media coverage and public discourse on the subject of access to Presidential materials, without regard to the statutory distinction between Presidential and personal records.

Rather than categorizing information contained in his Presidential records prior to leaving office, on January 19, 1993, President Bush signed a blanket agreement with then-Archivist Don Wilson purporting to give President Bush **"exclusive legal control"** of his Presidential records in perpetuity. A discussion of the validity of the Bush-Wilson agreement is beyond the scope of this memorandum; however, those issues are expected to be raised sooner rather than later in the *Armstrong* (PROFS) litigation and in other pending litigation. The issue of the Archivist bending to the will of the President will be of great interest and concern to the media, to historians and to political scientists for some time to come.

Appointment of an Archivist of the United States

Among the most important duties of the new Archivist will be to advise and assist the President regarding the classification and categorization of his Presidential records through the duration of his Administration, so that they may be protected in keeping with his wishes and to the full extent allowed by law.

Given the current controversies, and coming legal challenges regarding access to Reagan Presidential and Bush Vice Presidential materials, the nomination of a nominee for Archivist able to win confirmation without controversy and fulfill the duties of Archivist will require that he or she demonstrate (1) responsiveness to the prerogatives of the President and attentiveness to the confidentiality of Presidential records; (2) appreciation of the statutory obligations regarding public access to Presidential records; and (3) perceived political independence with respect to the distinction between Presidential and personal records to ensure that the nominee's confirmation and tenure will not become a battleground over access to the President's personal records.

The Conference Report on the bill creating the National Archives as an independent agency states that **"the conferees intend that [the Archivist] be an officer performing professional archival and records management functions insulated from the political orientation of a particular administration."** Leading constituent organizations of the National Archives⁴ have already made clear their intention to vehemently oppose the nomination of any Archivist nominee whose nomination could be characterized as political and who is without professional distinction in his or her own field of endeavor, let alone as an archivist or historian. The successful nominee must be able to win the support of these constituencies so as to be confirmed without embarrassment to the President.

The President's interests will be best protected in the confirmation process, through the duration of his Administration, and after the National Archives has taken custody of his Presidential records by the appointment of an Archivist whose independence is unassailable and whose qualifications cannot be challenged.

⁴ For example, the American Historical Association, the Society of American Archivists, and the National Association of Government Archives and Records Administrators.

National Archives



Washington, DC 20408

File
Archive
Pres Records

Date : January 12, 1994
Reply to :
Attn of : Miriam Nisbet^{mn} and Mary Ronan^{MR/BN}
Subject : Implementation of the Presidential Records Act
To : Trudy H. Peterson, Acting Archivist

On January 20, 1994, the Presidential records of former President Reagan and the Vice Presidential records of former President Bush will become subject to public access under the Presidential Records Act, 44 U.S.C. Sections 2201-2207, and the Freedom of Information Act as incorporated in the PRA. (A copy of the Presidential Records Act is attached.) As might be expected with the implementation of any new statute, issues of interpretation have arisen regarding the processing of Presidential records and the handling of requests for access to those records. The overriding issues concern: the requirement of segregating non-restricted and non-exempt information in unprocessed files upon request by a researcher, the handling of national security classification review, and the interpretation of the PRA restriction categories.

(1) PRA and FOIA requests--processing "queues": Archivists at the Reagan Library over the past several years have been processing records in their custody in a traditional archival manner, i.e., reviewing documents to determine whether they can be opened (released) in their entirety. If a document can be opened in its entirety, archivists leave it in the files; if a document or part of a document will be withheld because they believe a PRA restriction category or a FOIA exemption applies, the document is withdrawn and replaced by a withdrawal sheet. At this point, Reagan Library archivists have processed about one-seventh of the Library's paper collection (which totals approximately 50 million pages). According to standard archival practices, the remaining six-sevenths of this collection would be basically unavailable to researchers while it is being processed.

If a request (whether under the PRA or under FOIA) is received for records that have already been processed, the Library staff will conduct a line-by-line review of closed documents to determine whether any restricted or exempt information can be segregated and the remaining information released. Even though it is not entirely clear whether a line-by-line review is required under the PRA, former President Reagan's representative, Stephen Blitz, suggested that the review of segregable information should take place at this stage, rather than requiring a researcher to make a formal administrative appeal.

Traditionally, under archival practices, a request by a researcher for unprocessed materials would be responded to by telling him or her that the materials have not yet been processed and that those materials would be processed when reached in the course of the library's normal systematic review of records. When a FOIA request comes in for unprocessed materials, Reagan Library staff proposes that any requests that cannot be handled quickly will go into a queue. When the request reaches the top of the queue, the archivists will determine exactly which documents are responsive to the request and review the documents for application of any PRA restrictions and/or FOIA exemptions. During our visit to the Reagan Library in early December 1993, we believe that everyone came to understand that FOIA review may require line-by-line segregability. The question of whether a line-by-line review is required under either the PRA or the FOIA needs to be resolved.

The PRA, starting with the "Definitions" section, refers to "reasonably segregable." See 44 U.S.C. 2201(2) ("The term 'Presidential records' means documentary materials, or any reasonably segregable portion thereof, created or received . . ."); 2204(b)(1) ("Any Presidential record or reasonably segregable portion thereof containing . . ."); 2204(b)(1)(B) ("upon a determination by the Archivist that such record or reasonably segregable portion thereof . . ."); 2204(b)(3) (during the period of restricted access "the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted . . ."). Although Section 2204(b)(2), which does not contain the "reasonably segregable" language, arguably indicates that a record may be withheld in its entirety, this interpretation seems to be contrary to the plain words of the statute elsewhere and is contradicted by the legislative history. The legislative history states in this regard:

It is anticipated that the Archivist will process the former administration's papers in a manner roughly similar to current practices. Detailed processing will involve going through the records page by page and applying to the information contained in them the restrictive categories chosen by the former head of state. Where only a portion of a record is determined to be exempt from disclosure, the record must be disclosed with the reasonably segregable restricted portion deleted. This follows the segregability requirement contained in the Freedom of Information Act, 5 U.S.C. 552(b).

(Aug. 14, 1978) at 5746.¹ See also id. at 5747 (in making the determination, under Section 2204(b)(3), of whether particular records fall within a PRA restriction, "[t]he actual identification and segregation of materials pursuant to the restrictions is left to the Archivist.").

The legislative history also goes on to state that when the "grace period for archival processing of unrestricted records has ended, the records shall be administered in accordance with the Freedom of Information Act." House Report at 5747. Moreover, the history states that although Presidential records are not currently covered by the FOIA, "they effectively become agency records for the purposes of this provision [subsection (c)(3)] in applying FOIA requirements to them." Id. See also 44 U.S.C. Section 2204(c)(3) (subject to limitations on access under subsections (a) and (b) of Section 2204, Presidential records shall be administered under 5 U.S.C. Section 552 (FOIA) "and for the purposes of such section such records shall be deemed to be records of [NARA]"). In light of both the statute and legislative history, a response to a FOIA request that merely advises the requester that the requested records are not yet processed and that access will have to await processing in the manner of traditional archival systematic review--which does not include line-by-line review or review for current classification status--may not withstand judicial scrutiny.

(2) Interpretation of PRA restrictions: The PRA allows an incumbent President to claim any of six categories of restrictions under which access will be denied for up to 12 years. 44 U.S.C. 2204(a). Of these six restrictions, two are different from the exemptions from access allowed under the FOIA; the other four restrictions are worded in precisely the same way as in the FOIA. The question has arisen whether the exact duplication of language suggests that the interpretation of the PRA restrictions should follow the FOIA case law. This issue needs to be addressed with regard to all four of these PRA restrictions, but has arisen most immediately with regard to PRA Restriction 1 (national security information) and PRA Restriction 6 (clearly unwarranted invasion of personal privacy).

PRA restriction 1: Both PRA Restriction 1 and FOIA Exemption 1 provide for the withholding of information that is specifically authorized under the Executive Order on national security information and that is "in fact properly classified pursuant to such Executive order." 44 U.S.C. 2204 (a)(1); 5 U.S.C. 552(b)(1). Under court interpretation of FOIA Exemption 1,

¹ There was no Senate Report submitted with the legislation.

material must be both substantively and procedurally classified in order to meet the statutory criteria of being "properly" classified. As a consequence, for FOIA purposes, agencies must conduct a classification review of documents that become subject to FOIA requests in order to ensure that any information claimed to be exempt is currently and correctly classified.

One proposed interpretation by the Reagan Library is that records that were marked at the time of origin as classified remain "classified" and closed under PRA Restriction 1, and that no classification review need be carried out when these records are requested under the FOIA. The Library would simply inform FOIA requesters that it will do a systematic review of the files, open all releasable material, place withdrawal sheets in the file, and, at that point only, accept mandatory review requests on specific documents. Although this is consistent with traditional Presidential library processing (and with NARA regulations governing mandatory review), it is inconsistent with the interpretation that the PRA Restriction 1 is a blanket restriction that lasts until the expiration of the 12-year time limit or until the former President waives the time limit.

