

Government Record News

The Newsletter of the Government Records Section
of the Society of American Archivists

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The Government Records Section News is a semi-regular Newsletter/Publication of the Government Records Section (GRS), Society of American Archivists (SAA). The Newsletter is distributed to members of the Section by Postal Service, and is also available at the SAA Web site. Janet Waters, of the University of Northern Colorado , maintains the excellent GRS web site. Ms. Waters can be reached at 970-351-2854, or at janet.waters@unco.edu.

From the Chair

Dear Colleague:

The 2004 SAA Annual Meeting in Boston is just a few short weeks away. The meeting program couldn't have put it better when stating that it is the "best opportunity all year to meet, enjoy, and learn from the amazing work of archivists from around the world." I sincerely hope that you will be able to attend this year's conference, and if you do, to make it a point to attend the Government Records Section Annual Meeting. The Section Meeting is an opportunity to meet and learn with archivists who share your area of expertise and to discuss some of the unique issues public records archivists face.

This year's Section Meeting will be held on Thursday, August 5 from 10:00 - 12:00. It immediately follows the Opening Plenary Session. The program portion of the meeting features several presentations of interest to any archivist who deals with government records. Issues and topics include the illegal sale of official public records, managing and providing reference to electronic records, and ensuring that an information system is trustworthy and reliable.

Peter Blodgett, on behalf of SAA, will discuss SAA's latest efforts to prevent the sale of official public records on E-Bay. Peter will be glad to answer any questions you may have about SAA's joint *Statement Regarding the Sale of Historical Public Records on E-Bay* (see <http://www.coshrc.org/issues/publ-rec-auctions.htm> for a copy of the statement). Beth Fidler and John Laster from the National Archives and Records Administration Presidential Materials Staff will provide an update on "Issues in Processing the Clinton E-Records" including their experience in providing reference from electronic records. State Archivist Bob Horton will discuss the State Archives Department of the Minnesota Historical Society's collaborative Trustworthy Information Systems project. Several years ago, the State Archives Department and its partners issued a handbook which details a methodology to evaluate government information systems for trustworthiness. Now that the Handbook has been in use for several years, Bob will bring us up to date on its use and effectiveness plus touch on what the State Archives staff learned over the course of the Project. Information on the Trustworthy Information Systems project can be found at <http://www.mnhs.org/preserve/records/tis/tis.html>.

The presentations will be preceded by reports from the chair, SAA Council Liaison, Local Government Roundtable chair, and the section's newsletter editor. The section will also nominate and elect new steering committee members and section officers.

I think it will be an interesting and worthwhile two hours. I look forward to seeing you there.

Virginia Fritzsch

Chair, Government Records Section
Society of American Archivists

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Editor's Corner

Once again, the Editor apologizes for the great delay in the publication of this issue of the Government Records Section Newsletter. I am again grateful for the patience of its readers and, more especially, its contributors who have written such thought provoking articles. Thank You!

The Editor also solicits, nay, implores the reading public to make a contribution to the Government Records Section News, notwithstanding the delay in publication. We promise wide distribution, and minimal editorial interference.

Finally, the Corner notes that the current Editor is stepping down in his capacity of Editor of the Government Records Section News. It has been a great pleasure to be of service to the Government Records Section, and I encourage all of you to come forward and volunteer to assist the Government Records Section. Your help is always needed! Thanks!

Jim Cassedy
Editor
Government Records Section Newsletter

History, Openness, and A Free People: The Kennedy Assassination and 9/11

President Kermit L. Hall, Utah State University

[President and professor of history at Utah State University , Kermit Hall has written extensively about the history of American law, constitutionalism, and judicial behavior. His books include the *Oxford Companion to the Supreme Court of the United States* (1992), *Oxford Guide to Supreme Court Decisions* (1999), and *Oxford Companion to American Law* (2002). He also served from 1994 to 1998 as one of five members of the John F. Kennedy Assassination Records Review Board. The Editor gratefully thanks Dr. Hall for his contribution, and also thanks Ms. Lisha Penn and the National Archives Assembly for putting him in touch with Dr. Hall.]

