

National Archives Assembly

Legacy Project

**Transcript of Interview with
J. William Leonard,
Director, Information Security Oversight Office**

December 10, 2007

Interviewer: William C. Carpenter

CARPENTER: This is a National Archives Assembly Legacy Project interview with J. William Leonard, the Director of the Information Security Oversight Office [ISOO]. It is Monday, December 10, 2007; it is 10:00 in the morning, and the interviewer is William C. Carpenter. We have three groups of questions today. We have some common Legacy Project questions that we try to ask all subjects to have a degree of commonality among the interviews. We have some general questions about your specific situation, and then some very specific questions about one or two topics. The first question that we ask subjects is, how did your education and background influence your decision to work here at the National Archives? Was there anything in your past that led you to work here?

LEONARD: Actually, the National Archives proved to be a perfect meld for me. I often say that by vocation, I have been a security professional all my life. Prior to coming to the National Archives I had almost thirty years in the Department of Defense [DoD], all in the security field or counterintelligence field. That's how I spent all of my adult life, so security has truly been my vocation. But I always like to say that history has been my avocation. I have an undergraduate degree in history; my graduate degree is in international relations. It has always been, and it still remains to be my hope that somehow I can find a way into academia in some form after my Federal service, either in the classroom, or in writing, or maybe both. It is something that I look forward to; but that was really what I enjoyed the most about this job, that it was able to bring my background and my passion together in one position. And in that regard, I have spent the first thirty years of my life dealing primarily with Government constituencies in the national security arena. In this position I continued that, but I was able to broaden my contacts and my interface beyond that, to individuals in academia, to public interest groups, to historians and researchers. It was truly the best of both worlds that this job turned out to be for me.

CARPENTER: The second question has to do with your impressions of the agency at the time you began your position here. Was it what you expected it to be?

LEONARD: I am not too sure what my expectations were. I have to confess that my exposure to the National Archives had been relatively limited prior to coming here. In fact, just about the only exposure I had was to the office itself, the Information Security Oversight Office. And even then, like with so many folks, the office was synonymous to me with a single individual, Steve Garfinkel, who was the legendary director before me, who spent 22 or 23 years in this position, a record that it will be interesting to see if anybody ever gets to rival. So my expectations were somewhat limited, as I say I am embarrassed to say. But I quickly got to know and understand the mission of the National Archives, beyond what the limited involvement that I had up to that time allowed me. Plus, I also was very enthused that the current Archivist, Professor Weinstein, has allowed me to even get involved in issues beyond my immediate portfolio, which, again, helps feed my avocation.

CARPENTER: What kinds of issues are those?

LEONARD: Well, basic issues dealing with the Archives in terms of how to deal with the White House on contentious issues—contentious issues that didn't necessarily involve me—and things along those lines. It's always a challenge, in dealing with those types of things, because oftentimes a White House will look at even external organizations within the Government and try to keep them at arm's length. But when you take into account the National Archives' mission;

I know that Sharon Fawcett [head of the Office of Presidential Libraries] will often tell presidents that the Archives is one of only two agencies—the other being the Secret Service—that they will deal with the rest of their lives. So, it's clearly important that the National Archives have a close working relationship, not just with former presidents, but with current presidents as well, in terms of effecting smooth transitions, and things along those lines. So, those are some of the types of things that I was able offer my two cents worth.

CARPENTER: On a related topic, what were some of the challenges and issues that you faced in your time with the agency?

LEONARD: Clearly, the biggest challenge that arose while I was here was the issue that has commonly been referred to as “reclassification,” though technically, more often than not, that is an incorrect term. Back in early 2006 it came to light that a number of agencies were systematically reviewing the public holdings at the National Archives and requesting that records be withdrawn for purposes dealing with classification. More often than not, the agencies would try to make the case that their information had been improperly subject to declassification and should not have been on the [public] shelves, and worked with Archives staff in order to withdraw those suspect records. What probably started out with good intentions, in retrospect, clearly got out of hand.

We, the Information Security Oversight Office, eventually did an audit, and identified over 25,000 records that had been withdrawn from the National Archives public shelves, over a period of the previous ten years. And of course, that's something that goes to the heart and soul of what the Archives is all about; and could have had a really deleterious impact, I believe, on the Archives' reputation. But, instead, I actually think that it turned out to be a good news story for the Archives, because we met the challenge head-on. My philosophy, very simply put, is when you have bad news, try to find out the full extent of that bad news, and get it out as quickly as possible. Don't dissemble, don't try to mealy-mouth your way out of it, don't try to make excuses, don't try to point fingers elsewhere, or whatever. Just jump right into it, find out what the bad news is and get the worst of the bad news out. But even more importantly, have an effective plan in place, which clearly shows that the organization is serious about addressing the situation, regardless of what it is, and has clear thoughts and procedures that they intend to put in place in order to preclude recurrence, and that there is accountability built in as well to ensure to the extent we can that reoccurrence will not take place. And I believe that the public, the Archives' constituents, the researcher community, the media, and even the agencies that were involved, I think respected the Archives for the forceful response it took. I ascribe that in large part to the Archivist, Professor Weinstein, who is a remarkable person. I don't recall the exact quote, but there is a quote attributed to Teddy Roosevelt, about how there are two kinds of people: the spectators, and those who jump into the arena and get bloody. Professor Weinstein is clearly one of those people who believes in getting down into the arena and getting bloody. He jumped on this issue four-square, and gave this office the charge to get to the bottom of this, to work with the agencies to come up with effective solutions. I believe we did that, and we did that in such a manner that it preserved the fine reputation that the National Archives has.