This proposal could also result in the following scenario: A FOIA requester is denied access to materials that are classified and re-restricted under PRA Restriction 1. The requester files an administrative appeal under the FOIA and again is denied access to classified materials. If the requester seeks judicial review under the FOIA (there is no judicial review available under the PRA for the period of restricted access), he or she will presumably argue that the Library has not provided access to all unrestricted information. The government would at that point have the burden of showing that the information to which access had been denied was all "properly" classified. It will be impossible to carry that burden without having conducted a classification review. (In the case of almost all of the Reagan Library materials that are classified, that review will entail referral of documents to the originating agencies for a determination regarding classification.) We do not envision that NARA will have to make the kind of showing that it must make in FOIA cases (for example, through detailed Vaughn indexes), but we expect that there will need to be some showing that there has been an attempt to apply the PRA restrictions in accordance with the law and that the application of the restrictions is not arbitrary and capricious.

PRA restriction 6: Both PRA Restriction 6 and FOIA Exemption 6 provide for the withholding of "personnel and medical files or similar files the release of which would constitute a clearly unwarranted invasion of personal privacy." 44 U.S.C.

2204(a)(6); 5 U.S.C. 552(b)(6). The Office of Presidential Libraries has expressed the view that the FOIA case law on Exemption 6, which requires that an agency balance the individual's privacy interest against the public interest in disclosure of the information at issue, should not be applicable to considerations under PRA Restriction 6. That Office notes (in a memorandum dated Dec. 20, 1993) that Presidential libraries "have never applied the public interest test in Presidential papers because in most of our files a legitimate public interest argument could be made."

As noted above, four of the PRA restrictions use precisely the same language as the FOIA exemptions; the legislative history of the PRA states that this mimicry was intentional. See House Report at 5734 (restrictive categories "modeled" after FOIA exemptions). In fact, the legislative history, in setting out the wording of the restrictive categories, noted in the case of Restrictions 1, 3, 4, and 6 that the "scope of this category is comparable to" the corresponding FOIA exemption." House Report at 5745. In light of this, it would be difficult to argue that the case law governing the FOIA exemptions is not directly relevant to determining the meaning and scope of the very same words as used in the PRA restrictions. This argument might be possible if one were comparing the same language used in two different statutes, but in this case the FOIA is actually incorporated into the PRA as part of the statutory scheme for access.

For example, to follow the suggestion of the Office of Presidential Libraries that the public interest should not be considered in applying PRA Restriction 6 would require us to read out of the restriction the word "unwarranted." This is because the Supreme Court in interpreting FOIA Exemption 6 (and FOIA Exemption 7(C), which protects law enforcement records or information the release of which could reasonably be expected to cause an unwarranted invasion of personal privacy) has held that the way in which an agency determines whether an invasion of privacy is warranted or not is by balancing the individual's privacy interest in not having information withheld against the public's interest in disclosure of that information. See, e.g., United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 762 (1989).²

Two additional problems that have arisen concern the designation of certain records as personal or Presidential.

² Whatever the outcome of this issue for the present, the PRA is quite clear that when the restrictions no longer apply, access to Presidential records is governed by the FOIA. 44 U.S.C. 2204(c); see also House Report at 5746-47.

(3) Interfiling of personal and political materials: Archivists at the Reagan Library discussed a possible problem caused by the interfiling of personal and political material within the White House central files. Among records from the Reagan White House central filing system, there are records relating to President Reagan and the First Lady that contain personal information. There are also records from these files that contain material that in other Presidential libraries would be treated as the former President's personal political records, i.e., documents relating to his role as leader of his political party. These records appear to have been filed at all times among the Presidential records in the White House central files. Until December 27, 1993, President Reagan had requested no special treatment for these "personal" records; by letter of that date, he directed that these records be segregated from Presidential records and kept with his other personal records.

Obviously, these personal records were not segregated from Presidential records during or even at the end of President Reagan's administration, as is most likely required by 44 U.S.C. 2203(b). There is also a question whether this claim can be made retroactively.

(4) NSC Files at the Reagan Library: Approximately 3,100 boxes of records were transferred to the Reagan Library from the National Security Council at the end of the Reagan administration. Of these, one-third were designated as Presidential Records and the other two-thirds were described as the "convenience files" of staffers. Steven Tilley, formerly of the NSC Information Policy Directorate, believes that while these staff files often contain copies of the records that remain in the NSC's institutional files (which are Federal records), the existence of additional material as well as the unique organization and subject focus of these files suggests that they are more than just "convenience files." The Office of Presidential Libraries has proposed that all of the NSC material be treated as Presidential Records. We believe that there may be problems with this belated classification for the NSC "staff files."

As mentioned above, January 20 is the date on which the Reagan Presidential records and Bush Vice-Presidential records become subject to FOIA requests. We have already heard from various people that there are FOIA requesters who are anxious to seek access to those records just as soon as they are allowed to do so legally. For example, we understand that there are both individuals and organizations who have expressed interest in gaining access to any releasable records concerning Iran-Contra. We can anticipate that a failure to respond to such requests in a timely fashion will quickly lead to litigation. Another time consideration is the need to consult with the

attorneys for both former Presidents Reagan and Bush, so that we may solicit their input on the issues raised above. As you know, NARA regulations (36 C.F.R. 1270.46) require that a former President be notified before any records of his administration are disclosed.

Attachment

PRESIDENTIAL RECORDS ¹

(44 U.S.C. Chapter 22)

- Sec.
2201. Definitions.
2202. Ownership of Presidential records.
2203. Management and custody of Presidential records.
2204. Restrictions on access to Presidential records.
2205. Exceptions to restriction on access.²
2206. Regulations.
2207. Vice-Presidential records.

§ 2201. Definitions

As used in this chapter—

(1) The term "documentary material" means all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including but not limited to, audio, audiovisual, or other electronic or mechanical recordings.

(2) The term "Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) ³ of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) The term "personal records" means all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

(A) diaries, journals, or other personal notes serving as the functional equivalent of

a diary or journal which are not prepared or utilized for, or, circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President's own election to the office of the Presidency; and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

(4) The term "Archivist" means the Archivist of the United States.

(5) The term "former President," when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

§ 2202. Ownership of Presidential records

The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

§ 2203. Management and custody of Presidential records

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, his staff, or units or individuals in the Executive Office of the President the function of which is to advise and assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During his term of office, the President may dispose of those of his Presidential records that no longer have administrative, historical, informational, or evidentiary value if—

¹ Section 3 of Pub. L. 95-591 (Nov. 4, 1978, 92 Stat. 2523) provided that this chapter applies to any Presidential records created on or after January 20, 1981.

² So in original. Does not conform to section catch line.

³ Section 552(e) of title 5 was redesignated section 552(f) of title 5 by section 1802(b) of Pub. L. 99-570.

(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

(2) the Archivist states that he does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that he does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Administration and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever he considers that—

(1) these particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

(f) (1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this Act.

(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

(3) The Archivist is authorized to dispose of such Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

§ 2204. Restrictions on access to Presidential records

(a) Prior to the conclusion of his term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relating to appointments to Federal office;

(3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers; or

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b)(1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

(A)(i) the date on which the former President waives the restriction on disclosure of such record, or

(ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President, or his agents.

(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be

exempt from the provisions of subsection (c) until the earlier of—

(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to section 2203(d)(1); or

(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in his discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or his designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

(c)(1) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, except that paragraph (b)(5) of that section shall not be available for purposes of withholding any Presidential record, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Administration. Access to such records shall be granted on nondiscriminatory terms.

(2) Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President.

(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

(e) The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.

§ 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to section 2204—

(1) the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent President if such records contain information that is needed for conduct of current business of his office and that is not otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the Presidential records of a former President shall be available to such former President or his designated representative.

§ 2206. Regulations

The Archivist shall promulgate in accordance with section 553 of title 5, United States Code, regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

(1) provisions for advance public notice and description of any Presidential records scheduled for disposal pursuant to section 2203(f)(3);

(2) provisions for providing notice to the former President when materials to which access would otherwise be restricted pursuant to section 2204(a) are to be made available in accordance with section 2205(2);

(3) provisions for notice by the Archivist to the former President when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have; and

(4) provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies regarding materials which may be subject to section 552(b)(7) of title 5, United States Code.

§ 2207. Vice-Presidential records

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a

non-Federal archival depository. Nothing in this chapter shall be construed to authorize the estab-

lishment of separate archival depositories for such Vice-Presidential records.

