

[ Please stand by for realtime captions. ]

>> Good afternoon and welcome to the first afternoon session. The session is entitled [ Inaudible ] constitutional duties of the president social media and presidential record actin for this we have to panelist and I should mention this is a DLC sponsored section in the first panelist is trying to and also a member of the Council from Vanderbilt University library and secondly we have Hannah Bergman from the national archive administration where she is information policy Council.

>> Good afternoon everyone. Hope you are doing well. I hear all cheering really loud and I know everyone is really excited. We'll talk about social media and it will be two parts. My part will be more of us cussing from a depository for dinner and my experience is from what I see working with patrons but also from the office of federal register.. My heart is presidential documents. Need to have background information before we can go into the office of Federal Register. There's an organization called Nora, national archive record administration. They are an independent agency and that began in 1985. Before that they were the national archive and record services which fell under the general services a ministration and for all of the suit is like me, who has the public papers of the president? Has anyone ever noticed in the middle of Reagan's legal from GS to AE and that is the reason why. I put this has quotations that I took from archives.gov and I usually don't like to read from slides but this is important to understand where we are and Nora safeguards and preserves in the records of our government ensuring the people can discover used and learned from the documentary heritage and established policies and procedures for managing US records and manages the presidential library system and publishes the laws and regulations and presidential and other public documents which is pretty cool because that is a big part of keeping America informed. So let's talk about presidential documents. A lot of these are going to come from the office of Federal Register it is a part of an ARA. Which is a Pooh don't like Federal Register and regulation and LSA but also other cool things and when we think about presidential documents we have exhibited regulations and other administrative orders and those are published in the Federal Register. These are also published in the daily copulation of presidential documents which is prepared by the office of Federal Register and once again Federal Register the executive orders and proclamations or codified in title number three and who knows which that one is? >> And that is exactly the one volume of the CFR that is not superseded. This is also published by the federal register. One of the other loved titles. I like the title because I not only like reading it it looks fantastic on the shelves. It is compiled in published by the office of Federal Register and has papers and speeches. What's important and will get into detail on this that these are papers and speeches that are issued to the office of the Press Secretary. Both daily [ Inaudible ] documents in public papers of the document fall under one CFR 10.2. Those are the regulations that will govern how these materials have dealt. None of these publications will contain presidential social media. This includes tweaks. Use our a photo from ourselves. I like showing this because they are colorful and I'm very proud of this. To begin in 1957 and important to compile presidential documents. The one you notice go back to Pres. Hoover and recurrently received president Obama's. The exception is Pres. Franklin Roosevelt whose papers were published privately and do not follow this. They are issued by the office of the Press Secretary and of course we receive usually two per year and they cover about a six month period. They are published under the authority of federal register act and I concluded a link and references if you are more detail and encourage everyone to look into it because it is fully complicated nice to read through copulation of presidential documents. Another great one just for .11 and go into the EE 2.109 and now published online and previously that you have daily compilations and the predecessor which is the weekly compilation and I suspect most of you all have these on your shelf. 2009 was when the daily began and that's what we had ever since. And from the teen 77 the materials compiled and incorporated into the public papers of the president. Once again they mention the authority of the federal register act, this

falls under that at -- that. Social media limitations. Both of these publications fall under one CFR 10. Specifically and the daily compilation of presidential documents by itself is a special edition of the Federal Register in this you can find one CFR 10 point 10.1. One cool thing, has a coroner I read more regulations in tentacles than I ever thought I would. What I like about one CFR 10 is it is less than one page long.

>> It makes interpretation a lot easier. An important part we get into is the publication of materials is under one CFR two -- 10.2 a that the text of the publication's oral statements by the president described by the president and selected from transcripts or text of office of the White House secretary. Who knows how he tweet is delivered?