Because again, unfortunately I think that people did not take the time to reflect and look at this issue from two perspectives. First, from the Archives' mission, there can be nothing worse than having researchers have access to materials and base their research on those materials, and then,

unbeknownst to them, have it withdrawn from the shelves, to the point where peers or others want to come behind them and build upon or verify what they did, they can't, because, lo and behold, the records have disappeared. Not only that, it puts researchers in a quandary. They say, "Wait a minute, I have copies of those documents that were withdrawn, or I have quoted, them or even published them. What are the consequences? What am I opening myself to?" To the public it created the impression that in some way the Government, at least some of the agencies within the Government, was intent on trying to rewrite history, if even that could be a possibility. But ironically, even from a security point of view, I had to point out to the agencies, that it didn't make much sense. Even if there was information that had been on the public shelves that continued to meet the standards for continued classification, invariably what we were talking about was information that was 30, 40, 50, or 60 years old or more. My philosophy on that has always been, that 40-year-old historical information is just that: 40-year-old historical information. Usually when it is out there on the public shelves, it is in the detritus of all historical information. But once an agency reaches into the public shelves and pulls that 40-year-old document, they are now drawing a bright red line and shining a spotlight to it, which says, "You know, this is more than just a piece of historical information. This is something that is current and relates to national concerns today." Which, I think, is not a good security practice, to say the least. You are better off just letting it lay out there in anonymity, amongst all the other historical records, and say no more about it. Just because that was the way it was 40 years ago, doesn't mean that is the way it is today. People are free to speculate all they want on that. So it didn't even make sense from a security point of view.

Then, you add on top of that, the fact that it wasn't done very effectively. Our audit revealed that the agencies clearly got it right only two-thirds of the time. When I say, "got it right," what I mean is, identify information that, yes, did meet the standards of continued classification. However, just because it met the standards of continued classification doesn't mean that it made sense to withdraw it. For example, many times, the information that they were trying to protect was simply the name of some intelligence agency official that may have worked in an agency somewhere 50 years ago, who may or may not have had covert status at any point in their career. There was an awful lot of that kind of information. It was not revealing unacknowledged covert programs or sensitive intelligence sources that remain in effect today. It was that sort of administrative information, or at least a large part of it was. In addition, the agencies clearly got it wrong one third of the time. They were pulling information from the shelves that didn't even meet the standards of continued classification. Sometimes, agencies were requesting records be withdrawn that clearly didn't meet the standards for continued classification, and in fact had been properly declassified, if not by the agency that owned the information, then oftentimes by their own agency. So, it just was done in a very poor quality manner, and I am proud of the way the National Archives responded to that in a clear, forceful way.

In fact, one of the best things that came out of that was a protocol that all the agencies agreed to follow in terms of addressing this issue in the future. Because, yes, it is a legitimate concern. There are times where a record may find its way to the open shelf that clearly can have substantive impact on national security even today. So, we have to be prepared to address that, and we have to have procedures in place to effectively deal with that without needlessly creating perceptions that the Government is attempting to rewrite history. The agencies, I think, recognized that as well, and one of the things that we were able to do, which is one of the things that I am probably most proud of, in the time I was here, was that we called all the affected

agencies together, and brought them into a conference room here. Most people who have been involved in crafting Government policy understand that oftentimes it takes months, if not even years, of countless meetings and coordination—back and forth, exchanging of drafts, getting the lawyers involved—it can be a very, very, very frustrating experience, coordinating national policy. But we were able to accomplish that day, literally, in less than three hours, from starting on a clean sheet of paper; we got all the affected agencies such as State, CIA [Central Intelligence Agency], National Security Council, Department of Defense, Department of Energy; all the big players. We got them to help craft, and agree to, a protocol governing this kind of activity, which I think addresses all the legitimate concerns. I was so impressed that we were able to keep that group focused, that everybody had a can-do attitude. We had literally set aside three hours for the meeting, and I think that at the two hour and 50 minute point we had a text that everyone agreed to and everyone agreed to abide by, until such time as it was formally promulgated in the formal implementing directive [ISOO Directive No. 1: 32 CFR Parts 2001 and 2004].

That was April, May 2006, a little over a year and a half ago. It has been in effect ever since, and agencies have abided by it. And it is working. All you have to do is look at the numbers: in the 10 or 11 years prior to the protocol, 25,000 records or more were withdrawn. In the year and a half since the protocol, seven records have been withdrawn from the public shelves of the National Archives, to include the Presidential Libraries. Those were seven records that, yes, truly contained sensitive information, clearly shouldn't have been out there, but yet met the standards for being able to be withdrawn. We were reasonably sure they hadn't been accessed. We were reasonably sure they hadn't been used in research or publications. And the agencies looked at the information and recognized that any potential damage to national security that might arise from withdrawing the record and drawing attention to it would actually be exceeded by the damage that would occur if the record was left there, which is really the balancing test—and I think a very effective balancing test—that the protocol came out with. So, it gave the agencies the ability, that if national security dictated it, yes, we can in those rare instances withdraw a record. So it works in that regard. But also the fact that it has just about stopped in its tracks this practice, and ensures that it is only done in the most serious of cases; and furthermore, has contributed to the wholesale re-review of publicly accessible records by agencies and brought that practice to an end—I think the crafting and implementing of that protocol by the interagency [group] speaks very well of the interagency [group]. Again, it was a direct consequence of the National Archives' forceful response and the leadership role they took in this. They could have just as easily said, "Hey, we're the victim here. This is something that was done to us by the agencies." They did not take that attitude, and it was, instead, "You know what? We have the responsibility for leadership in this area. Yes, we acquiesced probably too much, and beyond the scope of what anybody probably envisioned at the time." But as time marches on, nobody ever looks back and asks what this really entails. So, under the leadership of the Archivist, we very effectively took the position that we are going to take the leading role, and we did. So I think that was the most significant challenge that I had to deal with in the five years that I have been here.