As a historian I believe that gaining access to secret documents is vital, because I believe that history based on the broadest evidentiary base is itself a guardian of liberty. Yet as a citizen and former public servant I worry about the cost to our security of lost secrets. Justice Robert H. Jackson summed the matter up succinctly: the "Constitution is not a suicide pact."

There is, of course, nothing new in the conflict between liberty and security, whether in the context of the assassination of President John F. Kennedy at the height of the Cold War or the effort to unravel the events of September 11, 2001 amidst the war on terrorism. As Mark Twain has said, "history does not repeat itself, it only rhymes."

This past November marked the fortieth anniversary of the murder of President, an event that shaped the conscience of a generation, just as Pearl Harbor had done for an earlier era and 9/11 has done today. Everyone who was alive at the time remembers where they were. What followed was a long period of uncertainty and conflict over what actually happened in Dealey Plaza and why.

Then in 1992, following the release of Oliver Stone's highly controversial movie "JFK", Congress created the John F. Kennedy Assassination Records Review Board (ARRB) to declassify the records held by the CIA, the FBI, military intelligence, and a host of other government entities relating to the president's murder. Five years ago this past September the ARRB shuttered its office doors at 600 E. Street, N. W., in Washington, D. C., issued its final report, and sent its twenty-five person staff home for good. It left behind millions of newly available documents relating to the murder and the intelligence operations of the United States during the Cold War, all of them fresh grist for the historical mill. Selected in part because they had never participated in any investigation of the assassination, the five-member civilian board departed far better educated, not just about the events in Dealey Plaza but about the role of secrecy in government.

So ended one of the most remarkable stories of one of the most short lived and most powerful agencies in the history of the nation's capital. Remarkable because of the millions of formerly highly classified documents concerning the assassination that it released. Short lived because Congress had intentionally sunseted it. And powerful because no other civilian group had ever been given the authority to declassify the government's most treasured secrets, to exercise full subpoena powers over the intelligence services, and to establish with finality what constituted an assassination record.

The powers of this non-partisan board went much beyond those given by Congress to the current National Commission on Terrorist Attacks Upon the United States, the so-called 9/11 Commission. The ARRB set a new standard for the declassification of government secrets and contributed to a renewed belief in the idea that the government that governs best governs in the open.

In the five years since the ARRB ceased to exist, much has happened to call that ideal into question. The events of 9/11 placed the nation on something of a war footing and fostered anew the government's penchant for secrecy in the name of security. America preemptively struck at Iraq , doing so, at least in part, based on intelligence claims that Saddam Hussein's alleged weapons of mass destruction posed an imminent security threat. The weapons have yet to be found; American troops take casualties on an almost daily basis; and while Hussein is in custody, the architect of 9/11, Osama Ben Laden, continues to frustrate America 's best efforts to find him. The USA Patriot Act, passed just weeks after the attacks, poses a threat to civil liberties every bit as real as those that accompanied the Cold War.

Yet in a remarkable way, these two great historical events -- the murder of President Kennedy and 9/11 -- have converged through their common ties to secrecy and security. The current terrorist crisis, however, differs from that surrounding the JFK murder in one profound way. While the American government was founded on the constitutional principle that government could not be trusted and therefore had to be limited, Cold War America possessed a level of trust in its government and the rightness of the American way that, in retrospect, bordered on the naive. Reporters, for example, who knew of JFK's sexual peccadilloes and the national security interests that they may have compromised, refused to blow their journalistic whistles. Today, however, a ruthless cynicism and overt suspicion have replaced that earlier, credulous vision.

The Kennedy assassination and the controversial investigation of it by the Warren Commission, along with the governmental dissembling associated with the Vietnam War, the Watergate fiasco, and the Iran-Contra Affair have all fueled this skepticism. As a result, public trust in government began a forty-year decline after the Kennedy assassination from which it has yet to recover. And that decline makes all the more difficult the work of the 9/11 Commission and the public's ability to come to terms with the war on terror.

