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GOVERNMENT TOLD TO SAVE MESSAGES SENT BY COMPUTER

HISTORIANS PRAISE RULING

Appeals Panel Rejects View That White House Should Decide What Can Be Discarded

By NEIL A. LEWIS

Special to The New York Times

WASHINGTON, Aug. 13 — In a decision that brings the accountability of Federal agencies into the computer age, a United States appeals court ruled today that the Government must preserve millions of electronic messages and memorandums under the same standards used for paper communications.

A three-judge panel of the United States Court of Appeals for the District of Columbia rejected arguments by the Clinton Administration that computer messages between officials — E-mail — did not have to be saved. The Administration contended that officials should be allowed to choose whatever computer files they thought should be preserved and to print them on paper.

The panel said that it was aware of the importance of electronic documents because of "the frequency with which they have been used in recent years." The opinion noted that electronic communications had been used by the Tower Commission, Congressional investigators and the independent counsel in the course of investigating the Iran-contra affair — including the cases against Oliver L. North and John M. Poindexter. They were also used by the Justice Department in prosecuting Manuel Antonio Noriega, the deposed Panamanian leader.

Incomplete Paper Trail

The unanimous court ruling won praise from historians and journalists who said it recognized how much of the Government's business is conducted on the computer. Paper files, while not obsolete, no longer provide a complete record of Government action.

The ruling covers such things as memorandums dealing with major policies, beginning in the Reagan Administration, as well as the more minute elements of history, like notes detailing who was present at what meetings.

"It's an excellent decision," said Arthur M. Schlesinger Jr., the historian and Presidential biographer. "It's of vital importance for historians that such materials be retained."

The court case dates from the beginning of the Bush Administration, when officials sought to erase from computer files all the records of communications among officials during the eight years of Ronald Reagan's Presidency. The Bush officials had then argued they had to purge the computer system to avoid overloading it and to help the Clinton Administration start work.

Suit Filled Quickly

The National Security Archive, a private research organization in Washington, learned of plans to purge the files and quickly filed suit. Judge Charles R. Richey of the Federal District Court here ordered the Government to retain computer tapes that duplicated all the computer traffic involved.

When the Clinton Administration came into office and took over the case, officials continued to argue the Bush Administration's position — that they had the right to dispose of computer files as they saw fit. But as a practical matter, they narrowed the question to whether it was sufficient to print out and save some of what was in the

Continued on Page 6, Column 1

Court Tells U.S. It Must Preserve Electronic Mail

Continued From Page 1

computer files. The Clinton Justice Department said it had already put into place regulations that amounted to a middle ground in the dispute. It said officials were encouraged to make paper copies of much of what was on their computer screens.

But the three-judge appeals court dismissed the Clinton Administration's alternative. The decision said: "We reject the Government's argument on this score. The Government's position is basically flawed because the hard-copy printouts that the agencies preserve may omit fundamental pieces of information which are an integral part of the original electronic records, such as the identity of the sender and/or recipient and the time of receipt."

The decision was written by Judges Abner J. Mikva and Patricia M. Wald, both of whom were appointed by President Jimmy Carter. Judge Karen L. Henderson, who was appointed by President Reagan, concurred in the decision.

Undecided About Appeal

Justice Department officials said they had not yet decided whether to appeal the ruling.

Sheryl L. Walter, general counsel of the National Security Archive, called the opinion "a fundamental victory for the historical record."

It is also a victory for journalists and others who request material under the Freedom of Information Act to view particular records although it remains unclear how the Government will accommodate requests for computer files from those who are unsatisfied with a printout.

Since the mid-1980's officials in the Executive Office of the President and the National Security Council have increasingly used their computers to shaft: electronic appointment calendars and edit documents. People write on a computer screen and can transmit their work at the push of a button to other officials. All such messages are stored by the computer.