CARPENTER: Aside from the reclassification problem, were there any other significant turning points in your time here?

LEONARD: One of the things I am most proud of is whatever role the Archives and this office played in crafting an amendment to Executive Order [E.O.] 12958. Because what I think is

significant about that, is that people look at that amendment and they want to focus on the things that changed, but what I think was the most momentous thing about that amendment were the things that didn't change. Up to that point in time, the tradition had been, that whenever an administration decided to devote its attention to the issue of classification—not every administration did, but usually at least every other administration would devote some attention to this—usually the approach that was taken was what I would call “52 pickup,” or to just throw everything up in the air, restart from scratch, and re-craft an Executive Order taking pen to plain paper. Which, to my mind, was never really an effective way to do it, if only because it is very confusing for the people who have to implement that, the millions of people with security clearances...

CARPENTER: Who stamp documents...

LEONARD: Yes, to fundamentally change procedures like that every time you want to leave your personal imprint on the topic of classification and declassification didn't make sense. Nonetheless, though, every administration would bring its philosophical and political bent to the issue: some toward the side of openness; some toward the side of secrecy. That would invariably be reflected. When [E.O.] 12958 was first crafted back in 1995 in the Clinton Administration, that was, of course, a groundbreaking Executive Order, at least from the perspective of declassification. Because, what it did for the first time was to tie declassification to enforceable deadlines. Prior to that, if an agency just sat on its hands and didn't do what was required of it, there were no consequences. The historical information would remain classified indefinitely until such time as somebody would go through the trouble of making an access demand, and then it would go through a laborious process of a FOIA [Freedom of Information Act] request, or a Mandatory Declassification Review request. Things, more often than not, with some notable exceptions like the Foreign Relations of the United States series for the State Department, information would not normally become declassified unless somebody made a demand for it. [E.O.] 12958, at least conceptually, changed that with the introduction of automatic declassification tied to enforceable deadlines.

So, then what was most significant about that in 2003, when under the Bush administration, we now have not only a new administration devoting its attention to this topic, but it's also in a post-9/11 environment, where clearly there was a much heightened increase in attention to national security. As a matter of fact, the amendment to [E.O.] 12958 was signed in March of 2003, the exact same week that the war in Iraq started. So, there was a much heightened degree of awareness of national security issues in 2003 than there was in 1995, when we still aglow in the post-Cold War peace dividend. Nonetheless, despite that, if you look at the basics of [E.O.] 12958, even after the amendment, the substance of it remains the same. For the first time we didn't just tear it all up and start from scratch. Rather, we preserved the fundamental framework and a lot of the fundamental principles, not the least of which was the concept of automatic declassification. And we did that not only in terms of two successive administrations, but two administrations that people would fairly say are on opposite ends of the ideological spectrum. I think that was very significant. A lot of people were involved with that, but this office and the National Archives, and to the extent that I was able to play a role, did something that they can take pride in. I like to think that we have more or less set a precedent now; number one, I think it is near impossible now for any future administrations to do away with the concept of automatic

declassification. I don't think we will every return to the days when information will only become declassified upon demand.

CARPENTER: Like the old "OADR" stamp [Originating Agency Determination Required, a marking used in the 1980s to indicate that a classified document cannot be declassified without review].

LEONARD: Right. So, I think we will never return to that. Not only that, but I also think that as future refinements to the process are made, I think we will be involved with tinkering with the framework rather than trying to create an entirely new framework. Lord knows, this current framework is not perfect; it has a lot of drawbacks. It needs to be refined, it needs to be simplified. But nonetheless, the fact that we were able to preserve some of the more forward-leaning concepts that were in the original [E.O.] 12958—and not only preserve those concepts, but actually implement them, which is what has occurred since 2003. As a matter of fact, that amendment to the Executive Order; a lot of people want to criticize this administration for excessive secrecy, but it was actually that amendment to the Executive Order that represented the renewed commitment to the concept of automatic declassification that was necessary in order to push the agencies over that final finish line, at least with respect to their initial responsibilities that became effective on December 31, 2006. Shortly after the amendment was signed I met with Condoleezza Rice, who was then the National Security Advisor and the most involved advocate within the White House on this topic, not only by virtue of her position as National Security Advisor, under which this framework exists, but also because of her background in academia and an appreciation for its impact upon research and understanding. The one message that she told me after that amendment was signed was to make sure that all the agencies understood that there would be no more extensions in time. Because that was what had been the steady drumbeat of history up to that point. The original deadline was, I believe...

CARPENTER: I think it was 1999...

LEONARD: 1999 or 2000. And it was extended once, and in 2003 it was extended again. So, Dr. Rice wanted me to make it perfectly clear that it would be understood by the agencies that there would be no more extensions. Leveraging that, I would like to think that this office played a role in cajoling, persuading, convincing, and in some cases, shaming agencies—at least those that needed that final push—into doing what they needed to do. The approach I took was very simple. The President set forth the edict in the Executive Order, what we all had to do. This office has very little leverage when it comes to making agencies and agency heads do things they do not want to do. After all, the responsibility rightfully rests with the agency heads. But one of the only tools that I saw that this office had, was the annual report to the President, which by Executive Order we are required to produce. Now, I recognize that the President is not waiting with bated breath once a year to see our report come across his desk...

CARPENTER: But other people are...