NATIONAL ARCHIVES TRUST FUND BOARD

(44 U.S.C. Chapter 23)

Sec.

- 2301. Establishment of Board; membership.
- 2302. Authority of the Board; seal; services; bylaws; rules; regulations; employees.
- 2303. Powers and obligations of Board; liability of members.
- 2304. Compensation of members; availability of trust funds for expenses of Board.
- 2305. Acceptance of gifts.
- 2306. Investment of funds.
- 2307. Trust Fund account; disbursements; sales of publications and releases.
- 2308. Tax exemption for gifts.

§ 2301. Establishment of Board; membership

The National Archives Trust Fund Board shall consist of the Archivist of the United States, as Chairman, and the Secretary of the Treasury and the Chairman of the National Endowment for the Humanities. Membership on the Board is not an office within the meaning of the statutes of the United States.

§ 2302. Authority of the Board; seal; services; bylaws; rules; regulations; employees

In carrying out the purposes of this chapter, the Board—

- (1) may adopt an official seal, which shall be judicially noticed;
- (2) may utilize on a reimbursable basis the services and personnel of the National Archives and Records Administration necessary (as determined by the Archivist) to assist the Board in the administration of the trust fund, and in the preparation and publication of special works and collections of sources and preparation, duplication, editing, and release of historical photographic materials and sound recordings, and may utilize on a reimbursable basis the services and personnel of other Federal agencies for such purposes;
- (3) may adopt bylaws, rules, and regulations necessary for the administration of its functions under this chapter; and
- (4) may, subject to the laws and regulations governing appointments in the civil service, appoint and fix the compensation of such personnel as may be necessary to carry out its functions.

§ 2303. Powers and obligations of the Board; liability of members

Except as otherwise provided by this chapter, the Board shall have all the usual powers and obligations of a trustee with respect to property and funds administered by it, but the members of the Board are not personally liable, except for malfeasance.

§ 2304. Compensation of members; availability of trust funds for expenses of the Board

Compensation may not be paid to the members of the Board for their services as members. Costs incurred by the Board in carrying out its duties under this chapter, including the obligations necessarily incurred by the members of the Board in the performance of their duties and the compensation of persons employed by the Board, shall be paid by the Archivist of the United States from trust funds available to the Board for this purpose. The Board, by resolution, may authorize the transfer of funds (including the principal or interest of a gift or bequest) to the National Archives and Records Administration to be expended on an archival or records activity approved by the Board or to accomplish the purpose of a gift or bequest.

§ 2305. Acceptance of gifts

The Board may solicit and accept gifts or bequests of money, securities, or other personal property, for the benefit of or in connection with the national archival and records activities administered by the National Archives and Records Administration. Moneys that are for deposit into the trust fund shall be deposited within 10 working days of the receipt thereof.

§ 2306. Investment of funds

The Secretary of the Treasury shall receipt for moneys or securities composing trust funds given or bequeathed to the Board and shall invest, reinvest, and retain the moneys or securities as the Board from time to time determines. The Board may not engage in business or exercise a voting privilege which may be incidental to securities in such trust funds, nor may the Secretary of the Treasury make investments for the account of the Board which could not lawfully be made by a trust company in the District of Columbia, unless directly authorized by the instrument of gift or bequest under which the funds to be invested are derived, and may retain investments accepted by the Board.

§ 2307. Trust fund account; disbursements; sales of publications and releases

The income from trust funds held by the Board and the proceeds from the sale of securities and other personal property, as and when collected, shall be covered into the Treasury of the United States in a trust fund account to be known as the National Archives Trust Fund, subject to disbursement on the basis of certified vouchers of the Ar-



File
Archives *BR*

81 57 26 0310

RONALD REAGAN

pres
records

December 27, 1993

Dear Ralph:

As we have discussed in the past, the materials that are now physically located at the Ronald Reagan Presidential Library include, in addition to the Presidential Records that were created during my administration, some of my and Mrs. Reagan's own personal records. In accord with Section 2201(3) of the Presidential Records Act of 1978, I wanted to confirm that the following materials were segregated as, and should be treated as, our "personal records":

All records identified by the following subject file categories: Presidential (Personal) (PP); all records in the subject file category Political Affairs (PL); all records in sub-category SP501 of the subject file category Speeches (SP); all records in sub-category TR003 of the subject file category Trips (TR); and all records in the First Lady Office in folders 6182 through 6187, inclusive, 9579, 11163, 11164, 13406, 14888, 16043, 16598, and 16933.

In addition to these files, there may also be other isolated documents that were misfiled among the Presidential Records but that were always intended to be, and should be treated as, our personal records. Whenever any such clearly personal papers are located among the Presidential Records, they should be segregated from the Presidential Records and kept with my other personal records.

It has always been my desire that my personal records remain segregated from the Presidential Records of my administration and that they not be disclosed at the present time without my written

approval or the approval of one of my designated representatives: Nancy Reagan, Frederick J. Ryan, Jr., Stephen Blitz, or individuals from the law firm of Gibson, Dunn & Crutcher designated in writing by Mr. Blitz. My intention, of course, is to make these personal records available for scholarly research at some future date in order to ensure that the historical record will be as complete as possible.

Sincerely,

Ronald Reagan

Dr. Ralph C. Bledsoe
Director
Ronald Reagan Presidential Library
40 Presidential Drive
Simi Valley, California 93065

7/5 1994

From the desk of

MARC H. MONHEIMER

To *John Podesta -*

*I think this
is a better number
for the purposes
of our discussions.*

MHM

*3 copies have been
delivered to you.*

File Archives

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pres records

JANUARY 5, 1994

INFORMATION

MEMORANDUM FOR THE STAFF SECRETARY

FROM: MARC H. MONHEIMER, SENIOR ADVISOR TO THE ARCHIVIST
OF THE UNITED STATES* *MMH*

SUBJECT: STATUTORY PROTECTION OF PRESIDENTIAL RECORDS

I. **SUMMARY:** The Presidential Records Act of 1978 (the "Act", relevant excerpts of which are attached) assigns to the President the authority to specify information to which he may choose to restrict public access for up to 12 years after leaving office and does not authorize public access to personal materials. The Act:

- o defines Presidential records;
- o distinguishes Presidential from personal records, to which the government and the public have no claim; and
- o sets forth the criteria by which the President, while in office, may organize his recordkeeping if he is to exercise his prerogative to restrict access to Presidential records after he leaves office.

II. **DISCUSSION:** The Presidential Records Act of 1978 establishes the regime by which Presidential papers, once considered entirely the personal property of the President, are differentiated between Presidential and personal records. The Act requires the National Archives to take custody and regulate access only to those materials defined as Presidential records.

- o The Act defines Presidential records as the official records of the President and his staff and advisors, and

* With Shirley Clarkson, Director of Public Affairs, and Brian Thompson, White House Liaison.

establishes 6 categories of Presidential records to which the President may restrict public access for between 5 and 12 years.

o The Act defines Personal records as records which are "purely private or non-public" and unrelated to the duties of the President. Personal records are not subject to government custody or public access under either the Act or the Freedom of Information Act.

The responsibility for categorizing Presidential and personal records and for specifying which Presidential records are to be governed by future access restrictions rests with the President during his terms of office. Upon the conclusion of his Administration, Presidential records will be placed in the care and custody of the National Archives and Records Administration which, pursuant to its statutory obligation, after 5 years will begin to make Presidential records available to the public according to the President's categorization of information subject to access restrictions.

Controversy pertaining to questions of access to the Presidential and Vice Presidential records of the Reagan Administration, whose Presidential records were the first to be governed by the provisions of the Act, stems from the failure of President Reagan and Vice President Bush to satisfactorily differentiate between Presidential/Vice Presidential and personal records while in office and to categorize for access restrictions information in Presidential records.

Attachment: Statutory Highlights

Attachment

Statutory Highlights Presidential Records Act of 1978

The statute establishing the National Archives as an independent agency provides that the President shall appoint the Archivist "without regard to political affiliations and solely on the basis of professional qualifications required to perform the duties and responsibilities of Office of the Archivist."

The Presidential Records Act of 1978 (the "Act")¹ requires that upon the end of a President's term(s) of office the Archivist shall "assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President" and imposes on the Archivist "an affirmative duty to make such records available to the public as rapidly and completely as possible" in accordance with the Act.

The Act defines Presidential records as documentary materials "created or received by the President, his immediate staff or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President".

The definition of Presidential records expressly includes materials relating to the political activities of the President or his staff if they relate to or have a direct effect on the carrying out of constitutional, statutory or other official or ceremonial duties of the President.

The definition of Presidential records expressly excludes "personal records". The Act defines personal records of the President as materials "of a purely private or non-public character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President".

¹ It is assumed that the Act will be held constitutional if challenged under the doctrine of separation of powers.