The ARRB structured its release of documents based on a protean definition of the assassination, one that permitted a variety of theories about what happened to be tested. For example, if the Board had assumed that Oswald murdered the president and looked only for information that spoke to his role, then it would have been likely, on national security grounds, to postpone certain kinds of information. On the other hand, if we assumed that the murder was a conspiracy,

then much of what seemed irrelevant to the Oswald explanation may actually have had great currency.

The intelligence agencies, notably the CIA, relied on the theory that Oswald did it and that he acted alone. Ironically, they turned for evidence to support this position to the report issued by the Warren Commission, a body that high ranking members of the Agency failed to fully inform about its role in attempting to murder Castro. And they used their considerable assets to discredit the critics of the report while suggesting to foreign journalists that the commission had in fact got it right.

There is an additional irony in the CIA's position. Much of the speculation about the murder of President Kennedy has centered on the role of that agency. The only way to sustain its innocence was to disclose fully the evidence, including selected sources and methods, that would reveal conclusively that neither they nor some foreign power were behind the murder.

Today, the assumptions with which the 9/11 Commission works will have an equally important impact in shaping what we know about that tragic day. The Commission represents, for example, one of the best defenses against the absurd but nonetheless repeatedly made claim that someone other than terrorists piloted the planes that crashed into the World Trade Towers and slammed into the Pentagon.

In the end, the American public should not and cannot turn finally to the work of the Warren Commission to settle what happened in Dallas and why. Perhaps the 9/11 Commission will fare better. George Bernard Shaw correctly observed that "[t]here are no secrets better kept than the secrets that everybody guesses." Shaw's words surely describe the approach of the intelligence agencies to the Kennedy assassination and of our current war on terrorism. In the absence of disclosure, the public, goaded by a news-hungry press and a well-intentioned research community, were left to speculate in sensational ways about the assassination that sapped public confidence in the government. Similarly, we are left today to divine the existence of weapons of mass destruction in Iraq . The result has been a similarly caustic view of the intentions of President George W. Bush in invading that country.

In the case of the Kennedy murder, we should be stunned by the fact that even with countless documents still hidden in government filing cabinets, researchers, newspaper reporters, columnists, and movie and TV producers have managed to convey a broadly held view that the Warren Commission failed and that Kennedy died at the hands of conspirators. Even more alarming was the assertion made by Oliver Stone and others that his death was the work of his own government. Such a matter cannot be left to chance explanation, since it eats away at the foundation of public confidence in government, which neither well-intentioned secrecy nor covert operations can shore up. Much the same applies with regard to events in Iraq and the larger war on terrorism.

The experience of the ARRB on matters of secrecy, security, and openness reminds us that the events of 9/11 and the war in Iraq will someday require disclosure of the historical record, just as was true with the Kennedy assassination. To that end, the final recommendations of the ARRB emphasized the importance of having a narrow rather than a broad base for classification of

documents, of maintaining the independence of the National Archives in providing access to once-secret documents, and of keeping investigative bodies like the 9/11 Commission free from political manipulation.

It is easy, however, to forget these lessons with the specter of terror looming over us. We are constantly reminded that the maintenance of secrets is good, that openness has to be limited in the name of not just security but survival, and that accountability in all public matters, while desirable, is a luxury we can no longer afford. Partial disclosure is to be preferred over full disclosure; something near the truth is better than the full truth; and the less we know about what government has done, is doing, and plans to do the more secure we will be.

Secrecy in a democracy deserves better. It cannot be an end in itself and certainly cannot be justified simply to obscure the intelligence services that generate much of it in the first place. Such an approach is ultimately self-defeating, both for the intelligence community and for the government it serves. And, as Benjamin Franklin noted more than two centuries ago, in order for three to keep a secret, two must be dead. The steady flow of photographs of the American abuse of prisoners in Iraq provides a vivid reminder of how hard it can be in the information age to keep a secret and how crucial for a democracy it can be to open some of them.