LEONARD: But other people are. It is probably the most quoted and the most read publication that this office produces, to include by some people in the White House. And so when we would encounter a recalcitrant agency that would just say, "Hey, in our priority scheme, we just can't

do this. We don't have time, we don't have resources," our reply was the same each and every time. That was, "OK, fine, but help us out here. We need to explain in this report to the President why you are not doing what he told you to do, so tell me how you want me to put that." Each and every time, that's all it took. The agency would say, "Well, let me go back to you." Because no agency wanted to be singled out as being one of just a handful of agencies that some how or some way didn't want to comply with what the President ordered in that regard. So, we had a few holdout agencies up until the bitter end, but even they came around. And again, none of that would have been possible, I don't think, if it hadn't been for that amendment to the Order, because that amendment to the Order represented a renewed commitment by this administration. If that amendment had not occurred, it would have been all too easy for the agencies to say. "Oh, that's an Executive Order from the prior administration. We have different priorities now." They couldn't say that anymore once this President issued an amendment to the Order. That was another very significant thing that occurred that I think helped us move the process along.

CARPENTER: You mentioned earlier that you hadn't had much experience with what the National Archives did before you came here. What specific experiences did you draw from, from your time at DoD, that helped you out in your position as Director of ISOO?

LEONARD: At DoD, again, I spent my entire career, almost 30 years, either handling classified information, or being directly involved with policy and oversight in dealing with it. I started in DoD in New York City in 1973, in a position known as an Industrial Security Representative for an agency then known as the Defense Supply Agency, now the Defense Logistics Agency. What that job entailed was to exercise oversight over cleared contractors who performed on classified contracts for Government agencies and who had access to and handled classified information, and the job of an Industrial Security Representative was to review how contractors protected that information and made sure it was being properly protected. So, the first part of my career at DoD was involved with that function, gradually moving up the ranks. I had the opportunity when I was involved with that program to work overseas as well. The agency I worked for had an office in Brussels, Belgium. I spent three and a half years in Europe. I went there in January of 1989, when the Cold War was still going hot and heavy. It was shortly thereafter that the Soviets threw in the towel. I do not know if there was a cause and effect there, between my going over there and the Soviets finally giving up the ghost. I tried to get it included in my performance appraisal, but they wouldn't buy it!

But being overseas for a few years really gave me insight into how other countries do it. Because I had to deal with other countries' security officials, especially within the NATO framework. This was the time of the Gulf War, and one of the areas we had responsibility for was the Middle East. There were a lot of issues dealing with getting classified contractors and components into the theater to support the war effort. So I got an insight firsthand into operational issues and how classification can impact that. When you are fighting a war, you need stuff, and you need it now; and somehow, classification can be just one more impediment to getting people and or things where you need them. That gave me even greater insight from an operational perspective, actually seeing how this impacts in a war directly. When I came back I eventually made it to the Pentagon, where I assumed roles and responsibilities; having responsibility for policy oversight, Department of Defense-wide, for a whole array of security programs, to include the information security protection of classified. I also assumed responsibility for counterintelligence programs, which started giving me insight into how our nation's adversaries target classified information,

and how effective our safeguarding procedures are, or how ineffective they might be, in terms of protecting that information, ensuring that it is properly safeguarded, that it isn't allowed to harm our nation by falling into the wrong hands. And like everything, in terms of what makes the most effective protection, it always falls upon the individuals who are required to protect that information; making sure they are properly aware, properly trained, and properly motivated. So that gave me a unique perspective, having responsibility for counterintelligence programs. I oversaw all counter-espionage and counterintelligence investigations for the Department for a number of years while I was there.

So, eventually I assumed the position of the Deputy Assistant Secretary of Defense for Security and Information Operations. Again, I got perspectives not only from a policy point of view, but becoming a real big consumer of classified information. It exposed me firsthand to the issue of overclassification. So much stuff came across my desk marked at the TS [Top Secret] Codeword level, and you ended up scratching your head trying to figure out why; what it is that made it that. I became an Original Classification Authority myself; and I have to admit, in retrospect, that I was an ignorant Original Classification Authority, because nobody ever took to time out to make sure I knew what my responsibilities were. I have to admit, I probably engaged in some of the same bad practices that in this position I assumed the [responsibility] to somehow counter. Again, that gave a unique perspective in terms of understanding the real-world environment in which decisions are made; and which, in a very tense and high-pressure environment, which was what the Pentagon was—it was one 14 or 16-hour day after another, and everything was due yesterday, and the Secretary, or Deputy Secretary, or Undersecretary needed this, or a crisis was being addressed... In a hectic environment in which you are trying to fulfill all of this, quite frankly, proper classification is unfortunately not always in the forefront. Again, it gave me that understanding of what the real-life environment is in which these rules are expected to be carried out.

In addition to that, working in the Pentagon as I did, you get real good insight and understanding in terms of what the agency's mission is all about: what the goals and objectives are, what the priorities are for the department. And I recognized that to do that; in our current job, in a place like ISOO, in order to effectively accomplish our mission, that is essential: to understand where the agencies are coming from; to understand what their goals, objectives, and mission needs and requirements are; because our job here, in large part, is to enable them to do that. To help them accomplish what they need to accomplish from a mission perspective, while at the same time being in compliance with the President's edicts with respect to how information is classified, handled, and how it is declassified. Because one of the things that I encountered first-hand in the Pentagon, and I am sure it is a common misperception that exists throughout the Government, is this belief that somehow or some way classification is an assertion; it is an assertion that I as a Government official can make, and it is a [simple] assertion that when I make it, I will always err on the side of caution. If I am going to make a mistake, I will make a mistake on over-protecting something rather than in under-protecting something, because if information is under-protected, there will be adverse consequences to national security—maybe people will die, or something along those lines, especially in a wartime environment—so we can't have that.