Personal records of a President are never available to the public under the Act.²

The Act provides that "**prior to conclusion of his term[(s)] of office**" [and quite plainly, therefore, not following his term(s) of office], the President "**shall specify durations, not to exceed twelve years, for which access shall be restricted with respect to information in a Presidential record [emphasis added]**" in six categories specified by the Act. Four of the six categories are essentially the same as the Freedom of Information Act ("FOIA") exemptions:

- o classified information;
- o information required by statute to be withheld;
- o trade secrets; and
- o personal and medical information, the release of which would constitute an unwarranted invasion of personal privacy.

The two non-FOIA categories are information relating to federal appointments and "**confidential communications requesting or submitting advice, between the President and his advisors, or between such advisors**". The Archivist is required to restrict public access to categorized information for the period specified by the President. Records which contain information in a category not restricted by the President prior to the end of his term(s) of office are available to the public five years after the end of the President's term(s) of office under FOIA.

The Act treats Vice Presidential records in the same manner as Presidential records.

² Availability of the personal records of a President pursuant to subpoena is not within the purview of the Archivist, as personal records of a President are never within the control of the National Archives as a matter of law. The National Archives would be a mere stakeholder with respect to a dispute over public access to personal records voluntarily transferred to the National Archives.

THE WHITE HOUSE
WASHINGTON

January 7, 1994

MEMORANDUM FOR JOHN PODESTA

FROM:

R. PAUL RICHARD 

SUBJECT:

REAGAN PRESIDENTIAL RECORDS

*File
Archives
Presidential
Records*

On January 20, the presidential records of former President Reagan and the vice presidential records of former President Bush will become accessible under the Presidential Records Act (PRA) and the Freedom of Information Act.

I met with Marc Monheimer and Marvin Krislov this afternoon to review plans for opening the records to public scrutiny. He estimates that there are about 50 million pages in the Reagan Library, and that approximately one-seventh of the pages have been reviewed. If nothing else, the presumptive unavailability of most of the Reagan records will be a public relations problem that you should be aware of.

There are several legal interpretation issues that will require resolution before the January 20 access date:

1) Processing issues

The archivists at the Reagan Library have been reviewing materials in the traditional manner to determine if they can be released in their entirety, that is, documents are reviewed for PRA restrictions and FOIA exemptions. If any are found, the entire document is withdrawn. This practice flies in the face of FOIA that requires when only a portion of the record falls within the restriction and/or exemption, the record must be released with the reasonably segregable restricted portion deleted. We expect that the Justice Department will concur with the latter position when it issues its informal opinion next week.

2) Interpretation of PRA restrictions

Four of the six PRA restrictions use the exact language from FOIA; we anticipate that Justice will opine that FOIA analysis and interpretations will apply to them. Current practice in the Office of Presidential Libraries conflicts with FOIA procedures in at least two instances:

a) PRA restriction 1

Restriction 1 provides for the withholding of information authorized under the national security executive order and that is "in fact properly classified under such Executive Order." Under the analogous FOIA provision, federal agencies must conduct classification reviews of requested documents to ensure that information claimed to be exempt is currently and correctly classified.

Traditionally, presidential libraries have treated all classified documents as closed with no classification review being carried out when the record was requested under FOIA. Only after review of the files was completed would the libraries consider mandatory review requests on specific documents.

If however, FOIA procedures are followed it is clear that classification reviews will need to be conducted at the time a document is requested. We will need to articulate a policy in this area in the immediate future, as it is likely that requests for Reagan records will include classified materials.

b) PRA restriction 6

This is the exemption for records involving an unwarranted invasion of personal privacy. The analogous FOIA provision requires that agencies balance the individual's privacy interest against the public interest in the information to be disclosed. However, the Office of Presidential Libraries argues that the public interest test should not apply to presidential records "because in most of our files a legitimate public interest argument could be made."

We anticipate that the Justice Department opinion will demolish that argument in the case of these types of records.

I have attached a preliminary memo drafted by the Archives detailing these are other anticipated problems arising from the opening of the Reagan records. I will fax you a copy of the final memo as well as the DOJ opinion as soon as it becomes available next week.

On January 20, 1994, the Presidential records of former President Reagan and the Vice Presidential records of former President Bush will become subject to access under the Presidential Records Act and the Freedom of Information Act as incorporated in the PRA. As might be expected with the implementation of any new statute, issues of interpretation have arisen regarding the processing of Presidential records and the handling of requests for access to those records. The overriding issues concern: the requirement of segregating non-restricted and non-exempt information in unprocessed files upon request by a researcher, the handling of classification review, and the interpretation of the PRA restriction categories.

(1) PRA and FOIA requests--processing "queues": Archivists at the Reagan Library over the past several years have been processing records in their custody in a traditional archival manner, i.e., reviewing documents to determine whether they can be released in their entirety. If a document can be opened in its entirety, archivists leave it in the files; if a document or part of a document will be withheld because they believe a PRA restriction category or a FOIA exemption applies, the document is withdrawn and replaced by a withdrawal sheet. At this point, Reagan Library archivists have processed about one-seventh of the Library's paper collection (which totals approximately 50 million pages). According to standard Presidential library practices, the remaining six-sevenths of this collection would be basically unavailable to researchers while it is being processed.

If a request (whether under the PRA or under FOIA) is received for records that have already been processed, the Library staff will conduct a line-by-line review of closed documents to determine whether any unrestricted information can be released. Even though it is not entirely clear whether a line-by-line review is required under the PRA, former President Reagan's representative, Stephen Blitz, suggested that the review of segregable information should take place at this stage, rather than requiring a researcher to make a formal administrative appeal.

Traditionally, in a Presidential library, a request by a researcher for unprocessed materials would be responded to by telling her that the materials have not yet been processed; those materials would be processed when reached in the course of the library's normal systematic review of records. When a FOIA request comes in for unprocessed materials, Reagan Library staff propose to establish whether this request should go into a "quick" or "project" queue.¹

¹ This raises a separate issue. The Reagan Library intends to treat as FOIA requests only those requests that expressly mention the FOIA, and to treat any other requests as traditional researcher requests. We have advised the staff that this is contrary to the rule that applies throughout the Executive branch, that is, there is no requirement that a FOIA request invoke the magic words in order to be treated as a FOIA request with its accompanying proce-

When the request reaches the top of the queue, the archivists will determine exactly which documents are responsive to the request and review the documents for application of any PRA restrictions and/or FOIA exemptions. During our visit to the Reagan Library, we believe that everyone came to understand that FOIA review may require line-by-line segregability. The question of whether a line-by-line review is required under either the PRA or the FOIA needs to be resolved.

The PRA, starting with the "Definitions" section, refers to "reasonably segregable." See 44 U.S.C. 2201(2) ("The term 'Presidential records' means documentary materials, or any reasonably segregable portion thereof, created or received"); 2204(b)(1) ("Any Presidential record or reasonably segregable portion thereof containing"); 2204(b)(1)(B) ("upon a determination by the Archivist that such record or reasonably segregable portion thereof"); 2204(b)(3) (during the period of restricted access the determination of whether access to a Presidential record or reasonably segregable portion thereof shall be restricted). Although the language of 2204(b)(2) arguably indicates that a record may be withheld in its entirety, this interpretation seems to be contrary to the plain words of the statute elsewhere and is contradicted by the legislative history. The legislative history states in this regard:

It is anticipated that the Archivist will process the former administration's papers in a manner roughly similar to current practices. Detailed processing will involve going through the records page by page and applying to the information contained in them the restrictive categories chosen by the former head of state. Where only a portion of a record is determined to be exempt from disclosure, the record must be disclosed with the reasonably segregable restricted portion deleted. This follows the segregability requirement contained in the Freedom of Information Act, 5 U.S.C. 552(b).

House Report etc. at 5746. See also id. at 5747 (in making the determination, under Section 2204(b)(3), of whether particular records fall within a PRA restriction, "[t]he actual identification and segregation of materials pursuant to the restrictions is left to the Archivist.").

The legislative history also goes on to state that when the "grace period for archival processing of unrestricted records has ended, the records shall be administered in accordance with the Freedom of

dural requirements. We have therefore advised the staff that it must give notice to the public of its policy in this regard and that it should include this notice in the Federal Register notice that it will need to issue in any event, alerting the public to the procedures for making FOIA requests to the Library.

Information Act." Legis. history at 5747. Moreover, the history states that although Presidential records are not currently covered by the FOIA, "they effectively become agency records for the purposes of this provision [subsection (c)(3)] in applying FOIA requirements to them." Id. See also Section 2204(c)(3) ([records deemed to be records of NARA for FOIA purposes]). In light of both the statute and legislative history, a response to a FOIA request that merely advises the requester that the requested records are not yet processed and that access will have to await processing in the manner of traditional Presidential library systematic review--which does not include line-by-line review or review for current classification status--may not withstand judicial scrutiny.

