

NARA Cannot Assure Complete Transfer of Bush Records*
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The impending transfer of Bush Administration records to the custody of the National Archives and Records Administration (NARA) will challenge the capacity of the Archives to absorb them because of their enormous volume and the diverse formats of various electronic records.

But there is also a fundamental question concerning the integrity of the transfer process, which relies on the good faith of executive branch officials and which can be subverted by design or neglect.

"There really is no practical way we know of for NARA to be assured that every document in paper or electronic form has been received from an agency," Dr. Allen Weinstein, the former Archivist of the

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United States, told Congress last year (pdf, at p. 136). "Nor can NARA police the records management practices of over 300 federal agencies to ensure that permanent records are not purposefully or unintentionally withheld from the National Archives. Federal agencies are expected to fulfill their statutory responsibilities."

"NARA must rely on the agency records officers, other agency officials, and a vigilant public and press to inform us of any such failure to act," he said.

As for presidential records in particular, Dr. Weinstein said "the incumbent President is solely responsible for ensuring that ... components of the Executive Office of the President adhere to the records requirements set out in [the Presidential Records Act]."

Although the President is supposed to obtain the written views of the Archivist prior to any proposed destruction of non-permanent records, "the final disposal authority rests with the incumbent president... regardless of the Archivist's views."

See "National Archives Oversight: Protecting Our Nation's History for Future Generations," hearing before the Senate Committee on Homeland Security and Governmental Affairs, May 14, 2008 (esp. pp. 131-136).

An estimated 25,000 boxes of White House documents are to be transferred to the Archives, R. Jeffrey Smith of the Washington Post reported ("Bush E-Mails May Be Secret a Bit Longer," December 21). Electronic records of the Bush White House are believed to total 100 terabytes of information, or about 50 times the volume of electronic

records left behind by the Clinton White House in 2001, Robert Pear and Scott Shane reported ("Bush Data Threatens to Overload Archives," New York Times, December 27, 2008).

Volume aside, the White House electronic records were often generated in non-standard formats using proprietary software that somehow must be accommodated by NARA.

"The biggest risk facing NARA that could disrupt a successful transition is our ability to ingest the electronic records of the White House," Dr. Weinstein said. A plan to address this risk was approved November 7, the New York Times reported.

Vice President Richard B. Cheney recently argued (pdf, at p. 24) that "The Vice President alone may determine what constitutes vice presidential records or personal records, how his records will be created, maintained, managed and disposed, and are all actions that are committed to his discretion by law" (as reported by Pamela Hess of Associated Press on December 18).

That view was disputed by Citizens for Responsibility and Ethics in Washington and historians who filed a lawsuit seeking to ensure compliance with the Presidential Records Act (PRA). "[The Vice President's] demand for unchecked discretion not only contravenes binding Circuit precedent, but ... is repugnant to our democratic ideals and the rule of law," they argued in a December 22 pleading.