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THE PAST, PRESENT, AND UNCERTAIN FUTURE OF PRESIDENTIAL RECORDS

THE FOLLOWING PAPERS concerning the recent controversies over presidential records originally were prepared for a symposium held at New York University (NYU) on February 26, 2002. The Archivists Round Table of Metropolitan New York (ART) sponsored this program, which also received support from New York University's graduate program in Archival Management and Historical Editing. Several factors convinced both ART and NYU's archives program that this symposium was especially. Record-keeping concerns have generated extraordinary popular interest and provoked sharp public debate over the past two years. A series of national and local controversies, which may collectively become known as the Records Wars of 2001–2002, provided archival issues with a heightened visibility. Questions concerning national security, executive privilege, the Freedom of Information Act, privacy rights, and public access to government records all have come to the fore. Archivists contributed vigorously and intelligently to these discussions. They lobbied effectively, built useful coalitions with various research constituencies, and played an important role in presenting complex issues to general audiences. In the process, archivists also learned much about what unites them as a profession. They discovered that archival perspectives do matter in profound ways, that records issues can resonate with both press and public, and that their unique insights can make significant contributions to a democratic cultural discourse. This appeared to be an ideal time to

probe deeply into these recent issues and generate some professional debate.¹

The 1978 Presidential Records Act appeared under unprecedented attack at the time of the conference. George W. Bush's Executive Order 13233, signed on November 1, 2001, gave the incumbent as well as former presidents unprecedented control over White House documentation. Indeed, this order seemed to signal a more general executive assault by the Bush administration on the concept of access to government-generated information. Bush had already announced his intention to remove his gubernatorial papers from the Texas State Library and deposit them in his father's presidential library, thereby clouding issues of state records ownership, custody, and access. Further, Attorney General John Ashcroft issued a memo to all Federal agencies in October 2001 encouraging federal agencies to withhold records in response to Freedom of Information Act (FOIA) requests and assuring departmental administrators that the Justice Department would support broad access restrictions.²

The archival profession responded rapidly to the Bush administration's new initiatives. Steven L. Hensen, president of the Society of American Archivists (SAA), signaled his intention to craft a more activist role for this historically conservative professional organization. He prepared a strong and thoughtful editorial for *The Washington Post*, charging that Executive Order 13233 "fits a pattern suggesting that the Bush adminis-

1. The symposium, formally entitled "Presidential Records under Siege?" was held at the Jurow Lecture Hall Lounge at New York University. Presentations by John Brademas and Bruce Craig are reprinted herein. The third presenter, Alan Brinkley, was not able to reconstruct his remarks for this journal. Information concerning the Archivists Round Table of Metropolitan New York may be found on the organization's Web site at <http://www.nycarchivists.org>. A summary of the NYU Program in Archival Management is contained in Peter J. Wosh, "Research and Reality Checks: Change and Continuity in NYU's Archival Management Program," *American Archivist* (fall/winter 2000):271-83. Also consult the URL for the NYU Archives Program at http://www.nyu.edu/gsas/dept/history/archives_program.htm.

2. The Bush administration's challenges to access are chronicled in Steven L. Hensen, "The President's Papers Are the People's Business," *Washington Post*, 16 Dec. 2001, p. B1. Alison Leigh Cowan, "Battling Over the Records of Bush's Governorship," *New York Times*, 11 Feb. 2002, p. A14, offers a succinct discussion of the situation in Texas.

tration may be hostile to the basic ideals that the public has a right to know what its elected officials are doing, and that the records of government are in fact owned by the people.” Hensen also prodded the SAA to draft a formal response to the executive order. Archivists throughout the United States went on record in favor of public access. The profession made common cause with journalists, historians, and civil libertarians, and this activist stance generated significant positive publicity. Hensen appeared on radio programs, lectured widely, and became an important spokesperson articulating archival perspectives for a receptive national audience. Indeed, the debate over presidential records sparked a useful educational discussion concerning records issues. Both ART and the NYU program felt that the issue deserved a full hearing in New York City, with its remarkable concentration of archivists and historians. A symposium seemed an ideal way to outline the debate and provoke commentary.³