"But it is the electronic mail (or E-mail) capacity which has racked up the most mileage," the court said. "The 1,300 Federal employees with access to

Seeking to keep a complete record of Federal action.

the E.O.P. and N.S.C. electronic mail systems can, and apparently do, utilize their ability to relay lengthy substantive e-mail classified — notes that, in content, are often indistinguishable from letters or memoranda.

The appeals panel said its rejection alternative was "far more than judicial nit-picking." The opinion noted that when a printout of an electronic file is obtained from a computer on the executive branch system, it includes only what is on the screen and not other information recorded by the computer, like who sent the document or who received it.

Michael Tankersley, the lawyer for Public Citizen, who oversaw the suit for more than four years, said the electronic data that the Bush Administration wanted to purge were the equivalent of many millions of pages. Public Citizen joined the National Security Archive in the case.

Two Shortcomings Seen

Mr. Tankersley said the Clinton Administration proposal to have officials print out the documents they believed needed to be preserved was flawed on two counts. First, the officials would have had full discretion to decide what should be preserved for public inspection and it was unlikely that someone would go to the trouble of insuring that a printout was made.

He said the ruling "means that Federal agencies are not going to be able to frustrate public access or ultimate access by historians by virtue of exempting their electronic systems."

There are two laws that provide for the preservation of executive branch records, one for all Federal records, and another for a limited category of Presidential records. The Federal Records Act in force since 1950 requires that all records of the Government's business be preserved.

Presidential records, those involved solely with advice to the President, are not covered by today's ruling. They can be kept or discarded at the pleasure of the President and may be kept off the limits of Freedom of Information Act requests for up to 12 years after the President leaves office.

But today's opinion also included a ruling that courts may review categories of documents that an Administration has deemed Presidential to shield them from the preservation law.

1051 - 6/17/93

White House, Archivist Held in Civil Contempt

Appeals Panel Stays Contempt Citation Against Archives

A federal appeals court panel yesterday stayed a contempt citation against the Clinton White House and the acting archivist of the United States for failing to heed court orders requiring them to preserve

still

of the court orders issued in January by U.S. District Judge Charles R. Richey. He held the administration in civil contempt in May and said he would begin imposing stiff fines if certain remedial steps were not taken by June 21.

Acting Archivist Trudy Peterson said that she was "pleased" by the stay and that the archives would continue its work of making pre-

By George Lardner Jr.
Washington Post Staff Writer

A federal judge held the Clinton White House and the acting archivist of the United States in civil contempt yesterday for failing to protect and preserve computer records made in the Bush and Reagan administrations.

pair those that have been damaged and issue new guidelines to protect them.

"[I]t is clear that by failing to preserve these tapes, the defendants are failing to preserve history and the lessons to be learned from it," Richey said.

Richey said he would levy fines of \$50,000 a day the first week after his deadline, \$100,000 a day for the second week, and \$200,000 a day for the third week. He reserved decision on how to deal with any

used to obtain compliance with a court order and the threatened penalties do not kick in unless, as Richey observed, "the recalcitrant party" fails to remedy the situation.

The judge said he would give the defendants 30 days to promulgate adequate guidelines for managing electronic federal records, to demonstrate that they are being

The tapes were transferred to the Archives under a controversial agreement giving Bush exclusive legal control of the "presidential" records on them. But deposition of the lawsuit show that the Archives does not have the equipment or the software to make copies on short order.

The lawyer for the plaintiffs, Michael Tankersley of Public Citizen, said the deteriorating tapes may have to be sent back

against Reagan and Bush officials and archivists, but it is a continuing dispute that imposes obligations on whatever administration is in office. Richey said yesterday that the Clinton White House and its new acting archivist have failed to meet those obligations for four months now.

"It's about time the Clinton administration gets its act together and deals with these issues," said Scott Armstrong, founder of the nonprofit National Security Archive and lead plaintiff in the case.

Richey also held open the possibility of criminal contempt proceedings for destruction of some backup tapes and other lapses during the final days of the Bush administration.