I got first-hand insight in terms of that mindset when I was at the Pentagon, which I think helped me when I got to this position, because in large part, I look upon our role as being to change that mindset; to help people to understand that classification is more than just an assertion, that there

are standards that have to be met. That when it comes to classification, what we are really doing is, the President, as the Commander in Chief and as the chief executive responsible for the foreign relations of the U.S., has inherent constitutional authorities that include restricting access to certain information in the name of national security; that the classification system represents a delegation of that constitutional authority from the President to other officials such as ourselves. As with any delegation of authority, there are standards that have to be met, and prohibitions and limitations that can't be exceeded. If individuals who exercise that delegated authority fail to meet those standards, or if individuals exceed the limitations or prohibitions, first and foremost, they don't have the legal protection of the classification system, because it is predicated on the foregoing. If you don't achieve that, you actually are on shaky ground.

But not only that, the additional thing is, and this occurred for me with the events of 9/11, but it also, I know, occurred for a lot of other people, and became a centerpiece of the recommendations of the 9/11 Commission. That is the realization that the unauthorized disclosure of information is not the only way that you can harm national security. It is not the only way that people can be put in peril or maybe even die. But the unauthorized hoarding of information can likewise be deleterious to national security, can likewise put people in jeopardy, to include for their life; that it is not as simple as, "Well, if I am in doubt I will restrict access to the information." By restricting access, you may actually be harming national security even more. You may be putting people at increased risk. So again, having insight into that mentality when coming into this position, I think helped me significantly.

Let me give you an illustration of one issue that came up while I was here that I think is a perfect example of that. That was—I'm not too sure on the timeline, now; it was either 2003 or 2004—there was an issue involving Guantanamo, the naval base down in Cuba where we set up detention centers for suspected terrorists. There was an issue involving some military members, to include an Army chaplain who had been accused of mishandling classified information. In fact, having been accused of mishandling classified information, at least in the chaplain's case, he was put into isolated confinement, and more or less threatened with facing a capital offense punishable by death, for supposedly placing classified information at risk in such a highly sensitive environment. Well, there was something about that case from the very beginning that just didn't make much sense to me, and again, based on my counterintelligence background and my security background, I sensed right off the bat that clearly this was a classification management issue more than anything else. It took quite a bit of prodding on our part of the Department of Defense for them to slowly but surely come to that realization. And I hearken back to what I said before, that people don't realize that classification is more than just an assertion, that there are standards that have to be met. Well, that's exactly where the Department of Defense went wrong in that particular case. The information that the chaplain was accused of mishandling, I believe you can make a case that, yes, it is sensitive information, and yes, you can make the case that damage to national security could occur if it was subject to unauthorized disclosure. Unfortunately, no Original Classification Authority had ever made that determination. There was never an original classification decision to that effect, and therefore, the information that the chaplain was accused of mishandling, was in fact not legally classified. It did not meet the standards for classification. Again, it took the Department of Defense a while to come to that realization, but as a result, they went from solitary confinement, possibly subject to capital punishment, to [waves hand], "Oh, our bad. So long. Have a good rest of your life. You

are free to go;" all because of the failure to do it right, the failure to adhere to the standards that the President established in delegating that constitutional authority.

So that is just one case that not only came to light, but that we played a role in, in terms of helping to ensure that the right thing was done in that case. I remember having a rather contentious discussion with a lawyer for the Department of Defense, advising me that I needed to be careful in terms of what I wrote, because it was all subject to discovery by the defense attorney. And I replied that, "You need to be careful, Department of Defense, or else you are going to find me on the stand testifying on the defense's side, because you are just wrong here. It is as simple as that." It is an illustrative example of how the role we play here, in terms of trying to ensure that people understand what those standards are, to include the original classifiers, as well as other responsibilities that, in the long run, can help them accomplish their mission. Because, my fundamental point for the Department of Defense was not just that, "Hey, you are wrongly prosecuting somebody here," but, "Hey, guess what? There is information out here that you are concerned about that still isn't properly classified, and you'd better do what you need to do in order to ensure that it comes under the legal umbrella of the classification system." Which they never would have done had they not stopped to figure the situation out, with our assistance.

CARPENTER: What you are describing here is the need for a change in culture, from a culture of secrecy to a culture of information sharing. Is it ISOO's role to help that culture shift?

LEONARD: As a matter of fact, one of the very first things I did, and I think it was the very first week I got here; the process to amend [E.O.] 12958 that was promulgated in 2003 was still underway; I alluded before about how many months if not years it takes to get policy revisions done. Those revisions to 12958 had started long before I even got here, in June of 2002, even though they wouldn't be promulgated for another nine months. One of the things I tried to do the very first week I got here was to address the Executive Order, whose default position when it comes to information sharing is: "If you want to share information with another agency that doesn't belong to you, you can't, unless you first go back and get the originating agency's permission." That, I think, is one of the fundamental impediments to information sharing; the "third agency rule." I recognized that right away, attempted to insert a change to the amendment package, and met total resistance by the agencies. Very disappointing.