Discussions concerning public records, access, and executive control over administrative documentation resonated with New York City’s archival community for another equally compelling reason. On January 3, 2002, the *New York Daily News* announced that outgoing mayor Rudolph Giuliani had signed a Christmas Eve agreement with the city that apparently allowed him to have unprecedented control over his public papers. Giuliani convinced the former Commissioner of Records and Information Services to box up his mayoral papers and transfer them to a high-security storage facility in the borough of Queens known as The Fortress. He then incorporated a private organization to manage his archival affairs and retained the right to contract with a private consulting firm to arrange and describe the material. The former mayor hoped to create a center for studying urban affairs at a major research institution, with his papers forming the core archival collection. Giuliani’s administration had

3. Hensen, “The President’s Papers Are the People’s Business,” *Washington Post*, p. B5; “SAA Responds to Executive Order 13233 on Presidential Records,” which can be found on the SAA’s Web site at <http://www.archivists.org/statements/stephenhom.asp>.

earned a reputation for excessive secrecy, careful public relations control over information, a very conservative interpretation over Freedom of Information Law (FOIL) requests, and highly centralized management practices. Although his performance following the attack on the World Trade Center rehabilitated the mayor's reputation with some, others remained very suspicious of his motivations and actions.⁴

Giuliani's eleventh-hour archival deal immediately became a *cause celebre* in the local media. Reporters and editorialists for *The New York Times*, *Village Voice*, and *Daily News* all criticized the novel archival venture, charging that municipal records had been "hijacked," that adequate provision for allowing timely citizen access had not been provided, and suggesting that the records reside properly in the Municipal Archives. New York's archival and historical communities also joined the chorus of criticism that questioned Giuliani's actions and tactics. Archivists especially noted the bitter irony in the fact that during his eight-year tenure the former mayor had severely hampered the Department of Records and Information Services with a series of severe budget cuts, then complained upon leaving office that the archives did not possess adequate staff to handle his own records.⁵

New York's archival community launched a series of advocacy initiatives to counteract Giuliani's actions. Archivist and ART member Janet Linde spearheaded the local lobbying efforts. She found particularly receptive colleagues in Ira Galtman, chair of the Archivists Round Table; Mike Wallace, Pulitzer Prize-winning historian who founded and directed the Gotham Center for New York History; and Robert Sink, chief archivist of

4. Joanne Wasserman, "Thinking Cap for Rudy: Plans Own Library and Urban Institute," *New York Daily News*, 3 Jan. 2002, p. 9.

5. Representative media reactions can be found in: Wayne Barrett, "Hijacking History: Rudy Heists City Archives to Shape His Own Legend," *Village Voice*, 29 Jan. 2002, p. 22; David Herszenhorn, "Giuliani's Papers Go to Private Group, Not City," *New York Times*, p. B1; —, "Giuliani Defends Removing Papers from City Control," *New York Times*, 6 Feb. 2002; Barrett, "Double-Standard Deity: 9-11 God Demands Special Treatment on Records and Residence," *Village Voice*, 14 May 2002, at the following Web site: <http://www.villagevoice.com/issues/0219/barrett.php>.

the Center for Jewish History and a Fellow of the Society of American Archivists. Local archivists proved especially successful in building coalitions with prominent and politically connected historians, involving regional and national professional archival organizations in their efforts, lobbying the city council to draft new records legislation, and maintaining pressure through local media outlets. They also built a general consensus among the ART membership by keeping the focus on broad professional issues: better funding for a stronger municipal archives; the key link between ownership and custody of public records; and the overriding significance of public access to city documentation. The ART/NYU symposium concerning presidential records occurred against this background of intense local lobbying concerning the apparent privatization of the Giuliani papers. The program has the ideal forum for raising complex ethical questions concerning public responsibility, political accountability, and the role of records in a democratic society.⁶

Finally, one additional fortuitous circumstance stimulated the organization of this conference. John Brademas, president emeritus of New York University, announced in 2001 that he planned to donate his personal and congressional papers to NYU. Brademas had served as the university's president from 1980 until 1992, during a particularly key moment of institutional transformation as NYU assumed a new academic and global prominence. During his congressional career as a Democrat from Indiana (1959–1981), Brademas was instrumental in supporting archives, history, libraries, museums, humanities, and