>> You pull out this thing here and do a click and hit send and do not go through an office of the White House press secretary which means it is not under the federal register at so because of this these are not provided in any of the documents by the office of Federal Register. Makes it so far? The cool part is I only had five slides in the the best part because I hate reading off of slides. Talk about limitations of social media because of the way these are compiled, the Federal Register is not publishing these so I get asked where you can find the information? We have a lot of on reliable sources which one is twitter. There's over 17,000 residential tweets since the president took office. That is a lot of tweets. One thing we run into is those can be deleted. Just because it's on twitter it doesn't mean you have access to it, it can be taken away once it is put off and we see that happen quite a bit. Another to be cautious if you use twitter itself to look at the information and make sure it is actually the twitter handle that you think it is. There are fake Twitter handles that look so real that they get cited by public officials and researchers because they don't realize that they are actually not real.

>> Were of these being captured? Since the Federal Register is not posting these and anything can be deleted and we have watchdog groups, researchers that are capturing these and private citizens. It is great because we are people capture them but the issue of authority. What I mean by that, when you go to a private citizen webpage, it's not ISO certified repository, you don't know if someone manipulated the data or those tweets. Whether the person captured it or hack the site. As of this we don't have the authority record we need to make sure it is authentic presidential tweet. This comes problematic when you have 17,000 of these that are used in many of which are dictating the presidential policies. The other part is many of them will also walk imitation as well. So 17,000 tweets will make even less sense. Does that mean the future is hopeless and there are definitely mechanisms and people working hard behind? I do think we are headed in the direction I know there are a lot of restaurants and one of the cool parts is Hannah will discuss presidential records which is not my expertise and I'm stoked about it because she will give us a different perspective of this.

>> Hello everyone. My name is Hannah Bergman and I work in the General Counsel office and I am all lawyer and no pseudo-preference and I don't know what Sioux ducks are. I will talk about the presidential records act and specifically as it applies to the tweets that Wilmington but I wanted to provide more overview about the national archive itself and what it is before we dive into that. We talked about the Federal Register which is one part of the national archive and a pretty small part. And in my mind they do very little that causes legal problems. I think of them as a day-to-day function, they do their job and not controversial and they go about their lives. They create no drama for me. They do employ lots of people. But other parts of the national archive, we are an facility and throughout the country, including the one downtown and the mall that houses the older records related to the central government and the papers of Congress. Then a huge facility in College Park Maryland which is open to the public and the primary facility that we have for research. And there are regional or field locations. The country and 14 residential labors that contain the paper prior presidential legislation. We do operate 13 presidential museums as well as a museum downtown we visit and see the Constitution and Declaration of Independence and all kinds of other documents. And we also are regulatory institution.

People forget or don't work in the federal government and not federal employees don't focus on the records administration part of national archives but we actually issue regulations that govern the management of federal records that are expecting agencies to follow and we are unique in that way. Most agencies when they regulate they touch on a small sector of the government or private sector, national archive when we regulate federal records we talk about the creation and management of records from any of the agencies in the executive branch and any of the agencies in the judicial branch. Court supervisory, offices and for offices. The lower federal court and District Court. And then the papers of Congress as well can be part of that. Not the house and sent it but papers of individual offices are covered. We touch across all three branches and in a unique way. We have an extensive amount of regulation in title 36 that deal with management of those records. We also operate the office of government operation services and information security oversight office which provides oversight on national security classification guideline. Here is a map of where we are in the country. We have a lot of facilities for those of you who are around from Kansas City or Midwest, we have a lot of records in that area. Because we have a library and then federal records Center. Those are warehouses that we operate, the storm working papers and federal agencies and around Kansas City there are a lot of caves. Caves are cheap. They are man-made I'm stoned caves. They are automatically climate control and more environmentally friendly. And we have lots of them.

>> A little bit about how much we have. In terms of the holdings. This is as of FY 16, before the Obama transition, 708 TB of data in the electronic records. And 33.4 million cubic feet and 33,400,000 ft.<sup>3</sup> and facilities that represent by those. The process about reference [ Inaudible ] request that your and those are people writing in in saying [ Inaudible ] and with the Obama transition, 200 treatment which about termites [ Indiscernible - audio cutting in and out ]

>> A different media format that require one type of management and 181 million emails. Before Obama, 700 [ Inaudible ] conditional 250 from Obama and of course gotten accession of federal records [ Inaudible ] and we don't publish a ton or keep track. I want to talk a little bit about before we dive into the presidential record, [ Indiscernible - audio cutting in and out ]

