

Testimony of Allen Weinstein
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Before the
House Committee on Oversight and Government Reform
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Good morning Chairman Waxman, Ranking Member Davis, and members of the Committee on Oversight and Government Reform. Thank you for calling this hearing, and for your continued attention to the management and preservation of government information.

I am pleased to appear before you today to discuss the work of the National Archives and Records Administration in managing Presidential papers at the time of a transition from one President to the next. I will summarize my remarks and ask that my full statement be included in the record.

Let me begin by discussing our preparation for the transition of the Presidential records of the George W. Bush administration to the National Archives in January 2009. The National Archives has a long and successful history of moving the President's records and gifts from the White House to the custody of the National Archives for ultimate deposit in a Presidential Library. We've done this work under the exigent circumstances of a sudden departure (as per Presidents Kennedy and Nixon), the foreshortened necessity of a one-term President, and the more predictable pace afforded by a two-term President.

The National Archives begins preparing for the eventual move from the first day of an Administration; however, most of the work takes place in the last year of the

President's second term. We work closely with the White House Counsel's Office, the White House Office of Records Management, the National Security Council, the White House Photo Office, the Office of Administration, and other appropriate White House offices in accounting for all Presidential records – textual, electronic, and audio-visual – and arranging for their physical transfer to the National Archives. We also work with the White House Gift Unit in inventorying and packing the thousands of foreign and domestic presidential gifts that will also be included in the holdings of the presidential library and museum. Traditionally, the Department of Defense supports the National Archives in packing and transporting the records from Washington to the library site.

Beginning in the summer of 2007, the National Archives attended several preliminary meetings with White House staff to discuss the transition process. In late fall, Archives staff began to meet with IT staff from the Office of Administration to discuss the transfer of electronic records. (Archives staff has also met with staff of the National Security Council regarding their classified electronic records, which are maintained separately from the systems managed by the Office of Administration.) We expect that transition meetings will continue on a regular basis and look forward to working with White House staff in ensuring a smooth transition of what will be a massive amount of records.

The National Archives has leased a temporary presidential materials facility in the Dallas, Texas area that will serve as our archival repository for these records until the Presidential Library is completed. We have already begun to hire and train archival staff, along with a museum registrar, who will take charge of the records and gifts as they

arrive. We expect to continue the hiring of a full staff when we receive our FY 2009 appropriation.

Now I would like to turn to your question regarding the National Archives's actions concerning the possibility of missing Executive Office of the President (EOP) emails. The Presidential Records Act (PRA), 44 U.S.C. §§ 2201-2207, gives the Archivist no regulatory or formal oversight authority over how an incumbent President performs his records management responsibilities, but rather vests records management authority entirely and exclusively with the incumbent President. Nevertheless, throughout the course of an Administration, both I and my staff endeavor to provide our best guidance and advice on matters affecting White House records management when we are invited to do so.

When we read the press reports in April 2007 that the White House had acknowledged that a large number of emails might be missing from the EOP system, we immediately began to ask the White House about this matter. (The National Archives made similar inquiries in 2006 upon our learning of press reports that Special Counsel Patrick Fitzgerald had reported on email archiving problems with Office of the Vice President's records.) Some time later in April 2007, White House staff told us that a chart prepared in 2005 indicated that there might be some emails from the EOP system that had not properly been archived, but that no one within the EOP had been able to validate the chart's results. My staff was further informed that efforts would be taken to corroborate whether or not any emails were actually missing.

In addition, because the EOP email system contains records governed under both the Presidential Records Act and Federal Records Act (FRA), on May 6, 2007, the

National Archives sent a standard letter, pursuant to 44 U.S.C. § 2906 and 36 C.F.R. § 1228.104, to the Director of the Office of Administration requesting a report on the allegations of unauthorized destruction of Federal records. (This letter has been provided to the Committee.) While we have not received a written reply to the May 6 letter, we have been diligent in requesting an update on the status of the White House's review of these allegations and the possibility of missing Federal and Presidential emails. The White House has responded regularly that its review is still continuing.

Furthermore, we have made our views clear, both to the White House and to this Committee, that, in the event emails are determined to be missing, it would be the responsibility of the White House to locate and restore all the emails, probably from the backup tapes, and that such a project needs to begin as soon as possible.

A similar situation occurred near the end of the Clinton Administration, with its Automated Records Management System (ARMS), and the Office of Administration took full responsibility in restoring an estimated two million emails. (In April 2001, the General Accounting Office issued a report on the Clinton Administration's Management of Executive Office of the President's E-Mail System. Report No. GAO-01-446.)

Because of the problems that occurred with the ARMS system during the Clinton Administration, the National Archives recommended to the incoming George W. Bush Administration that it replace ARMS with a new electronic records management application for its emails as soon as possible. The Bush 43 White House expressed interest, and invited the National Archives to work with the Office of Administration in developing the requirements for a new system. The National Archives staff worked with the Office of Administration from late 2001 until the summer of 2004 on what came to be

known as the proposed Electronic Communications Records Management System (ECRMS). The National Archives staff reviewed deliverables and documentation produced as part of the system design effort, with our primary concern being to facilitate the transfer of these electronic records at the end of the administration. In the fall of 2006, the National Archives learned that the Office of Administration had decided not to implement ECRMS. In February 2007, the National Archives began meetings with the Office of Administration to discuss how it proposed to manage EOP emails in anticipation of the upcoming transition. The National Archives was not informed about the possibility of missing emails at this time.

The Committee has also asked the National Archives about policies on preserving backup tapes. Under longstanding federal records management guidance to the government at large, the National Archives encourages the recycling of backup tapes as short-term, temporary records, provided that an agency is not under a special preservation hold imposed by a lawsuit or investigation, and so long as any federal records residing on the backups have been appropriately preserved elsewhere either in paper or electronic form. See, e.g., General Records Schedule 24, Item 4; General Records Schedule 20, Item 8. The recycling of backup tapes for the EOP email system, as managed by the Office of Administration, has been specifically governed by a 1995 FRA records disposition schedule. (SF 115, Job No. N1-429-95-2.) Item 8 establishes that the backup tapes are temporary federal records, with the following disposition:

Daily Backup Tapes. Delete when set of weekly backup tapes has been created without error.

Weekly Backup Tapes. Delete when 90 days old.

The National Archives understands that the Office of Administration stopped recycling its backup tapes in October 2003 for reasons unrelated to the problem of missing emails, and has been maintaining them ever since. While we do not have very much information regarding the matter of missing emails, we certainly support the suspension of recycling of backup tapes pending a determination by the EOP as to the true state of facts concerning this situation.

Mr. Chairman, this concludes my testimony. Thank you for your attention, and I am happy to answer any questions that may remain.