But slowly but surely, the sentiment changed. The 9/11 Commission report came out, the WMD [Weapons of Mass Destruction] Commission report came out, all making the same observations and the same recommendations. Finally we were able to pick this up again, and finally got to the point where we achieved interagency agreement through a long, drawn-out process in terms of some recommended changes to [E.O.] 12958. Specifically, changing the default position of the Executive Order with respect to that "third agency rule," having it more or less say that, "Thou can share, unless you are specifically told you can't;" as opposed to, "You can't share, unless you are specifically told you can." I thought that was a very significant—a minor, but yet significant—substantive change, that could have some beneficial impact. We succeeded in getting that through the interagency process and getting all agencies to agree. Unfortunately, it died in White House coordination. I have been told that that amendment, which included a number of other things, to include addressing DNI [Director of National Intelligence] authorities, will not be acted on during the course of the rest of this administration. And it's a shame, because it is something that is clearly required, and it is one of my regrets that I haven't been

able to further facilitate that along; although obviously is not up to me. It is something that hopefully my successor will be able to pick up and move along.

CARPENTER: On a similar point, what do you regard to be the most significant challenges facing ISOO in the future?

LEONARD: As I just said, information sharing: we are not there. We are clearly not there; we have not been able to change some of the fundamental impediments in the Executive Order that get in the way of information sharing. Clearly, in addition, the back-end of the process needs to be reformed. When I say back-end of the process, I mean the declassification part. We have been focused up to this point in time simply on identifying the wheat from the chaff: that is, the information that can be subject to automatic declassification and that information that must be exempted. Unfortunately, in the process of identifying information that can be exempted from declassification, there has been absolutely no rhyme or reason in terms of how that has been done. Each agency has done it differently; each agency has assigned different dates or events for [eventual] declassification, not only for their information compared to other agencies, but they have even set different dates for their own information in the same box, if you will.

So, as a result, it is total chaos, total cacophony of date or events, to the point that the concept that even exempted information will eventually be subject to automatic declassification; we have lost that, because there is absolutely no way that exempted material that has been put back in the vault can be subject to automatic declassification in any systemic way. It is going to require not only a review, but a re-review, and another re-review; or, it is only be going to be subject to access as in the old days, when somebody asks for it specifically. Which, to me...some people say, "That's fine. Why should we devote resources until somebody wants the information?" But, to me, a big part of the essence of the National Archives is the ability to discover information; to be going through material and having that "Haha!" moment. You can't have that "Haha!" moment if the stuff's in a vault. You can't pore your way through it, you have to try to figure out is something is relevant to what you are looking for or not. But it is the [apparently] irrelevant stuff that actually will give you that "Haha!" moment. You are never going to see that if you have to have demands for it [before it will be reviewed for declassification]. You have a greater chance of seeing that if it is all open, and all available and subject to your perusal. So, even for the exempted material, we can't revert back to the process where you are only going to get it if you ask for it. But I also recognize that right now the process is too chaotic to have any sort of systematic way to be able to go through those exempted holdings.

So we clearly have to reform the back-end. I think we can significantly narrow the kinds of information that is exemptible. Some information, I think, is clearly exemptible: current sources and methods; cryptography, where you are still dependent on the secrecy of the keys to protect you; current war plans; those kinds of things, OK. But clearly, we have established a net that is too wide. We have captured too much in the exempted category that shouldn't be there. Then, the second reform I think that we need, is that we need to have standardization. If it is exempt, fine, but it is only going to be exempt for another—pick your number, I almost don't care—10 years, 15 years, 25 years, 40 years. I don't care, but pick something and stick to it and say, "After this point in time, we don't care, it is going to go." Because, you know what? No matter how sensitive it is, once it is 50 or 60 years old, it isn't going to hurt us, it isn't going to hurt us.

This brings me to one of the last things I think attention has to be devoted to, and that is another balancing test that I would propose. But my balancing test is not the traditional “open versus secrecy.” My balancing test is similar to what we came up with in that protocol, and that is that I think we need to move to a state where classifiers have the responsibility to not only be able to identify and describe the damage to national security that could arise if the information in question was subject to unauthorized disclosure, but they also have to be able to identify the damage to national security that would arise if the information was restricted. Because no information is pure one way or the other. There are clearly instances where, yes, maybe something meets the standards for classification, but, you know what? To withhold it would actually cause greater damage to national security. I think classifiers should at the very least be expected to look at that issue, and say, “OK, what is the damage to national security that arises when this information is not made available?” and do some balancing test in that regard. I think if we implemented such a balancing test, we would be classifying a whole heck of a lot less.

Not only that, we would be advancing the cause of national security. The perfect example is, today, a lot of people have a hard time categorizing the times that we as a nation find ourselves in. I think most people would agree that at the very least, we are currently involved in an ideological struggle against adversaries or potential adversaries who clearly want to do this nation harm. Whenever you are in an ideological struggle, to me, that calls for more transparency, not less. Because, really what we are dependent upon to prevail in an ideological struggle is not our military might, not our intelligence capability, or whatever. What we are depended upon to prevail are our ideals and our values as a nation. That is what is going to prevail in an ideological struggle. But yet, we end up restricting so much information that we literally cede the playing field in that arena to the adversary. “Oh, we don’t confirm nor deny what we do in this regard...” We end up becoming reduced to a caricature that the adversary wants to portray of us. Once you start losing the support not only of the world population; we not only want to win the hearts and minds of the world population, but we also want to make sure we maintain the support of the American people. To do that, I think that speaks towards transparency, or increased transparency, at least.

I would recommend that balancing test. Yes, maybe it would cause damage to disclose it, but how much damage would it cause to restrict it? Are we better off, actually? We make that decision every day, without thinking about it. For example, you go to China and you collect information with respect to the size of their military, and the amount of their military budget; the Chinese consider that classified information. If you go over there and collect it, you will be arrested for espionage. Could that information be classified in this country? Sure, you could make a case that it would cause damage, and in fact we have made the case for years that the disclosure of the intelligence budget would cause damage. But yet we recognize that to restrict access to that information would cause more damage, because you need an open and public debate in terms of what size should our military be, how much of our tax dollars should be devoted to it, and things along those lines. That is a very fundamental example, I think, where we have long recognized that, yes, technically it meets the standards for classification, but is within our interest not to restrict [access to the] information.