>> To laws that govern the holdings of the national archive for all intensive purposes and wonders of phonorecord which applies to records created by GPO or records created by EPA or US Esther court. All of those are governed by the federal records act and that law was passed in 1950 and it has been tweaked a couple times but largely the structure of the 1950 law remains the same and records come to us in the approximately 30 years old and after they have been when the agency has passed and we get about 3% through the operation of federal record and the rest of records are temporary records and eligible for disposal because they are permanently voluble [ Inaudible ].. If you want access you show up and show your ID and go through [ Inaudible ] and go through research training and then put in a pole slip for records and it is pretty straight for better try to make records open and available as much as possible and if they are not open and available then they contain information and you can make a request for either screening and demand and if you happen to be there in person then depending on how sensitive the records are then they can spring them for you right away and get what you are looking for or maybe sensitive and require line by line. That is one process. Then we have the presidential record. There's a separate statute governing the records created with the president and components of the White House that advise directly on presidential duties. It is a Watergate statute that comes out of Nixon reform and takes effect starting with Reagan. Prior to next and or all presidential records, they were owned by the president treated as personal papers much like today, you see personal papers of a Supreme Court justice treated as their own personal property. As Justice retires they take the chamber papers with them and then they can donate those to a collection with any sort of many of you to a well known library it then houses that collection. That is a similar practice occurring prior to Nixon with presidential papers. They keep that with our property and then starting with FDR build great buildings to put the property in and have these museums and remarkable spaces to house the record and deed

those buildings and papers to national archives at the end of the demonstration. Or at some point that the end of the administration depending on how into their legacy they were. We have several libraries that operate under the deed of model and then we get to Nixon who left office under less than [ Inaudible ] circumstances. And ultimately in Congress passed a Nixon specific statute called recordings and materials preservation and there is a specific law that deals with Nixon so if you care about Nixon, he is over here. And nothing I will say applies to Nixon. Nixon had his own library and then personally operated then did the 2000 family did detail library and we do now operate the presidential library but under different legal schemes than Reagan. So presidential record act did several things. It flipped on the inverse idea that personal papers of the present were the presidents personal property. It created something called presidential records and they come to the national archive at the end of the administration with.. -- With full stop. It is on the incumbent president. The current resident has to manage those records as they create them and that has been the case since Reagan was in office. The presidential record does allow the incumbent president to dispose of records and if they are no longer valuable because they don't have historical value and after they obtained the views of the ark of the United States and this is slightly different than the federal context. If the EPA wants to throw away a box of papers they have to have permission of the national archive and that happens to be a record schedule and cannot throw away the records without our permission. That same rule does not apply to the president. It is a ASIC manner of constitutional law. The executive branch or the Barnett constitutional agency so we cannot tell the president what to do. You can never tell your boss what to do. You can give your boss advice and will reason judgment whether or not the boss follows that advice, that is why there is a lost sense of the president can come to us for advice and we provide that and they make the decision. As a practice of the White House to keep all [ Inaudible ]. They throw away very little in examples of common things thrown away are the log file that the computer system generates the IT security some like where did everyone go? And all the automatic log files by the IT security system and those are a significant amount of time but not the thing that comes to the national archive. Bulk mail is disposed of and they will take a sampling of public mail that comes in but we don't get every fourth-grader, the letter no longer comes to the national archives in the house to be too much of the take a sample and dispose the rest until those are things that are commonly [ Inaudible ]. But again that is up to the current administration to implement on a day-to-day basis. That is typically done by the White House office and management and responsibility for that function. The PRA also requires separation of personal materials from presidential materials and there is a definition which I will get to Charlie that says these are presidential records and anything else is personal record and segregated and not tested with the US government. In the PRA establishes a Rizzi or public access to the record beginning five years after the end of administration. Five years after Obama leaves office those records become available subject to employer request as was the case which with George W. Bush, George Bush 41, Clinton etc. etc. This is the definition of the statute of a presidential wrecker. Documentable record treatment created or received by the president and president immediate staff and essentially created or received by the office or someone who has the principle functional of advising and advising on carrying out the constitutional duties. With me so far?