The JFK Board had one goal: to help Americans assess the role of their government in the murder of President Kennedy based on the evidence that the government had in fact held from them. In a democracy, as Daniel Patrick Moynihan reminded us, people will repose trust in their leaders to the extent that genuinely important secrets are protected. The government's persistent inability to distinguish between what is vital and what is not, lies at the heart of the debate about openness and secrecy, the historical verdict on the Kennedy assassination, and the legitimacy of our efforts to deal with the admittedly dangerous world of terrorism.

Today, five years after the ARRB closed its shop, a new threat poses not only a risk to our physical safety but to our well being as a democracy. While the secrets of 9/11 are probably too ripe to be opened now, the day will come when doing so will be crucial. To that end, the ARRB provided a model.

Twain was right, of course, history does rhyme. Recognizing that reality, we would do well to accept on a principled basis the absolute requirement to balance the protection of that which genuinely requires secrecy without compromising the principle of openness so essential to our liberty and to maintaining public trust in government. As the lessons of the ARRB make clear, that will become one of the most powerful historical measures of President George W. Bush's war on terror, of the correctness of our actions in Iraq , on of our ability to remain a free people.

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DISTRICT OF COLUMBIA GOVERNMENT

Office of the Secretary

of the District of Columbia

THE OFFICE OF PUBLIC RECORDS:
MEETING THE CHALLENGES WITH
RENEWED EFFORTS AND COMMITMENTS

Clarence Davis
Public Records Administrator
Office of Public Records
Archival Management and Library of Governmental
Information

[The Editor is grateful to Mr. Clarence Davis for his contribution, as well as to the Mid-Atlantic Regional Archives Conference, DC Caucus, for putting him in touch with Mr. Davis.]

The Office of Public Records Archival Management and Library of Governmental Information (Office of Public Records) was established by DC Law 6-19, “District of Columbia Public Records Management Act” on September 5, 1985 . The organizational structure of the Office of Public Records includes the District of Columbia Archives, District of Columbia Records Center , and Library of Governmental Information.

The Office of Public Records, located in the Office of the Secretary of the District of Columbia , was established, nearly 20 years ago with great expectations to preserve the institutional memory of the District government as a major tenet of home rule. Plans and proposals were developed to meet the goals and objectives of developing a comprehensive archival and records management program for the District government.

These initiatives included staffing the Archives, Records Center , and Library of Governmental Information with professional staff; securing equipment and resources for each division; retrofitting the Recorder of Deeds Building, in the downtown enclave, to become the Archives; and renovating the current building, at 1300 Naylor Court, NW to become the Records Center . During the formative years of the Office of Public Records, the lack of adequate appropriation was an immediate impediment to implement plans and proposals to develop a comprehensive archival and records management program. The process of hiring a professional staff of archivists and information specialists was abruptly ended in 1988 due to the lack of appropriated funding. Also, budget requests for equipment and other resources were denied, and the recommendation by the Mayor's Policy Group to convert the Recorder of Deeds Building into the Archives was abandoned in 1990. The only proposal that moved forward was the conversion of the Records Center which became the repository for the Archives and Library of Governmental Information.

The decision to locate the Archives and Library of Governmental Information in the Records Center at 1300 Naylor Court, NW was another obstacle that prevented the Office of Public Records from meeting its legal mandate. This decision coupled with the lack of funding to the Office of Public Records created a paralyzing effect on developing a comprehensive records management program for the District government. After plans were abandoned to renovate the Recorder of Deeds Building into the Archives, the Office of Public Records and its 3 divisions moved into a 24,000 square foot Records Center building, located at Naylor Court NW , which holds 53,000 cubic feet of records. Although inadequate as a records repository and inaccessible

to the public as an archives, research, and cultural institution, this facility was nearly filled to capacity by 1995, three years after moving into the building.

Operating with a skeleton crew in 1993, the Office of Public Records was affected with a reduction in force which left it with only 5 full time staff members. Affected by another round of reduction in force in 1996, followed with retirement of staff in 1996 and 1997, the Office of Public Records was reduced to 2 staff members. Currently there are 3 staff members in the Office of Public Records to service more than 240,000 cubic feet of records stored in the District of Columbia Records Center ; the Washington National Records Center ; and other repositories throughout the metropolitan area, and in other locations.