And so, as I was saying, another example is when senior administration officials, appearing before Congress, get themselves all tied up into knots, in terms of asking a question as to whether or not a particular form of interrogation constitutes torture or not. When you think about

the damage to national security that occurs when the worldwide population witnesses that; I don't think there is any underestimating that. So, I really think that we need a much more informed [decision]. I have often said that decisions as to what information can be classified is ultimately subject to agency discretion and agency judgment. I always have a problem when it seems that agencies seem more than willing to use their discretion, but not willing, necessarily, to apply judgment. You need an informed judgment, and you need to make that assessment. I like to think that maybe we can find a way to formally incorporate that into the process.

CARPENTER: The last topic has to do with the Office of the Vice President issue. ISOO was featured in the news media earlier in 2007 when the Office of the Vice President argued that it was not a Federal agency for the purposes of the reporting requirements of E.O. 12958. How did the increased visibility of ISOO affect you as the Director, and NARA as a whole?

LEONARD: Well, when you become fodder on the late-night comedy shows, to include Stephen Colbert and Jon Stewart [comedy news shows on the Comedy Central cable television channel], you know you have made it, I guess. That was quite an experience, but one that I think bode well for this office and bode well for the National Archives. The way it came to light was; actually it was not a new issue. Back in 2003 we had encountered problems with the Office of the Vice President with respect to, number one, submitting reports to this office, and number two, being subject to onsite reviews by this office. And we were informed by the then-Office of the Vice President's general counsel that from their perspective, OVP [Office of the Vice President] was not subject to them, because the Office of the Vice President was neither part of the executive branch nor the legislative branch, but somehow or someway hovered between the two. At the time, I could not accept that position, but also I recognized that it probably wasn't worth butting your head up against the wall, because it was difficult to envision in some way being able to prevail in such a touchy situation. The White House is such a well-guarded building, and it is pretty hard to get in there unless somebody wants you to come in! So, as much as I disagreed with it, we let it be, but I didn't want to lend it any credibility, which is why at the very least we acknowledged when we published the [ISOO] Annual Report one year, we included a footnote that it did not include information from the Office of the Vice President.

[As it turned out], that footnote was picked up by a newspaper reporter who called and wanted to know why. He said, "Well, it is probably best to talk to the Office of the Vice President; it is not up to me to explain their actions." It was at that point in time when a spokesman for the Office of the Vice President went public with this explanation, that they were neither part of the executive branch nor the legislative branch, therefore not subject [to the reporting and inspection requirements of ISOO]. Now, that was kind of a different story, because now it was a public issue, it was not an internal issue, and it was an issue that was made public by the Office of the Vice President. So, I felt that we needed to react, but in any event, in addition to that we received a formal complaint shortly thereafter on the issue. What I took exception to, and the reason why I thought we had to act; first of all, I feel it is necessary to explain to people that this issue did not have anything to do with the constitutional office of the Vice President itself. I recognize that the constitutional office of the Vice President is unique. I also recognize that if you go back in history, I think it is very clear that I don't think John Adams thought he controlled Thomas Jefferson when he was his Vice President; and I certainly don't think that Thomas Jefferson thought he controlled Aaron Burr when he was his Vice President. So, we recognize some of the unique situations with respect to the constitutional position of the Vice President. Rather, from

my perspective, the issue dealt with the bureaucratic entity known as the Office of the Vice President and the non-elected public officials such as you and me who occupied that office and had positions in that office. And furthermore, this issue from my perspective never really dealt with ISOO's authorities, either. Rather, what I found most remarkable was that the general counsel, now chief of staff to the Vice President, that the position he was taking was that non-elected public officials such as himself and the other members of the Office of the Vice President who worked at the White House—when it came to accessing national security information, they were not subject to the direction of the President. I found that to be a rather remarkable position. I found it to be a remarkable position that severely undermined the authority of the President in this regard, and when such a position was taken publicly, it had to be reacted to.

You add to that the fact that out of this particular Office of the Vice President there was specific history with respect to handling classified information. One former official had actually been convicted of espionage, passing classified information while he was an employee in the Office of the Vice President to a foreign power. Of course, another very senior official ended up being convicted of felony perjury charges dealing with how he handled classified information.

CARPENTER: That was “Scooter” [I. Lewis] Libby.

LEONARD: One and the same. So it was more than just a theoretical issue, it actually was something with very real consequences and very real import. For instance, during the “Scooter” Libby trial, some other things came to light. I remember seeing a bunch of prosecution exhibits that included purely unclassified information, yet marked, “Handle as SCI [Sensitive Compartmentalized Information, a highly restricted access category],” which is rather remarkable as well. So, I was troubled in that: first, here was somebody who was taking a position that when it came to accessing this kind of information they were not subject to the direction of the President, which I thought was remarkable. Second, when you looked at what little insight we got into how that office was handling that information, I think some serious questions arose. So that's why I felt obligated to try to obtain some common understanding. My attempts were ignored by the Office of the Vice President. I had no choice, then, but to go to the Attorney General as provided for in the Executive Order. I am not too sure I am happy in terms of how it has been resolved; even though the Office of the Vice President has yet to formally engage with this office on the topic, they have responded to a member of Congress, Senator Kerry. It was interesting, that letter to Senator Kerry did not repudiate that argument that these individuals are not subject to the direction of the President. Rather, it more or less said, “Well, that's a theoretical constitutional argument best left for another day. The bottom line is, the President never intended for the Office of the Vice President to be subject to outside review, much the same way his immediate office—the President's immediate office, the White House office consisting of his closest advisors—likewise, isn't subject to outside review.” This, of course, was a new rationale that was offered. It was a rationale that had never been offered to us; quite frankly, it was a rationale that, had it been offered to us when this all started, we would have said, “OK, fine, no problem. We can understand that.”