>> Who creates? Not just the president himself, also it does include significant parts of the White House staff. The White House counsel office is the entity charge deciding whether your subject to PRA and crating office or FRA office. And if you are within the office of management and budget there are functions of the office that are governed by the federal record act. It is the most convoluted and confusing offices but otherwise most offices are short one or the other in if you're subject to the record act then records are available [ Inaudible ] right now. And subject to the presidential record act those in the records that come to us as primary records and become open and available five years after the administration.

>> A list of PR the components, the White House in her office and office of the vice president and this was subject to litigation a couple years ago and the vice president is [ Inaudible ] it's very strange who tries to be a fourth branch when we have this standard position like metaphorical forest branches but in or out in the office counsel and national Security Council which most of you often in the news and foreign intelligence advisory board. National economic Council, OA office of administration. If you ever correspond with people at the White House you might notice that the email address has the component associated with it and it may be 08.EOP or OMB, etc. and you can tell a lot about a person from their email address and whether or not they are in one of the offices were not. I will go back to, this is a link to the PDF file and this is guidance of the presidential record act and you can download the PDF file and it contains all the things I'm talking about right now and you can study it.

>> How is the presidential act registered? As I mentioned, it is generally up to the incumbent White House to an minister how they manage the records. We don't get involved in the day-to-day management, we provide for federal agencies standards Galatians and improve record schedules but how an agency goes about doing day-to-day record management responsibilities is that agencies dropped to figure out in the same is true of the White House. It also includes social media records. There responsibly to figure out how they capture and manage. They tell you the previous administration used a couple different tools and X1 social discovery is forensic tool for capturing social media records which they implemented and captures a ton of data and pretty reliable. They also use archive social. I don't think [ Inaudible ] and I am positive the used F1 social discovery. And we are engaged periodically in conversation about how to make sure you are managing all these things appropriately and providing high level advice. Then toward the end of the administration we engage more and more. More meetings and more coordination and for discussion of what you're doing because we will have to take all that in to the national archive and service that.

>> For social media, it was a little bit tricky. For those of you who worked with these types of files, you might be aware of challenges. If you use something like X1 social discovery, you might discover from the platform about who said and when they said it but you might not capture what it looks like. It is datafile which are useful to a social science researcher who will be mining for whatever it is. The graduate project or delving deep into language but if you want to know about how something looks, you might need a nether platform which is why archive social came in and that platform allowed the capture of more look and feel. Sometimes you trade off one type of capture for losing something. They were able to do various exports from the Obama social media comes and we do have files from twitter Facebook and find that you can download the bulk export from the Obama library website. That is a authoritative type of source and the Obama library website. We have electronic records but our repository for managing electronic records and presidential and federal and all these records were interested into that repository and not ISO compliant but I do know that and do know it is something we like to do one day that I know it does not meet that standard and those files are preserved along with other presidential records. The problem with that is is not great for regular people who want to access the files on a day-to-day basis but did exports and living in a repository and secure within the national archive it's not necessarily a link you can click on. Available for Google search etc. Google search etc. We are not providing access right now to those records and the presidential record that we provide after the administration and yes these would be open and available and no restrictions but we do have them posted on the Obama library website that no legal mandate but it makes good sense and we want to provide reasonable customer service and want people to be able to access stuff. So we do make it available but this is a challenge. Another that [ Inaudible ] pointed out which was a real problem with the capture is link short nurse. I don't know if you pay attention particular to twitter, link centers are a big thing. And if you use a pay link short and if you stop paying the link short on the link that people tweet about will not work in the data export and that is something they noticed and tried to make sure

they were getting and had gone back and made sure that they had full links rather than shortened links but this is a flaw with the data that we have.