(2) Interpretation of PRA restrictions: The PRA allows an incumbent President to claim any of six categories of restrictions under which access will be denied for up to 12 years. Of these six restrictions, two are different from the exemptions from access allowed under the FOIA; the other four restrictions are worded in precisely the same way as in the FOIA. The question has arisen whether the exact duplication of language suggests that the interpretation of the PRA restrictions should follow the FOIA case law. This issue needs to be addressed with regard to all four of these PRA restrictions, but has arisen most immediately with regard to PRA Restriction 1 (national security information) and PRA Restriction 6 (clearly unwarranted invasion of personal privacy).

PRA restriction 1: Both PRA Restriction 1 and FOIA Exemption 1 provide for the withholding of information that is specifically authorized under the Executive Order on national security information and that is "in fact properly classified pursuant to such Executive order." Under court interpretation of FOIA Exemption 1, material must be both substantively and procedurally classified in order to meet the statutory criteria of being "properly" classified. As a consequence, for FOIA purposes, agencies must conduct a classification review of documents that become subject to FOIA requests in order to ensure that any information claimed to be exempt is currently and correctly classified.

One proposal for the Library is that any records that were marked as classified remain "classified" and closed under PRA Restriction 1, and that no classification review need be carried out when these records are requested under the FOIA; the Library will simply inform FOIA requesters that it will do a systematic review of the files, open all releasable material, place withdrawal sheets in the file, and, at that point only, will accept mandatory review requests on specific documents. Although this is consistent with traditional Presidential library processing (and with NARA regulations governing mandatory review), it is inconsistent with the position that the PRA Restriction 1 is a blanket restriction that lasts until the expiration of the 12-year time limit or until the former President waives the time limit.

This position could result in the following scenario: A FOIA requester is denied access to materials that are classified and restricted under PRA Restriction 1. The requester files an administrative appeal under the FOIA and again is denied access to classified materials. If the requester seeks judicial review under the FOIA, she will presumably argue that the Library has not provided access to all unrestricted information. The government would at that point have the burden of proving that the information to which access had been denied was all "properly" classified. It will be impossible to carry that burden without having conducted a classification review.

PRA restriction 6: Both PRA Restriction 6 and FOIA Exemption 6 provide for the withholding of "personnel and medical files or similar files the release of which would constitute a clearly unwarranted invasion of personal privacy." The Office of Presidential Libraries has expressed the view that the FOIA case law on Exemption 6, which requires that an agency balance the individual's privacy interest against the public interest in disclosure of the information at issue, should not be applicable to considerations under PRA Restriction 6. That Office notes that Presidential libraries "have never applied the public interest test in Presidential papers because in most of our files a legitimate public interest argument could be made."

As noted above, four of the PRA restrictions use precisely the same language as the FOIA exemptions; the legislative history of the PRA states that this mimicry was intentional. See Legis. History at 5734 (restrictive categories "modeled" after FOIA exemptions). In fact, the legislative history, in setting out the wording of the restrictive categories, noted in the case of Restrictions 1, 3, 4, and 6 that the "scope of this category is comparable to" the corresponding FOIA exemption." Legis. History at 5745. In light of this, it would be difficult to argue that the case law governing the FOIA exemptions is not directly relevant to determining the meaning and scope of the very same words as used in the PRA restrictions. This argument might be possible if one were comparing the same language used in two different statutes, but in this case the FOIA is actually incorporated into the PRA as part of the statutory scheme for access.

For example, to follow the suggestion of the Office of Presidential Libraries that the public interest should not be considered in applying PRA Restriction 6 would require us to read out of the restriction the word "unwarranted." This is because the Supreme Court in interpreting FOIA Exemption 6 (and FOIA Exemption 7(C), which protects law enforcement records or information the release of which could reasonably be expected to cause an unwarranted invasion of personal privacy) has held that the way in which an agency determined whether an invasion of privacy is warranted or not is by balancing the individual's privacy interest in not having information withheld against the public's interest in disclosure of that information. See, e.g., Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, ____ (1989).

Two additional problems that have arisen concern the designation of certain records as personal or Presidential.

(3) Interfiling of personal and political materials: Archivists at the Reagan Library discussed a possible problem caused by the interfiling of personal and political material within the White House central files. Among records from the Reagan White House central filing system there are records relating to President Reagan and the First Lady that contain personal information. There are also records from these files that contain material that in other Presidential libraries would be treated as the former President's personal political records, i.e., documents relating to his role as leader of his political party. These records appear to have been filed at all times among the Presidential records in the White House central files. Until December 27, 1993, President Reagan had requested no special treatment for these "personal" records; by letter of that date, he directed that these records be segregated from Presidential records and kept with his other personal records.

Obviously, these personal records were not segregated from Presidential records during or even at the end of President Reagan's administration, as required by Section 2203(b). There is also a question whether this claim can be made retroactively.

(4) NSC Files at the Reagan Library: Approximately 3,100 boxes of records were transferred to the Reagan Library from the NSC at the end of the Reagan administration. Of these, one-third were designated as Presidential Records and the other two thirds were described as the convenience files of staffers. Steven Tilley, late of the NSC Information Policy Directorate, believes that these "staff files" are the equivalent of project or program files at the NSC. While these files often contain copies of the records that remain in the NSC's institutional files, the existence of additional material as well as the unique organization and subject focus of these files suggests that they are more than just "convenience files." The Office of Presidential Libraries has proposed that all of the NSC material be treated as Presidential Records. We believe that there may be problems with this belated classification for the NSC "Staff Files."

file
Archives

It has been suggested that I lack the "professional qualifications required," in the words of the statute, "to perform the duties and responsibilities of the Archivist of the United States." Well, that's easy to say, since the statute does not define "professional qualifications." Presumably, however, if the authors of the legislation had wanted to be more specific -- more limiting -- they would have done so. My assumption has always been that they well understood that there were others in these United States besides professional archivists and historians whose background and experience qualified them to perform the duties and responsibilities of the Archivist.

In pursuit of that assumption, I placed a personal telephone call to former Senator Tom Eagleton in St. Louis last Friday and asked him what his intent was when he wrote the legislation. He told me without hesitation that he never looked upon the language of the statute as so restrictive that it would preclude someone with my background from being Archivist of the United States. He is today FAXing me a letter to that effect.

I also have with me a copy of a letter that Congressman Jack Brooks wrote to President Clinton just last week, stating that it was never the Committee's intention to limit the appointment of the Archivist of the United States to a professional archivist or historian. He wrote, "To limit the President's choice of candidates to archivists or historians would be short-sighted and foolish. As honorable as these professions are, they do not necessarily provide the best training ground for the management skills required to run a diversified central management Federal agency."

So I submit to you that there is nothing in the National Archives and Records Administration Act which disqualifies me from serving as Archivist.

But there is more to this issue than just the legislative intent. I am not a "Johnny-come-lately" to the functions of archives in general, to the National Archives and Records Administration in particular, to the needs of the archival constituents, or to the public policy issues of the Archives.

-- During the nearly four years I served in the White House, I was regularly involved in advising the White House Archivist on the preparation of the Public Papers of the President which is published by the Archives.

-- During the last year I was in the White House, I was intimately involved in the planning process for the Lyndon Baines Johnson Library and I continued that involvement until the day the Library was dedicated three years later. In the twenty years since then, I have been involved in the planning of every symposium and every conference the LBJ Library has sponsored.

Following my White House years, I served as a writer and as senior editor of President Johnson's memoirs, *The Vantage Point*. I literally lived with the Johnson archives twelve hours a day for 2 1/2 years. I doubt if there are more than a handful of professional historians in this country who have spent more time working in the holdings of the National Archives than I. I was a professional historian for those 2 1/2 years and nobody can tell me that I don't understand the archival needs of professional historians -- or professional political scientists or professional journalists. I know full well, for example, what a two-day delay in locating a document does to a writing schedule or a research project.

-- In the mid-1970s, as press secretary and special assistant to Texas Governor Dolph Briscoe, I convinced the Governor to begin work on his archives while he was still in office and I helped draft the guidelines for establishing those archives.

-- In the late 1970s, I was one of the early proponents of independence for the National Archives. My op-ed piece in the *New York Times* was one of the first published articles on the subject of separating the Archives from the General Services Administration. I lobbied members of Congress to support independence -- particularly Chairman Jack Brooks-- and I later testified before the Brooks Committee on behalf of the National Archives and Records Administration Act -- at the Chairman's request. Bob Warner, who was Archivist of the United States at the time, told a friend of mine recently that I was a "hero of the Archives" for my role in helping the Archives achieve independence.