The lack of staffing, inadequate equipment and resources, and the lack of an adequate repository with temperature and humidity control to preserve the historical and permanently valuable records of the District government are problem areas that were reported in The Washington Post's exposition on the District of Columbia *Endangered Archives* , December 4, 2003 . When Sherryl Hobbs Newman took the helm of the Office of the Secretary of the District of Columbia, in the Spring of 2003, she began to review management reform plans submitted by the Public Records Administrator to remedy longstanding problems that have plagued the Office of Public Records and to request funding to support the operation of the Office of Public Records and to renovate a building to become a state of art archives and records center.

Several plans, proposals, and initiatives have been prepared and implemented with renewed effort and commitment by both the executive and legislative branches of government to meet the challenges of preserving the historical and permanently valuable records of the District government. In response to these challenges, an action plan was prepared that addresses the problem areas of the Archives and proposes solutions to preserve the historical and permanently valuable records.

The action plan includes a five year staffing plan to request appropriation for professional staff to perform the functions and provide the services of the Archives, Library of Governmental Information, and Records Center . In Fiscal Year 2004, the budget was approved for 2 full time equivalents. Three additional staff members have been requested for Fiscal Year 2005. Additional staff will be requested for the Office of Public Records each fiscal year as proposed by the staffing plan until the Archives, Library of Governmental Information, and Records Center are adequately staffed.

Currently, a study is being conducted by "History Associates" to analyze the legal mandate, operation, and management of the Archives, Records Center , and Library of Governmental Information and to make recommendations on best practices to solve the problems and meet the challenges of the Office of Public Records. Also, the Office of Public Records is initiating a pilot project in partnership with the Office of the Chief Technology Officer (OCTO) to digitize select records in the Archives, and post them to the District government's web site to improve access to records.

This project is phase one of an effort to automate the functions of the Office of Public Records and to digitize records in the Archives as a measure to preserve the historical and permanently

valuable records of the District government. The Office of Public Records will explore with OCTO the possibility of a joint partnership in submitting a capital budget proposal to build on the success of the project and to digitize records in the Archives that have high volume use.

After much deliberation on finding a suitable building for the Archives and Records Center, the District government approved and included in Fiscal Year 2004 budget a \$1.3 million lease occupancy budget agreement and \$500,000 to move the Office of Public Records from its current location to a temporary site with temperature, humidity, and environmental controls to preserve the historical records and institutional memory of the District government. Through the Office of the Secretary, the Office of Public Records submitted a \$6 million capital budget request for Fiscal Year 2005 to commence the process of renovating or constructing a new building for the Archives. The request was approved by the Mayor's Capital Budget Team, and the City Council with modification. A search is being conducted to identify a building for the temporary move. Plans are being developed to determine the permanent site for the Archives and Records Center . The Recorder of Deeds building located at 7 th and D Streets NW, near the National Archives, is again being considered as an option for the new Archives.

The Office of the Secretary is reaching out to various agencies such as the National Archives in seeking support for the Office of Public Records. The National Archives is providing professional assistance and support through various records projects, programs, and plans to help preserve the historical records of the District government. Since the District government re-established the District of Columbia Historical Records Advisory Board, the National Archives, through applications to the National Historical Publication Records Commission, will provide support to process and preserve historical records in the District of Columbia Archives.

The Office of Public Records is working on a project to establish Friends of the District of Columbia Archives to support programs, projects, and activities of the Archives through supplemental funding from corporate, business, and community resources. The Office of Public Records is also amending its law to recover lost revenue from the storage and service of agencies records which are subsidized by the Office of the Secretary.

The District of Columbia government is working to meet the challenges it faces to preserve the historical records in its custody. These challenges are being met with renewed efforts and commitments to ensure the preservation of its history and institutional heritage and to protect the rights of the citizens of the District of Columbia that are inherent in the records entrusted to the custody of the Office of Public Records and District of Columbia Archives.