>> So that led to a conversation about how to preserve the online account so that they were clickable and usable to the average person. And we recognize people expect things on the Internet to stay on the Internet and remain liable and alive in particular with the social media. So I have a screen capture of tweeting October 6 and this month, he asked where this account is and where did this account go and why is it not there anymore so people expect the accounts remain live. The problem is that if the account is associated with the administration of the administration is leaving office, who will keep that account live and where will the passwords be? Would you continue to let that person continue tweeting? Do they get to keep the followers with them and are the property of the government because the account was something they are doing as part of their work. All of these were led to conversations about day-to-day limitation about how to take on the accounts and what was the expectation and how can we leave something on the Internet that people can actually find what was treated by the Obama White House. The other thing to keep in mind is we didn't want to break all the other references that exist right back to the tweets or Facebook posts. And we went to have the continuity of anything out there with the public access. When an account, Obama treated -- tweeted with a common practice and the best practice to tweet under a handle that was associated with your office and then when a new person comes in because it is the change of administrator we wipe it clean? In 20 doesn't have a good activism for saying, generate 21st, new office. It allows you to make the differentiations. There was good angst about how to keep the information alive and get exports and preserve everything as well as have a continuity of a policy across the government. So the Federal records act governs what the evident government does and what the secretaries might do as they leave office in transition with all those accounts and what they may look like but again up to those cabinet level agencies to process what worked for them and they didn't have the support and backing of the high-level backing of the administration. A lot of what happened with preserving the online accounts involved White House, digital staff reaching out to twitter and Facebook and they were able to do that to get twitter and Facebook to do things for them that are not available to the regular average system and regular average government agency.

>> It is quite possible if you tweet on behalf of the government, the followers are the property of the government and you cannot take them with you when you leave office. And no matter how much you want to or brought them into start with, one of the other issues that people have is a handle that they bring it to the job and start tweeting about the job and four years have passed. And I had 10,000 followers and don't I get to take my handle and go home? And it's not necessarily in its government property overtime because you speak on behalf of the government. So I want to give you a couple links with deeper dives into these issues. In DC we hosted a couple of events involving national archives and federal agencies and social media platform. They are available on YouTube and I think you have to know the links to get to them. If you Google them you will not find them. They were a presentation open to the public and I was in one of them. But if you want to take a much deeper dive into how works on a day-to-day basis then check that out.

>> I would also recommend you look at this blog post by Corey Schultz who was a White House digital staffer and who did a lot of the coordination and made sure that all accounts actually made it to national archives at the end of the day and kept great lists of things happening in did a lot of the coordination.

>> Ultimately we did things like make sure the [ Inaudible ] remained available for the administration and migrated all the content that was from POTUS 44 and then ensure the password was changed and we have access to that password and no one else has access. Then we put a note on it that it is no longer monitored but frozen in time but everything remains available to the public and you can look at any tweets from the Obama administration. And the same is true from the first lady account number Press Secretary account and other accounts as Corey Shulman mentioned before, someone like that who is a

lower-level staffer who didn't have a high public perception or public review and those accounts came to us the same level as migration and it didn't necessarily happen. This is what a archived Facebook account looks like. This is an archive of the Obama administration. Everything is there and you can see the last post was January post was January 20, 2017. Then we have twitter and more Facebook, sorry Insta. And how do we make that happen? We have an endless number of spreadsheets and an endless number of meetings with the White House digital staff to Courtney this to make a list of what are the official accounts. And what are the handles and passwords and links, what are they transitioning to? Have we changed the passwords or told the people and it is not as though everyone leaves on January 20. We leave and there is a trickle out process that begins months before the administration and something might or someone might leave in November or left in October but how do we make sure we have the account in the password and everything switched over and exported in the archive. We started planning and very early on. Any presidential administration requires an enormous amount of planning and coordination between the White House and national archives. We are engaged constantly in planning for transition and no matter at one point that we are. Some points we have quarterly meetings in sometimes we have monthly meetings and sometimes weekly. At the end we have staff detailed to work every week and making sure the transitions happen and that was what was happening at the end for all the exports that were going to the electronic archived records and then we were also doing coordination between national archive staff and White House staff under the movement of the accounts to an archive or frozen in time status. So that the would remain on the platform. Hopefully we will view something similar going forward but it's always interesting to see how much time in the media and formats that it affects what transition looks like. One of the things we talk about with twitter, I mentioned the [ Inaudible ] account and if you look at the current administration, and look at POTUS, it is an active account and re-tweeting the at real Donald Trump account. Not though the official account is dead, it's producing content but not the first generator of content. That speaks to what content will be archived and how we get that and what is in the list of official accounts from the White House. Deleting tweets is an issue. And so a tool while X1 discovery or archive social, is going to be capturing in real time the moment you tweet something. If I tweet today, five things and delete one, and my account is enrolled in one of the platforms, the goal is because it's ongoing continues archive, the deleted tweets are there in the fact that I deleted is no longer visible on the twitter doesn't mean it's gone from the version that was captured on the platform. Twitter itself has changed its policy about deleted tweets of different companies implemented twitter policy about deleted tweets so it is important to understand how the third-party capture tool is handling we did tweets. Whether or not they are deleting them or keeping them within the account. Ultimately depends on who it is logging in and how you capture it. If you are the account owner and have the credentials with third-party platform, they are likely to be capturing and keeping the deleted tweet content. But if you are a member of the public and I want to capture everything from at POTUS and if it leads something then the third-party platform is deleted as well but you have to look at the terms and details of that platform.