6. The members of the Archivists Round Table board, which played a leading role in the lobbying efforts, included Ira Galtman, Amy Surak, Gunnar Berg, Joseph Komljenovich, Richard Wandel, Mindy Gordon, and Marianne LoBatto. Linde, who works as the archivist for the American Civil Liberties Union, broadened the core coalition to include archivist Teresa Mora; Norman Siegel, former executive director of the New York Civil Liberties Union (NYCLU) who at the time functioned as a private civil rights attorney; Donna Lieberman, executive director of the NYCLU; Art Eisenberg, legal director of the NYCLU; and Beth Haroules, staff attorney at the NYCLU. Andy Lanset, archivist for WNYC radio, also prepared a broadcast program concerning the transfer of the Giuliani papers. On the Gotham Center, which presents a variety of public programming concerning New York City history, consult the following Web site: <http://www.gothamcenter.org>.

education, serving on the National Historical Publications and Records Commission from 1971 to 1976, and as the chief author of the Presidential Recordings and Materials Preservation Act of 1974. This latter piece of legislation effectively nullified President Gerald Ford's actively enabling Richard Nixon to retain ownership of his tapes and records. The resulting commitment to identifying and defining public records eventually led directly to the Presidential Records Act of 1978 and to the surprisingly contemporary concept that presidential papers belong to the American people. Brademas's congressional papers themselves contain many useful and interesting insights concerning the evolution of presidential papers legislation and, ultimately, will offer archival historians a treasure trove of documentation concerning the changing definitions of public and private records.⁷

This unique confluence of national, local, and institutional factors produced the February 26 symposium. The basic idea appeared relatively straightforward. John Brademas would discuss his own experiences during the 1970s in drafting presidential records legislation and shepherding the 1978 act through Congress in his capacity as majority whip. His paper, reprinted herein, offers fascinating insights into the public records climate during the Nixon and post-Watergate period, during which time much contemporary public records legislation was written. Bruce Craig, director of the National Coordinating Committee for the Promotion of History, would update the audience on efforts to overturn Bush's executive order and also offer some commentary concerning effective lobbying at the federal level. Alan Brinkley, chair of the history department at Columbia University and one of the

7. A thumbnail sketch of Brademas's career can be found in the National Historical Publications and Records Commission's press release, "John Brademas to Receive Distinguished Service Award from National Historical Publications and Records Commission," 13 May 2002. For a fuller treatment, see Thomas J. Frusciano and Marilyn H. Pettit, *New York University and the City: An Illustrated History* (New Brunswick: Rutgers University Press, 1997), pp. 251-57. Brademas's papers now reside in the New York University Archives, in New York City.

nation's most prominent political historians, agreed to provide an academic perspective on the current issue. Robert Sink, an archivist whose long-standing advocacy efforts have been alluded to above, chaired the proceedings.

As an event, the symposium proved remarkably successful. More than one hundred archivists, academics, students, and members of the general public attended. Panelists vigorously argued their perspectives and did not shy away from presenting controversial topics. Audience discussion proved spirited and focused, with many attendees remarking on both the quality of the presentations and the broadly educational nature of the proceedings. The event also generated significant press coverage and once again brought archival issues into the popular consciousness. National Public Radio reporters, for example, interviewed the panelists and featured an account of the controversy in the "On the Media" program the following Sunday. In many ways, the symposium served as a model for high-quality professional association programming at the local level.

Symposia, unfortunately, too often have a very short shelf life. Audiences enthusiastically listen to the presentations, absorb some useful information, and quickly move on to the next topic or program that suits their particular interests. Publication in this journal will help to ensure that the issue of presidential records remains in the archival literature and does not quickly fade from consciousness. Archivists, historians, and librarians need to remain "eternally vigilant" in such areas, as Bruce Craig concludes in his article. Nationally and locally, archivists responded nobly and well to the records challenges posed by politicians in 2001 and 2002. Yet, more sustained advocacy efforts appear necessary. Episodic responses to particular events can effect change, but more systematic efforts that continue over time hold out the greatest promise for reformation. The papers presented here, and

archivists' reactions to recent events, offer important lessons concerning the effectiveness of strong professional associations, the significance of strategic coalition-building, and the need for proactive approaches to records issues. As we reflect on the work ahead, we also may find that the process itself has helped us to begin achieving a new level of professional self-definition and purpose.⁸

8. Robert Sink makes this point about the significance of sustained advocacy efforts in "The Giuliani Records: Advocacy, Access, and Custody," an unpublished paper delivered at the Sixty-Sixth Annual Meeting of the Society of American Archivists, in Birmingham, Alabama, 23 Aug. 2002.