-- As President of Southwest Texas State University, I worked to expand the university archives and I negotiated the original gift of papers, documents and photographs that became the Southwestern Writers Collection which is today the leading collection of Southwestern writers material in the nation. And I built a special suite for that collection in the university's new \$30 million library. By the way, I had to fight and argue and lobby for three years to get that library approved and built. My regents were against it. The state higher education coordinating board was against it. The legislature was against it. And the Governor was against it -- not because they didn't all recognize that the current library was a disaster, but because the state was broke. But I didn't think that our students ought to have to wait until the price of oil went up to be able to use a decent library and we finally got it built.

So I may not be totally familiar with some of the more technical aspects of archival administration, but I do know something about archives and their critical importance to the memory of this nation.

And I have some other attributes as well which I think would serve any Archivist of the United States in good stead,

regardless of his or her professional background.

I know how to get things done. I've spent my entire career dealing with Presidents, legislators, congressional committees, cabinet officers, policy boards, editors, publishers and political leaders of both parties. I am comfortable dealing in that realm -- and effective.

I am a proven administrator. I ran a large university for nearly seven years -- a university of 20,000 students, a \$100 million budget and a faculty and staff of 1,500. And I'm not afraid to make decisions; I'm not a status quo person. I've always believed that in this era of technological explosion, an institution either changes or change runs over it.

I'm a leader and I'm good with people. I believe that the process of governance must include the process of consultation with all constituent groups. In every position I have ever held I have operated under an open door policy. When I first went to Southwest Texas State University, I found a faculty that had been in open rebellion against my predecessor -- and mad as hell at me because I didn't have an earned PhD. When I spoke to a faculty convocation two months later and outlined my goals for the university, they gave me a standing ovation. And I never had a serious conflict with the faculty from that moment on. We embarked on one of the most sweeping programs of curriculum reform in the nation and I involved the faculty in the planning process every step along the way. From that time on, I had the entire university moving in the same direction, toward common goals that we had all agreed on. And I never again, not once, heard another word of criticism about my lack of an earned PhD.

I'm a communicator, a writer, and a public speaker, with a strong press and public relations background.

I know my way around Washington and I am experienced at policy-making decisions at the highest levels. For three years I served as Chairman of the Board of Governors of the U.S. Postal Service, the governing and policy-making body of that organization, which at that time had a \$20 billion annual budget. During my tenure, I regularly testified before Congress, we approved a rate increase, we mandated major cost-cutting programs, we established the first truly comprehensive affirmative action program throughout the Postal Service, and we appointed a new Postmaster General.

In sum, I believe that I do possess the qualifications required to perform the duties and responsibilities of Archivist of the United States. I have an enormous respect for the position and for what it represents, but I am not overwhelmed by it. It's a big job, but I think I am big enough to handle it. And I think my track record proves that I am.

What would my goals be for the National Archives and Records Administration if I became Archivist?

-- First, assure that the National Archives remains a non-partisan institution and rebuild public confidence in its independence and integrity.

-- Second, begin immediately to boost staff morale.

-- Third, utilize every available aspect of modern technology to make the Archives user friendly.

-- Fourth, strengthen the Archives' ties to Congress.

-- Fifth, determine who the customers and constituency groups of the Archives are -- all of them, not just a select few -- and reach out to those groups in a renewed spirit of consultation and accomodation.

That would be the beginning. Then we would worry about the second week when we got to it.

National Archives



file
archives

Washington, DC 20408

33 OCT 15 A9:29

OCT 12 1993

The Honorable John D. Podesta
Assistant to the President
and Staff Director
The White House
Washington, DC 20500

Dear John:

The information you requested on researcher/museum visitor statistics for presidential libraries is enclosed. You may be interested to know that written and oral requests for information in presidential libraries run approximately three to four times the number of in-person researcher visits.

If I can be of further assistance, please let me know.

Sincerely,

Trudy Huskamp Peterson

TRUDY HUSKAMP PETERSON
Acting Archivist
of the United States

Enclosure

OFFICE OF PRESIDENTIAL LIBRARIES

Museum Visitors

Fiscal Year	Hoover	Roosevelt	Truman	Eisenhower	Kennedy	Johnson	Ford	Carter	Reagan	TOTAL
1970	91,083	162,423	182,823	449,631						885,960
1971	70,648	160,295	186,174	263,234		85,240				765,591
1972	81,989	181,520	187,866	318,684		676,116				1,446,175
1973	82,822	191,194	340,818	299,741		704,190				1,618,765
1974	84,002	194,314	264,230	215,586		542,717				1,300,849
1975	106,109	188,106	291,180	197,727		520,985				1,304,107
1976	148,099	223,673	510,584	295,532		905,244				2,083,132
1977	91,324	371,514	321,136	177,332		657,907				1,619,213
1978	95,418	276,865	264,714	170,172		502,115				1,309,284
1979	69,775	215,582	219,067	127,026		480,521				1,111,971
1980	64,088	241,459	201,642	143,910	563,470	446,062				1,660,631
1981	70,337	226,238	211,864	125,458	357,724	384,884	22,476			1,398,981
1982	61,227	202,048	197,477	131,961	291,430	368,289	423,886			1,676,318
1983	59,637	206,147	200,913	117,420	222,847	409,304	183,071			1,399,339
1984	58,487	186,833	210,149	109,720	243,173	357,390	139,529			1,305,281
1985	50,310	194,578	188,552	115,103	215,790	402,768	114,214			1,281,315
1986	51,958	193,150	176,578	101,232	190,586	447,714	92,526			1,253,744
1987	53,690	189,335	168,645	95,895	212,582	419,595	97,812	190,388		1,427,942
1988	95,653	167,747	159,119	90,201	206,115	318,422	95,785	117,881		1,250,923
1989	104,483	184,964	155,182	96,180	210,318	420,199	81,385	86,440		1,339,151
1990	99,741	168,898	149,521	158,058	199,927	342,951	83,353	79,668		1,282,117
1991	71,833	163,237	136,864	125,345	175,076	308,033	120,460	80,559		1,181,407
1992	75,704	168,514	139,230	93,287	213,996	388,529	88,419	86,383	280,219	1,254,062
TOTAL	2,352,964	8,989,017	6,874,449	5,195,958	3,303,034	10,089,175	1,542,916	641,319	280,219	38,988,832

OFFICE OF PRESIDENTIAL LIBRARIES
Researcher Daily Visits

Fiscal Year	Hoover	Roosevelt	Truman	Eisenhower	Kennedy	Johnson	Nixon	Ford	Carter	Reagan	TOTAL
1970	598	1,112	996	144	36						2,886
1971	509	1,192	808	209	316						3,034
1972	563	1,604	283	173	389	185					3,197
1973	609	1,345	767	342	461	484					4,008
1974	616	1,278	1,051	336	868	1,116					5,265
1975	498	1,361	880	390	682	1,243					5,054
1976	949	2,274	1,663	756	957	1,564					8,163
1977	427	1,303	886	484	1,123	1,297					5,520
1978	528	1,535	985	496	878	1,797					6,219
1979	958	1,097	785	527	785	1,533		122			5,807
1980	614	1,603	973	625	1,419	1,618	84	119			7,055
1981	672	1,243	1,306	676	2,975	1,687	121	74			8,754
1982	686	1,439	918	648	2,196	2,257	124	234			8,502
1983	656	1,283	1,378	802	2,251	1,848	87	496			8,801
1984	582	1,415	1,361	718	2,251	1,804	259	863			9,253
1985	604	1,016	1,221	748	2,110	2,301	852	977			9,829
1986	564	1,358	975	779	1,834	1,673	427	977			8,587
1987	616	1,172	1,369	784	2,016	2,455	819	625	569		10,425
1988	826	1,446	1,552	756	2,760	2,853	886	649	505		12,233
1989	482	1,587	1,591	1,033	2,451	2,007	657	1,420	549		11,777
1990	700	2,193	1,422	1,291	2,646	1,674	827	1,682	652		13,087
1991	424	1,234	1,080	1,098	2,663	2,272	771	1,218	616		11,376
1992	520	1,968	1,772	1,211	2,555	2,525	958	981	768	151	13,409
TOTAL	15,246	47,179	31,897	15,269	36,622	36,193	6,872	10,437	3,659	151	203,525