But the problem was, again, that the Office of the Vice President never repudiated the original argument. They just said it was best left for a different day, since it was theoretical. But the other problem is, again, that if you take the Office of the Vice President's argument on face value, when it comes to the President's intent, it is irrelevant, it doesn't matter, because they are not

subject to the direction of the President. That issue, quite frankly, was never addressed, and never resolved. The Attorney General had his Office of Legal Counsel respond to us. They included a letter written by the White House Counsel, Fred Fielding, to another member of Congress, setting forth the President's intent argument. The Department of Justice then said, "Well, in view of this letter, we are not going to answer your letter, ISOO." So, that's where the matter resolves, or lays unresolved, at least in my mind, because a serious question still exists from my perspective. That is, if these people in the Office of the Vice President are not subject to the direction of the President and not compelled to follow the same rules that everyone else does, then what rules do they follow? We, of course, do not have any insight into that. That, to me, was always the issue. It was not a matter of ISOO authorities, it was not a matter of, "Gee, the Vice President is also the President of the Senate," or things along those lines. It was focused solely on non-elected public officials in the Office of the Vice President, and whether or not they were subject to the direction of the President when it came to handling and accessing classified national security information. So, maybe my successor will have better luck resolving that.

CARPENTER: Are there any other topics you want to bring up?

LEONARD: Oh, I think we probably covered the waterfront. Probably more than you wanted to hear.

CARPENTER: Great. Thank you very much. This will probably be one of the more sought-after interviews.

LEONARD: I appreciate it, Bill. Thank you very much.

Gift of Historical Materials of **J. William Leonard** to
The National Archives and Records Administration (NARA)

1. In accordance with the provisions of Chapter 21 of Title 44, United States Code, and subject to the terms and conditions hereinafter set forth, I, **J. William Leonard** (hereinafter referred to as the Donor), hereby give, donate, and convey to the United States of America, for eventual deposit in the National Archives of the United States (hereinafter referred to as the National Archives), the following historical materials (hereinafter referred to as the Materials):

Recording of an oral history interview with the Donor conducted on December 10, 2007, by William C. Carpenter on behalf of the National Archives Assembly Legacy Project.

Transcript of an oral history interview with the Donor, conducted on December 10, 2007, by William C. Carpenter on behalf of the National Archives Assembly Legacy Project.

Letter stating the Donor's agreement to participate in the Legacy Project, signed by the donor on December 10, 2007.

2. Because the Materials were generated in connection with the National Archives Assembly Legacy Project-an oral history project designed to capture the institutional memory of retiring NARA staff-the Donor stipulates that the Materials be accessioned into the National Archives and allocated to the donated historical materials collection of the National Archives Assembly. This collection is designated as NAA and is entitled, Records of the National Archives Assembly.

3. The Donor warrants that, immediately prior to the execution of the deed of gift, s/he possessed title to, and all rights and interests in, the Materials free and clear of all liens, claims, charges, and encumbrances.

4. The Donor hereby gives and assigns to the United States of America all copyright which s/he has in the Materials.

5. Title to the Materials shall pass to the United States of America upon their delivery to the Archivist of the United States or the Archivist's delegate (hereinafter referred to as the Archivist).

6. Following delivery, the Materials shall be maintained by NARA at a location to be determined by the Archivist in accordance with the provisions of Chapter 21 of Title 44, United States Code, and provided that at any time after delivery, the Donor shall be permitted freely to examine any of the Materials during the regular working hours of the depository in which they are preserved.

7. It is the Donor's wish that the Materials in their entirety be made available for research as soon as possible following the deposit of the Materials in the National Archives.

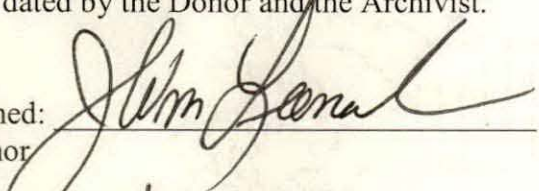
8. The Archivist may, subject only to restrictions placed upon him by law or regulation, provide for the preservation, arrangement, repair and rehabilitation, duplication and reproduction, description, exhibition, display, and servicing of the Materials as may be needed or appropriate.

9. The Archivist may enter into agreements for the temporary deposit of the Materials in any depository administered by NARA.

10. In the event that the Donor may from time to time hereafter give, donate, and convey to the United States of America additional historical materials, title to such additional historical materials shall pass to the United States of America upon their delivery to the Archivist, and all of the foregoing provisions of this instrument of gift shall be applicable to such additional historical materials. An appendix shall be prepared and attached hereto that references this deed of gift and that describes the additional historical materials being donated and delivered. Each such appendix shall be properly executed by being signed and dated by the Donor and the Archivist.

Signed:
Donor

Date:

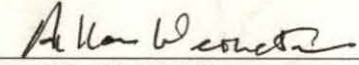

11/20/2008

Pursuant to the authority of Chapter 21 of Title 44, United States Code, the foregoing gift of historical materials is determined to be in the public interest and is accepted on behalf of the United States of America, subject to the terms and conditions set forth herein.

Signed:

Archivist of the United States

Date:


12/3/08