The judge said in a 27-page opinion that some tapes had been found damaged after

history and the lessons to be learned from it."

—Judge Charles R. Richey

to the Clinton White House which does have the facilities for copying. Although the Archives agreement with Bush would appear to preclude this, Tankersley said it contains an exception for compliance with court orders. He added that "civil contempt orders are not appealable."

White House deputy communications director Ricki Seidman said "we're disappointed by the judge's contempt citation." She said that the case was "principally about records maintenance by the Bush and Reagan administrations" and that the Clinton

I-B	EXAMPLES OF RESEARCH USE	Sample of Requests for United Nations Records	
INTERNAL UNITED NATIONS REQUESTS			
Category	Number of Requests	Percent of Requests	
Management, Precedent, Statistics	609	18%	
Accounting and Budget	245	7%	
Personnel	1255	37%	
Pension	976	28%	
Audio-visual	343	10	
1992 Internal Service Requests	3428	100	
EXTERNAL RESEARCH USE			
Purpose of Research	Number of Researchers	Percent of Use	
Printed publication	37	52%	
Dissertation/Thesis/Academic project	18	25%	
Documentary film	5	7%	
Exhibition	3	4%	
Personal	3	4%	
Legal	4	5%	
Unknown	2	3%	
Total Researchers January 1992 - August 1993	72	100%	
Main Categories of Research	Number of Researchers	Percent of Use	
Country-focused research	17	24%	
United Nations history (6 country-related)	16	22%	
UNRRA history (9 country-related)	14	19%	
Biography (1 country related)	13	18%	
UN War Crimes Commission (6 country-related)	9	13%	
International affairs	3	4%	
Total researchers January 1992-August 1993	72	100%	

I-B1	EXAMPLES OF RESEARCH USE: INTERNAL UN REQUESTS	Date: 9/9/92 Ref : UNTABLE.IB1
Category	Record Groups	Subjects
Management, precedent, statistics	DAG-001 Office of the Secretary-General	Celebrations of past UN anniversaries: peace- keeping memorial: S-G's social events
609 requests 18%	DAG-003 Office of Legal Affairs	Administrative Tribunal cases: Ratification Country signatures: Original treaties: Country accessions
	IAG-004 Department of Political and Security Council Affairs	Administrative Management Service reports
	DAG-006 Department of Economic and Social Affairs	Statistics of Tanzania: Statistical training to Yemen Arab Republic: Statistics: Jordan, Djibuti, USA
	DAG-007 Department of Administration and Management	Financial crisis-economy measures; acceptance of gifts by UN staff members
	RAG-002 and RAG-003 Branch Registries and Central Registry	Income taxes: Mission lease: Postal agreement: Acceptance of honours
	ROAG-08 International civil Service Commission	Rental subsidies
Accounting and Budget	DAG-008 Office of Programme Planning, Budget and Finance	Cheques issued to individuals and companies: Vouchers from missions: Invoices and credit notes; Bank reconciliations: Bank cheque payments: Trust funds: Financial statements
245 requests 7%	DAG-022 Field Operations Division	Personnel files: travel authorizations: Reimbursements to governments

Category	Record Groups	Subjects
Personnel	DAG-005 Department of Political Affairs, Trusteeship and Decolonization	Namibia staff pension fund; Namibia schools
1255 requests 37%	DAG-009 Office of Human Resources Management	Official status files; Interpreters examinations
Pension	ROAG-06 United Nations Joint Staff Pension Fund	Separations; Withdrawals; Case files; Bank advices
976 requests 28%		
Audio-Visual	DAG-010 Office of General Services	Sound recordings of proceedings to fulfill requests from Missions, journalists
343 requests 10%	DAG-012 Department of Public Information	UNRRA photographs; Regional conferences Bangkok, India, Paris, Yugoslavia, Kenya
	PAG-004 United Nations Relief and Rehabilitation Administration	Photo requests
	PAG-005 United Nations Conference on International Organization	Photo requests

