

**Remarks of Meredith Fuchs
General Counsel, National Security Archive**

March 15, 2010

Delivered at the National Freedom of Information Day Conference

Hosted by the First Amendment Center

Knight Conference Center at the Newseum

Thank you Roberta for your introduction.

When I was called several weeks ago and told that I had been chosen to receive the American Library Association's James Madison Award, I was thrilled and honored that ALA considered me someone who had championed, protected and promoted public access to government information and the public's right to know.

The American library is one of the few institutions in the world where people have free access to information. That information offers them the opportunity to participate and to speak as informed members of the society.

Thus, it is fitting that the ALA gives this award here, at the Freedom Forum in the Newseum where, etched out front on a huge tablet, is an unmistakable reminder of our First Amendment rights to speak and petition the government.

Of course, access to government information is an essential foundation for the effective exercise of those rights. What good is our vote if we don't know who we are voting for? How useful is it to have the right to petition if we do not know where to go or what to demand? Thus, access to government information – like the American library -- is a cornerstone of our democracy

The American Library Association has been bestowing the Madison Award since 1989. Ironically, 1989 was the year that the National Security Archive (along with the American Library Association and others), filed the first White House e-mail lawsuit. That case, known as *Armstrong v. Executive Office of the President*, managed to span three presidential administrations.

It led to numerous important precedents, including that e-mail can be a record, that certain contextual data associated with e-mail records must be preserved, and affirmed the public's private right of action to bring a lawsuit seeking to enforce the Federal Records Act. That litigation also taught us the importance of backup tapes – thank goodness they sometimes work. And, that suit saved a lot of Reagan, Bush and Clinton e-mail from destruction.

Ultimately the case was resolved with the agreement for the Executive Office of the President components to put in place an electronic e-mail archiving system. At the time, the Automated Records Management System, also known as ARMS, was the main system used in the White House.

ARMS had problems on occasion, and during the later part of the Clinton Administration, the loss of e-mails again was front page news. But, for the most part the National Security Archive assumed that the White House records were being preserved.

Imagine our surprise when we first had inklings that e-mails were missing again. It came in a letter from Special Counsel Patrick Fitzgerald to Scooter Libby's defense team. It said e-mails from several weeks in the Office of the Vice President could not be located.

Next came a report from Citizens for Responsibility and Ethics in Washington, based on a confidential source, that said that the losses were not limited to a few weeks and were not limited to the Office of the Vice President.

When the White House press secretary acknowledged the losses, the National Security Archive decided to do what it had done through three prior presidencies – we went to court to demand that something be done to find and preserve the missing e-mails.

Now, let me step back a bit to talk about why the White House records matter. Records of decision making at the White House, in both the federal record and presidential record components, have long been viewed as some of the most valuable records to historians and researchers. Outside the White House, only about three percent of federal records are deemed to merit permanent preservation by the National Archives and Records Administration. As you can imagine, a far larger proportion of the records that come out of the White House, which includes the National Security Council, Office of Management and Budget, Office of the United States Trade Representative, Office of the Vice President, and the White House Office, merit permanent preservation.

The policies and decisions that emanate from these offices are important ones that affect the whole country and, indeed, occasionally the whole world. Some of those decisions we will know about immediately, but many others will not be disclosed until years after they have been made. How fortunate we are in this country to at least believe we will learn the truth at some point. That has not been the international norm.

The halls of my organization, the National Security Archive, are lined with images of death squad and secret police records from other countries, each of which has a remarkable story about how the record barely survived official efforts to hide it or destroy it. They are reminders of how powerful records can be.

Why should we think it any less important to preserve the records of an American presidency? Is the fact that we are a mature democracy enough to protect us? I don't think we can rest on that hope.

By learning the truth about important decisions, even if there is a delay, we are able to push for accountability. We are able to improve our government and demand more from our leaders. This is no truer than when it comes to White House records.

So, I feel privileged to have played a role in forcing the preservation of over 20 million records that would have been lost to history. I was only one small part of the effort and I want to mention a few other people who were part of the collaboration.

First and foremost, the attorneys at Jones Day LLP who worked with us, Sheila Shadmand, John Williams, Joe Clark, Kristen Lejniaks, Tom Bednar, and Alice Park, all deserve recognition for their phenomenal legal work. Also on the team was Al Lakhani, our expert technical advisor, a Managing Director from Alvarez & Marsal.

Second, Citizens for Responsibility and Ethics in Washington, with which I share this award. They brought to light the extent of the losses and eventually joined us in the litigation as partners.

Third, the National Archives and Records Administration and the Obama Administration. They clearly deserve credit for their efforts. Not only their efforts to resolve the case and help maximize the recovery of e-mails after the start of the Obama Administration, but also for ensuring that the current White House e-mail system – the Obama system – complies with the law. As we got close to resolving the case, I asked them how we knew that President Obama could not walk into an office and delete the records – after all, rumor has it that he is quite technologically savvy. The current White House staff provided a long list of controls that now prevent that sort of thing from happening.

Indeed, this White House has gone further than any to be transparent about its activities. On his first full day in office, President Obama issued an Executive Order that vastly improved the implementation of the Presidential Records Act. And the systematic release of White House visitor records is both unique and courageous. The Administration has launched an unprecedented open government initiative that has the potential to change the way in which the public interacts with its government. These are all positive signs that I hope will be transferred to the rest of the executive branch.

It is with complex emotions that I accept this award. As some of you know, I am moving to another venue to do oversight work. So, as long as I have the podium, I want to express my sincere thanks to Tom Blanton and all of my colleagues at the National Security Archive. More broadly, I want to thank the advocates, analysts, and partners I worked with from so many other organizations represented in this room, and the many wonderful government access professionals

I have worked with both formally and informally. You are my true heroes for keeping the Freedom of Information Act working despite the pressures from inside and outside government. It has often been a thankless task and so I want to express my gratitude for your work.

Thank you again to the American Library Association for this honor and thank you for the great work each of you are doing to protect the public's right to know.