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**"It Was A Dark and Stormy Night."
A Saga of the Transfer of Gubernatorial Papers**

**Conley Edwards
Director - Archival and Information Services
The Library of Virginia**

[The Editor is grateful to Dr. Conley Edwards for his second contribution to the GRS. He also thanks his colleagues of MARAC and NAGARA for his on-going opportunism].

The Sunday evening of November 17, 2002 , was a dark and stormy night . Before leaving work on Friday, the State Archivist and State Records Administrator at the Library of Virginia had been alerted to be near the telephone on Sunday evening. Upon receiving a phone call, they were to go to the State Records Center , about 20 minutes from their homes, join another staff member, and await instructions.

The call came about 6:00 p.m. and the group assembled at the Records Center . Another call came about 7:00 with instructions to drive toward a mini-storage facility just across from the entrance of a mall to the west of downtown Richmond . When the truck arrived, the office of the storage facility was closed and the gate at the entrance locked. A dark colored Mercedes appeared, headlights off, from around a corner inside the storage facility, and proceeded to the gates.

The gates then opened and allowed the truck to enter. The truck followed the dark car down the storage center drive. All the parties emerged from the vehicles, stood in the rain, and introduced themselves. State Records Administrator Preston Huff and State Archivist Conley Edwards introduced Ben Smith , State Records Center manager, to David Anderson, legal counsel to Governor James S. Gilmore.

Anderson directed the others to a small storage area within the building, where Huff, Smith, and Edwards loaded 228 boxes of records from the Gilmore Administration onto seven pallets in the truck. After one more cell phone call to say that the mission was complete, the truck and its cargo returned to the State Records Center , where the pallets were unloaded and surrounded in black shrink-wrap so that the labels on the boxes could not be read. The records center alarms were activated and the group headed home.

The next day the Library of Virginia Board approved an agreement with the former Governor's lawyers transferring the records to the Library and ending a process that had begun shortly after Gilmore took office four years prior.

The Library of Virginia is home to an extensive and relatively complete series of executive papers, beginning in 1776 with the papers from Patrick Henry. Beginning in 1906, executive papers continue in unbroken succession to the present and total over 3,000 cubic feet. Every aspect of Virginia 's political, social, religious and economic life is reflected in the records.

In the 1970s, there were no record retention schedules for the Governor's Office and archivists dealt directly with the Governor's staff. By the mid-1970s, this informal relationship began to change. In 1970, Virginia elected its first Republican governor since Reconstruction, and office support staff changed. The Virginia Public Records Act was passed in 1972 and outlined a records management program for both state and local governments. In 1978, the Library's Records Management Section prepared *The Governor's Files: File Operations and Procedures Manual for the Office of the Governor* , which served as a guide for the files of Governor John N. Dalton.

In 1981, Governor Dalton removed his official 1978 correspondence (totaling 130 boxes) from the Library to purge confidential material that he deemed to be of a “personal and private nature.” The Governor was within his rights. State law required only that the Governor “shall have delivered to the state library for safekeeping all correspondence of his office during his term; provided that this shall not apply to correspondence of a personal or private nature, the decision therein to be made by the Governor.” When the records were returned to the Library six months later, the collection had shrunk from 130 boxes to 114. A significant number of folders containing records that were clearly public in nature had been removed.

A similar incident occurred in 1986 when Democratic Governor Gerald Baliles removed the correspondence of his predecessor, Charles S. Robb. Baliles claimed he removed documents protected under attorney-client privilege, since Baliles had been Robb's attorney general.

These controversies resulted in revision of the Virginia Code relating to disposition of official correspondence. The General Assembly passed legislation in 1988 that required all governors' records be made available once they have been cataloged by the Library. The act also added that “should any subsequent Governor need such records for the transition of business of the Office of the Governor, such records may be reviewed at the Library and copied, if necessary, but the Governor and his staff shall assure that the original records are preserved intact and remain in” the Library.

The largest transfer of executive papers of any 20 th century governor—439 cubic feet—came from Governor Douglas L. Wilder. The records came two years after the governor left office. In explaining the delay, Wilder noted “Virginia doesn't give you money to go through and decide what is archivable and what is personal.”