I-B2	EXAMPLES OF RESEARCH USE: EXTERNAL RESEARCH	Date: 22/9/93 Ref: UNTABLE.IB2
No. of research- ers	Category of Research	Examples of Research Topics
17 24%	Country-focused research	<p>Canadians in the United Nations; Social work in Pakistan 1945-55; Archives bibliography project on Taiwan history 1940-50; Spanish question before Security Council 1946; Hungarian Uprising of 1956 and Western Powers; Lebanon 1958 - UN response to genocide; Canada and Peace-keeping operations 1956-64; Rado documentary: debate of Hungarian Revolution 1956; Rural conditions in Yugoslavia 1945-53; Korean War 1950-54; Congo/Zaire 1960-93 US policy toward Zaire; Prisoner of war camps in Greece; Sweden participation on ONUC (Congo) 1960-64; American support of the Ukraine nationalist movement 1944-61; Israel perception of its security problems 1950-56; Admission of Nepal to the United Nations 1955; Congo 1960-64</p>
16 22%	United Nations history (6 country-related)	<p>UN Emergency Forces Logistics, Operations, Command, Communications; UN HQ architecture; UN action on article 43 - 1945; Origin of the UN; Korean Armistice negotiations and prisoner exchanges following the signing of 1953 armistice; Procedures which helped peace-keeping forces achieve purposes; Evaluation of UN enforcement action - article on UN command; S-Gs of the UN 1946-1992; UN 50th anniversary celebration; Research towards 50th anniversary of the UN; The 1962 negotiations that resolved the West Irian dispute; Bernadotte Mission to Palestine 1948-49; UN operations in Congo; UN policy and population problems from 1945 to present; Congo Crisis 1960 - 1964; UN Observer Mission on Akko</p>
3 4%	International Affairs	<p>Human rights 1945-49; International drug control; Economic and financial institutions 1940-46</p>

No. of researchers	Category of Research	Examples of Research Topics
14 19%	United Nations Relief and Rehabilitation Administration (9 wuntry-related)	UNRRA Shanghai, China 1945-47; UNRRA Salonika, Greece; UNRRA operations and displaced persons - M.H. Cattel; UNRRA and displaced persons - Poles; UNRRA in China, 1945-49 - Cultural Confrontation; Displaced persons - Camp Jagerskyst; Displaced persons camps and resettlement- 1930 and on; Science and scientists under Mussolini 1920 to post WW II; Dr. T.L. Harrison - UNRRA experiences 1946-47; UNRRA - immigration of displaced person in the US - 1945-52; Confrontation between Jews and Germans - <i>article</i> on displaced persons riot - Landsberg, Germany 1945-51; UNRRA - L i i of ID cards for food and clothing in 1945; UNRRA in Poland; Displaced persons in Germany British Zone 1945-1948; UNRRA displaced persons camps 1945-49
13 18%	Biography (1 wuntry-related)	S-G travels in Africa; 1945-46 International Health Conference- role of Dr. Yves Biraud; S-G memoirs; Gestavo Duvan 1906-1969; Victor Hoo, UN official 1946-72; Hamid Franjic 1946; Sir Robert Jackson; Sir Robert Jackson - Congressional Hearings; Genealogical research 1946; Speech of researcher's father; Dr. T. L. Harrison - UNRRA experiences 1946-47; Memorial for U Thant; Prof. A. S. Bokhari, former USG of DPI 1951-60
9 13%	United Nations War Crimes Commission (6 country-related)	List of Japanese War Criminals; Preliminary investigation against Wolfgang Lehnigk-Emden ; War Crimes trials in Shanghai; German Army War Crimes, Scope and conditions of criminal activities; Repressions, persecutions, crimes against humanity in France; Deportation of Jews from Solonika and Greece; Medical experiments performed by Nazi physicians

I-cl

Research Use External Requests for UN Records