OFFICE OF PRESIDENTIAL LIBRARIES
Reproductions Furnished

Fiscal Year	Hoover	Roosevelt	Truman	Eisenhower	Kennedy	Johnson	Nixon	Ford	Carter	Reagan	TOTAL
1970	47,412	91,296	31,857	49,649	1,815						222,029
1971	78,855	82,485	29,279	12,760	2,950	95,007					301,336
1972	24,303	193,954	14,672	26,440	4,822	65,228					329,319
1973	32,726	309,210	18,046	34,047	6,926	67,568					468,523
1974	25,962	134,676	53,632	31,528	21,645	34,630					302,073
1975	23,179	126,794	42,011	60,910	22,776	19,667					295,337
1976	25,764	143,585	91,072	110,389	45,821	75,311					491,942
1977	13,661	85,159	67,484	115,343	38,462	75,311		301			395,721
1978	14,710	107,330	65,381	115,341	32,607	119,439		2,895			457,703
1979	29,154	110,411	75,673	118,217	39,807	133,272		2,071			508,605
1980	28,733	119,595	72,676	103,357	63,016	131,425	13,208	6,633			538,643
1981	33,700	90,157	80,707	88,942	53,089	113,089	31,223	5,376			496,283
1982	32,934	63,391	59,707	116,255	48,323	88,527	34,513	11,112	6,089		460,851
1983	21,864	81,122	88,925	84,873	84,519	108,268	30,872	14,423	8,878		523,744
1984	28,943	71,020	79,336	119,077	109,305	125,178	13,129	11,145	9,531		566,664
1985	22,934	61,327	71,586	86,144	53,687	72,180	4,717	8,015	10,766		391,336
1986	21,803	53,937	70,717	95,485	63,783	105,753	2,620	10,068	4,748		428,914
1987	22,198	44,452	67,009	90,000	69,396	61,670	37,786	12,391	29,291		434,193
1988	34,457	86,552	73,516	83,894	122,765	74,406	51,869	23,256	44,211		594,916
1989	28,302	89,360	74,263	95,908	99,205	111,288	30,845	15,364	51,617		596,152
1990	18,569	86,557	57,130	97,112	126,513	103,242	26,526	27,135	40,243	16,948	599,975
1991	5,020	60,012	125,193	129,683	137,710	97,398	67,034	10,571	35,650	16,164	684,435
1992	12,342	42,810	117,870	135,929	136,311	127,381	73,094	54,941	22,642	61,489	784,809
TOTAL	661,472	2,455,158	1,599,275	2,037,872	1,385,253	2,005,238	417,436	215,697	263,666	94,601	11,135,668

File
Archivist

ARCHIVIST OF THE UNITED STATES
Names for Consideration
March 16, 1993

LAST NAME	FIRST NAME	ST	R	S	SPONSOR	COMMENTS
*Hackman	Larry F.	NY	C	M	SHFG, Warner, AHA	Dir. NY St.Arc. No Ph.D. Highly regarded.
Hardesty	Robert	TX	C	M	Warner, Pickle, McCullough, V. Jordan, A.Richards	WH during LBJ. Vice Chancellor of UT System & Pres. of SW TX State. Retired.
*Hine	Darlene Clark	MI	AA	F	Janet Rabinowitch, editor, IN U Press	Prof/Hist. MI St U. Award-winning writer re Human Rights, Am. Black Hist, w focus on black women.
*Huxley	Carole Corcoran	NY	C	F	AHA, Hackman	Deputy Comm. for Cultural Ed. NY St. Responsibilities-- comprehensive oversight, mgt. St. Arc and Rec. Budget \$100m. Hackman's boss. Hackman has more hands-on arc. experience.
*Katz	Stanley	NJ	C	M	Warner, Hackman, AHA, SHFG	Atty/prof. Pres. Am. Co. of Learned Societies. Respected outside of immed. circle. Sponsored & managed hist. Doc. Study: <u>Using the Nation's Documentary Heritage</u> . On Comm. re study <u>The Knowledge Management Model</u> . Focus on electronic technology in libs and arcs.

*King	Patricia Miller	MA	C	F	Joan Challinor, Ph.D. (DC)	Historian. Dir. Schlesinger Lib. on Hist. of Am. Women since '73.
*Viola	Herman J.	DC	C	M	SHFG, Hackman	Smithsonian, Natural History. Prev. staff of NARA, 1st ed. of <u>Prologue: Journal of Nat'l Arc.</u> Bk on Nat'l Arc. Taught in arc fld.
Vogt	George	SC	C	M	Warner	Dir. SC Dept. of Arc & History. One of 3 lgst combined arc and rec mgt. programs in US. Reorg'd depart and diversified staff; updated procedures. Staff of 112; budget \$5m.

ARCHIVIST OF THE UNITED STATES

Also Considered

March 16, 1993

ADLER, DR. NORMAN. C/M NY. Ph.D. in History, U. of WI. Expert in history of reform movement in Demo Party. Former labor leader, pol. campaign mgr. and consultant. Hackman.

AMBACH, GORDON MACKAY. C/M DC. Education Association official. Background in education and social studies. Worked in US Office of Edu. Nothing stands out to put him above the crowd. Hackman.

BANKS, BRENDA. AA/F GA. Now asst. dir. GA Dept of Archives and History. Good work experience for archival job but ranked as good candidate for deputy. Hackman.

BARNETT, JAMES FRANKLIN, JR. C/M, MS. An anthropologist with specialization in archaeology, for the past eleven years he has been director of the Division of Historic Properties, Mississippi Department of Archives and History. Background is far more archaeological than archival. Management experience is micro rather than macro. Skip Rutherford labels him "outstanding."

BEARMAN, TONI CARO. C/M PA. Calls himself an information scientist but emphasis on library skills. Was Exec. Dir. of U.S. National Committee on Libraries and Information Science 1980-86. Education is in physical sciences and seems to lack hands-on archival experience. Hackman.

BERRY, MARY FRANCES. AA/F DC. Degrees in History/Law. Has served in Government and has some national reputation. Short on management skills and no archival experience. AHA.

BLOUIN, FRANCIS XAVIER, JR. C/M MI. Teaches History and Library Science at U. of Michigan concurrently with directing Bentley Library. His degree is in History but has published many archival articles. Would rate archival skills high; nothing to indicate large-scale management experience. Hackman.

BOK, DEREK. C/M MA. Educator (former Pres. Harvard U.) with law degree. Main asset would be national reputation which would serve him well with many constituent groups. Has support of Senator Kennedy for some high post. Hackman.

BRADEMAS, JOHN. C/M NY. Consensus that this would be a wonderful appointment but he is known to be uninterested. Hackman.

BRIDGES, EDWIN CLIFFORD. C/M AL. Ph.D. U. of Chicago/ Mgt course work in Pub. Adm. Lengthy experience in managing Alabama State Archives and serves as Chairman of Committee concerned with State and Local Records. Belongs to both Archives and Historical Assns. Active with Larry Hackman in conveying concern re Archival situation. Professional credentials strong. Broader stature unknown. Hackman. Warner.

BROOKS, PHILIP. C/M VA. Served as Historian-Archivist for both 1989 and 1993 Presidential Inaugurations. Has worked at NARS since 1971. His education is in Political Science but his work experience has been along the lines we're looking for. He is really seeking Asst. Archivist for Presidential Libraries or for Public Programs. Included because of recommendation by Rahm Emanuel.

BROWN, ELLSWORTH HOWARD. C/M IL. Dir. Chicago Historical Society. Museum work with background in history. No archival credentials. Hackman.

BURNS, KEN LAUREN. C/M NH. Award-winning filmmaker, historian. Main asset would be national reputation for film and TV work. Would probably be an eloquent spokesman. No managerial archival experience.

BUTLER, TYRONE G. AA/M NY. For ten years, most recently as Deputy Director, worked at NYC Dept. of Records and Information Services. Managed 90 employees. Responsible for developing award-winning records management program. Belongs to Records Mgt. and Archivists Assns. Lectures on Records Management. Has BA and MA in American History. Apparently has not finished dissertation for Ph.D. Has academic training in Historical and Archival Adm.

COX, RICHARD. C/M PA. Ph.D. candidate, U. of Pittsburgh. Twenty years archival experience at Pitt; edits American Archivist, has received archival awards. Has grasp of what archivist should be. Can't determine national stature.

DEARSTYNE, BRUCE W. C/M NY. Edu. History. Active professionally as archivist. Now Dir. Statewide Services and Programs, NY State Archives and Records Adm. Active in formulation of legislation regarding archives. Written extensively re arc. including newly published book The Archival Enterprise: Modern Archival Principles, Practices, and Mgt. Techniques. Andrew Spano, Westchester County Clerk.

DE GENNARO, RICHARD. C/M MA. Librarian rather than archivist but has degree in Advanced Mgt. from Harvard. Has published re Technology/Information. Presently director of Widener Library. Hackman.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	re: Archivist of the United States [partial] (2 pages)	03/16/1993	b(6)

COLLECTION:

Clinton Presidential Records
Staff Secretary
John Podesta (Subject Files)
OA/Box Number: 17335

FOLDER TITLE:

Archivist

2018-0662-S

rs3142

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

DOWLER, LAWRENCE E. C/M CT. Associate librarian Yale U., member Archival Assns. Served on National Information Systems Task Force on Automation and other comms. concerned with automating archives. Hackman.