By the 1990s, the Library began formalizing its records management policies with the Governor and pushed for comprehensive records retention and disposition schedules. Library staff gave a presentation to Governor George Allen's staff in 1997. Record surveys were completed, but Allen's chief of staff balked at turning the surveys over to the Library, saying he was concerned about confidentiality and that the surveys might provide a “roadmap” to the administration.

When Governor Allen's records arrived at the Library in June 1998, approximately 12 cubic feet were sealed for confidentiality reasons. There is no provision in Virginia 's laws that allow a governor to seal records. Under pressure from the press, Allen asked his successor, Governor James Gilmore, to open the records. “If I didn't have the authority to seal them,” Allen said, “I don't care to have them sealed.”

Library staff hoped for a better outcome working with the staff of Governor Gilmore. The Library suggested a series of workshops and records surveys. Gilmore's chief of staff was concerned that the surveys would take up staff time and, like Allen's staff, feared that the surveys would disclose too much about the administration's internal workings. As a compromise, Library staff developed schedules based upon an examination of records transferred from the previous five gubernatorial administrations.

The first record retention schedule for the Governor's office was effective just a month and a half before the end of Governor Gilmore's term. When Library staff picked up the Governor's records on January 10, 2002 , they immediately noticed that the volume of records was much less than they had anticipated. There were 86.4 cubic feet of records, less than half the volume transferred by George Allen and 20% of that transferred by Governor Wilder. Archivists realized that entire records series listed on the records schedule were missing.

In early June, the state records administrator met with Gilmore's former chief of staff, Boyd Marcus, to discuss the missing records. Marcus stated that some additional records had been found, and acknowledged that Gilmore had retained clemency petitions based on the advice of counsel. Marcus claimed that he did not know what had happened to his records as chief of staff, adding that he did not have a computer or e-mail account while serving in this capacity. He suggested that missing policy office files might be found at other agencies. Staff followed up on this suggestion, but no policy office records were discovered.

A follow up meeting in July produced 0.2 cubic feet of records from the chief of staff's office and 11 compact discs of speeches, news clippings, press releases, and executive orders. Gilmore's aides described the administration's decentralized record keeping practices and again asserted that the Library had the bulk of Gilmore's records.

The dispute between the Library and Governor Gilmore became public on June 20th when stories appeared in the *Richmond Times-Dispatch* and *Washington Post* excerpting parts of a letter written by State Librarian Nolan Yelich to Governor Gilmore. "The pivotal records that scholars would rely on to reconstruct your administration," Yelich wrote, "are not to be found in the files thus far transferred to the State Archives ." The State Librarian asked for the governor's assistance in obtaining the remaining records and transferring them to the archives as soon as possible.

Gilmore responded in an op-ed piece in early August, assuring the Library he wished to cooperate "to ensure that every official document that belonged at the Library was archived there." Gilmore confirmed that he had retained clemency and legislative files, but added "if previous governors have turned these over, we will too." Gilmore went on to say, "There is simply no issue here that cannot be resolved if the Librarian will work with us through a mediator, or directly."

Mediation was taking place when Gilmore's piece appeared. It was at one of these mediation sessions that the Library learned through those representing the former governor that Gilmore had 240 boxes of records in storage, nearly 3 times the number initially delivered.

By the end of August, both the Library and Gilmore had obtained outside counsel and were meeting with a mediator appointed by Governor Mark Warner. Gilmore's lawyers continued to say that the records he retained were personal and private, or that they were protected by principles of the lawyer-client relationship, or protected by executive privilege.

The Library Board expressed its desire that an agreement be reached before the end of the year. The last Library Board meeting was scheduled for November 18 th . If no agreement was

reached by then, the Board was ready to proceed with a suit against the former governor. Fortunately, agreement was reached on the night of November 17th. Gilmore agreed to transfer an additional 228 boxes of records to the Library, including 86 cubic feet from the policy office. Also received were scheduling files and hard copies of press clippings and speeches. In addition, the archives received 25 cubic feet of material spanning Gilmore's tenure as attorney general (1994-1997).

What were the outcomes of such protracted efforts by the parties involved? There are several important ones for the management of public records in Virginia . Certain public records may be privileged and confidential by operation of law, but they are still public records and belong in the archives rather than in the possession of an ex-governor. Clemency files include confidential personal and medical information, but were created and maintained as part of the official duties of the governor and should remain in state custody.

The agreement reinforces several procedural practices considered standard archival practice expected with any group of records. For example, a confidentiality statement is required of those working with the records. Library staff members sign such an agreement as part of their annual work plan, and sign an extended statement if working on the Gilmore papers. The agreement states that if personal and private information is found while processing the records, they will be returned to Gilmore. Access to the records by the Governor and his authorized representatives is also guaranteed.

The agreement touches two previously unexplored areas. Documents that are identified as attorney-client privileged or over which there is a claim of executive privilege can be made available by waiver of the privilege. Gilmore agreed to waive such privileges January 1, 2015 . This was one of the terms of the agreement over which there was considerable discussion. The length of closure—12 years—did not seem unreasonable to my colleagues, although we would have preferred access to the records sooner. The agreement also outlines a procedure for any challenge to its legality, including the confidentiality or privilege protection or rights afforded by the agreement. The Library is removed from any challenge and the Office of Attorney General will defend the provisions of the agreement.

Left unsettled was a more precise definition of what constitutes “personal and private” records. Legislation was passed during the 2003 session that added “strictly” before “personal and private” in the appropriate section of the Code along with the provision that the Governor consult with the Librarian to identify such records. An editorial in the *Virginian-Pilot* in July 2002 noted that often “a governor's staff gets to decide what is ‘personal,’ which too easily translates into anything deemed controversial, embarrassing or insightful.” Without a clear definition, boxes filled with documents providing clues about policy decisions will continue to be transformed into thin folders of sanitized press clippings.

Governor Gilmore recognized the need for better definition of “personal and private” in an editorial in December 2003. He also made several other suggestions that are well worth consideration.

- Preserve Governor's Web sites. The Library began doing this with Governor Allen, Gilmore's predecessor.
- Strengthen the Public Records Act by provisions that recognize executive and attorney/client privilege and set forth either a specific time period or standard for determining how long such documents should remain confidential. Reaching agreement on these issues eludes the best legal minds.
- Funds for archiving gubernatorial records should be part of transition funding. "Like other transition tasks, archiving is a special, essentially one-time activity," Gilmore said. "It should be included as part of the transition process and should extend beyond the term of the outgoing administration." I strongly agree. Providing funding for this effort also places a value on the work and time my colleagues spend on the process. The figures would surprise those who provide such funding.

The controversy in Virginia with Governor Gilmore took place during the same period that issues arose with George Bush's Texas gubernatorial papers and Rudi Giuliani's mayoral records. Issues about Howard Dean's gubernatorial papers followed shortly afterward. We won't know the full impact of the Virginia controversies until Governor Warner leaves office in 2 years. I feel certain, however, there will be more interest in the preservation of these records.

Whatever reason may have prompted the actions of Governor Gilmore may not have been worth the political cost. Gilmore took a beating in the press and public opinion. One editorialist wrote, "Former Governor Jim Gilmore didn't need the months-long fuss over his official papers. It made him look petty, secretive and vindictive. In other words, like a politician."

Several encouraging things happened after this controversy. The State Librarian and Library Board received the Freedom of Information Award from the Virginia Coalition for Open Government.

At the 2003 annual meeting of NAGARA, COSHRC sponsored an incubator session on the records on governor's and mayors. Out of that session comes an effort to work with the National Governor's Association to revise a pamphlet published in 1989, *Executive Chamber Records: A Guide for Governors*.

The Library of Virginia has drafted a brochure that will be distributed to government executives before the end of the current administration and at the beginning of the next. It will define what records must be incorporated into agency files and identify personal files that must be maintained separately.

Discussions about what happens to the records of government give us in this profession the opportunity to explain the importance and significance of what we do. We don't get that opportunity as often as we should. We should make the best of it.

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