EAGLETON, THOMAS F. C/M DC. Former Senator, attorney. No specific skills in archival field. Knows the Hill. Hackman.

EVANS, MAX J. C/M UT. No Ph.D. Librarian-archivist. Served as Deputy State Archivist in Utah, 77-86. Has written on technology of record-keeping.

FITZSIMMONS, JOSEPH JOHN. C/M MI. Pres. University Microfilms, so well-versed in technology of record-keeping but has not worked as archivist or historian. Degree in Phy.Sc. Was V.C. of White House Conf. on Libraries and Information Sciences in 1991. Bob Warner.

FLECKNER, JOHN A. C/M DC. Ph.D. candidate. Ten years archival experience Smithsonian Museum of American History. Prior archival experience at Wisc. State Historical Society. Archival consultant.

(b)(6)

GRAY, HANNA. C/F IL. Educator/historian. National reputation makes her an attractive candidate. Running a large University gives her management background. Hackman.

GREGORIAN, VARTAN. C/M RI. Another educator/historian with a national reputation and management experience from running large organizations--NY Public Library and Brown University. Hackman.

GRIFFITH, ROBERT. C/M MD. Hist/Pol Sc. Dean of Arts & Sciences, U. Md. Bob Warner.

HALE, MIKE. C/M FL. Edu. in Physical Sc. and Bus. Adm. Responsible for implementation of Information Resources Management program in Florida gov including 25 state agencies, 20 States Attys, 20 Public Defenders, 17 data centers with total tech budget of \$324m.

HALL, KERMIT L. C/M OK. History/Law. Described as able and articulate. Published extensively--mostly legal history. As academic chair and dean would have some management experience.

HENDERSON, JAMES S. C/M ME. Edu. Pol.Sc. Now Adm of Maine State Archives, staff of 15. Advanced Archives Inst. for Mgt. of Electronic Records, U. Pitt.; bd mem of NAGARA; Internat'l Conf. on Archives '89. Brenda Banks.

JOSEPHSON, WILLIAM HOWARD. C/M NY. Attorney. Govt service in both domestic and international agencies. Award for exemplary achievement in public adm., on NY State Records Advisory Board since 1990. While not in archival or history professions, highly respected. Hackman.

KATZ, STEVEN L. C/M DC. Attorney. MA in History/BA Anthropology. Government experience mostly on Capitol Hill. Works on Committee that provides oversight for the Archives. Was author of report detailing malfeasance at the Archives. Has no hands-on archival or management experience. Steven Katz.

KOHN, RICHARD H. C/M NC. Professor of History. Grad. Harvard. Served as member of Council of American Historical Assn and chr of Public History Comm for the Organization of American Historians. Was member of Presidential Materials Review Board for Nat'l Archives and Records Adm. Chr Adv. Comm on Research and Collections Management for Air and Space Museum. Nothing to indicate management skills.

LYTLE, RICHARD H. C/M PA. Dean, College of Information Studies, Drexel U. Previously, Archivist and Director, Office of Information Resource Management, Smithsonian. Knowledgeable about National Archives operations and new technologies for record-keeping. Good political skills.

MARTIN, ROBERT. C/M LA. Experience in Library and Information Studies. Belongs to several Archival Assns. Nothing indicating management skills or broad appeal in other areas listed.

MCCULLOUGH, DAVID. C/M AZ. Historian/professor/ writer. Truman Bio won many awards. Stature would provide focus on NARA. No hands-on archival or management experience. Hackman.

MCPHERSON, JAMES MUNRO. C/M NJ. Historian/professor-Princeton/writer. Recipient, Pulitzer Prize for History. No archival or management background. Hackman.

MARZIO, PETER. C/M TX. Professor/Museum Director. Adv. Coun. Anthropol Film Ctr, Archives Am. Art. Thin background for this particular position. Hackman.

MICHALKO, JAMES PAUL. C/M CA. Library Assn. Adm. No special skills that call him to your attention. Hackman.

MOYERS, BILL. C/M NY. A larger than life individual with a broad background in Government broadcast journalism. His personal prestige would put the spotlight on the Archives. Lacking the hands-on archival and mgt. experience. Hackman.

NELSON, JAMES A. C/M KY. Has MA in Library Sc. Now State Librarian of Kentucky and Commissioner of the KY Dept. for Libraries and Archives. Responsible for management and preservation of public records in Kentucky. Has staff of 200 and budget of \$16m. Bob Warner.

PALM, CHARLES G. C/M CA. Hist/MLS. Asso. Dir. for Library and Archives, Hoover Inst. Worked at NARS 70-71 as trainee, Ofc. of Pres. Libraries. Active in Archival Assns. Member, Task Force on National Information Systems, 79-83.

PAPENFUSE, EDWARD C. C/M MD. Archivist/Historian. Resume claims innovator of automated mgt. of records. Now State Archivist for State of Maryland. Endorsed by Sarbanes and Steny Hoyer.

PETERSON, TRUDY HUSKAMP. C/F DC. Historian. Staff of National Archives in a variety of areas. Has served as Pres. of Society of American Archivists. Recommended as Acting Archivist by Search Committee. Endorsed by Agricultural History Society as permanent Archivist.

SOVERN, MICHAEL IRA. C/M NY. Col. University Pres/law educator. No archival work. Obviously mgt. skills running large U. Hackman.

SMITH, WAYNE. C/M MI. OCLC (Online Computer Library Consortium) Columbus, Ohio. Probably would not take. Bob Warner.

VIOLA, HERMAN JOSEPH. C/M DC. Now at Museum of Natural History, Smithsonian, Dir. of Quincentenary Programs. Prior to 1972, was on staff of Nat'l Archives, where he launched and was first editor of Prologue: The Journal of the National Archives. Has also been archivist at Bureau of Indian Affairs and the National Historical Records and Publications Comm. Wrote book on National Archives. Also taught in archival field, Catholic U.

VOGT, GEORGE. C/M SC. Director, SC Dept. of Archives and History. Staff of 112 and budget of \$5m. Dept. one of three largest combined archival and records management programs in the US. Reorg. the Dept. and diversified staff and updated procedures. Says well known in the relevant professional communities across the country. Warner.

WEDGEWORTH, ROBERT. C/M NY. Extensive work in field of Library Science. No hands-on archival work. Hackman.

WILSTED, THOMAS. C/M WY. Since 1978, Archivist/Adm for Salvation Army Archives and Research Center. Other Library and Archival positions. Authored articles on Archives. No hint of mgt. of large org.

WINTER, WILLIAM FORREST. C/M MS. Atty/former MS gov./professor of law and social studies. Past pres. board of trustees, MS Dept. of Archives and History. Advantage would be political connections re Capitol Hill. Hackman.

WOODS, ROBERT J. C/M VA. Edu. MS in Pub.Adm. with emphasis in Technology Mgt. Harvard. IRM in several Fed. Ag. Has chaired The Fed IRM Policy Council; the Interagency Committee for IRM. A Nat'l Communications and Information Systems Security Council Board member. Brenda Banks.

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

TO: Bruce Lindsey
FROM: William Gilcher, Personnel Manager
Susan Reichman, Personnel Manager
Lenore Pearlman
VIA: Jan Piercy
RE: Search, Archivist of the United States (Executive Schedule, Level III)
DATE: March 17, 1993

BACKGROUND

According to the National Archives and Records Administration Act of 1984, "The Archivist of the United States...shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist."

The Report accompanying the legislation states that the Committee "recognizes the desirability of ensuring that the Archivist, like other presidential appointees in the executive branch, will be responsive to the leadership of the president, while at the same time providing the Archivist with a degree of insulation from improper political pressure in the discharge of his duties." The Report also states that the Committee expects that the appointment of the Archivist "will be achieved through consultation with recognized organizations of professional archivists and historians."

We have designed the search for Archivist taking into account the need to identify candidates who will:

- o be responsive to the leadership of the President;
- o have stature and personal integrity such that the public and Congress will agree the candidate is above falling victim to improper political pressures; and
- o demonstrate that we have fulfilled our responsibility to consult with recognized organizations of archivists and historians.

We are following the usual procedures established for presidential appointments, with special attention to outreach and to extensive consultation with Congress. Leonard Weiss and Steven Katz of Senator Glenn's office have forwarded extensive written material to us for our consideration. We have met with Weiss and Katz and a number of prominent professional organizations of archivists and historians to seek their guidance in identifying the best potential candidates.

The ideal candidate must have stature within the historical and archival professions and the ability to provide leadership not only to the executive and legislative branches of the federal government but to the broader constituency of research, education, information

and cultural organizations. He/she must possess great sensitivity to legal and political issues, a knowledge and appreciation of changing technology and its application to the many facets of record keeping and information dissemination.