>> We updated documenting the federal service which is guidance that we provide to all public officials and across all branches to make it clear that you should when you come into the government if you tweet on behalf of the government, you need to make it clear that that is what you are doing and probably want an new account that is a clean account because you don't want to be in a place where you have an argument and with the last week of employment with you can take your twitter handle with you. It is the standard policy so hopefully folks will all of that in be fewer confused end of term issues. I think that is all I have. We have about 10 minutes for questions.

>> [ Applause ]

>> [ Indiscernible - low volume ]

>> James Jacobs [ Inaudible ] University. I am wondering [ Indiscernible - speaker too far away from the mic ] [ Indiscernible - audio cutting in and out ]

>> A couple things, platforms do have export functionality into the platform and most of the time. You can export directly from twitter. That is the future they make available to everyone. Each social media has government liaison and responsible for answering the questions for every social media coordinator within the federal agency but those folks are aware of all these needs and participating in conversations in the partnership for public surface, those presentations to include representatives from the social media platform to talk about what they are able to do for government agencies when they were contacted off-line because they are able to do something and other things that the platform once itself to the skill of the account and the problem. I would say there is an ongoing conversation between the designated social media government liaison within all the companies and each agency operation.

>> Rich cross, our retreat differently held accountable preserved?

>> No. Three treat -- retweets are treated the same.

>> [ Inaudible ] University of Minnesota. Do you see any congressional movement on this? Legislation making numerous easier to try and help with the new landscape or anything like that?

>> They are are periodically those out there to and the laws all the time. I don't know there is anything that is active in the state or anything that, not a problem they are trying to fix.

>> This is actually what my next comment or question was going to be because there were a couple of [ Inaudible ] introduced fairly recently and one of them was called the [ Inaudible ] act and believe it or not the communication over various feeds electronically for engagement. And another one that was called the electronic message preservation act and my question is are these amendments to the presidential record act actually necessary or grandstanding by members of Congress?

>> I don't know anything about the first one. It is like a preowned meal child being reentered and I'm telling you that I have not looked at it recently but my general sense is all the things that the act requires happened by virtual policy, the way it was written and possible it could use new things and pretty much [ Inaudible ].

>> That is a lot of information and besides presentation, would you recommend we go [ Inaudible ]?

>> Recommend go to the local depository and speak to a reference library. There are a lot of sources you can go to. There is a lot of information out there and doing simple web searches will get you in the right direction and utilizing the government website as well and fantastic if you look at the bills for Congress,.gov is fantastic for finding the material. Also talked to academic libraries that there's a lot of resources available as well and if you do a simple web search you can find them and they will have experts as well and the biggest problem you will run into is [ Inaudible ]. The most authoritative concrete thing out there on interpretation of the presidential record act, interprets of the statute is the latest that we had to say about it and maybe 2017. Definitely.

>> Point of clarification, it looks like the act that you cite the fines what counts as a presidential record. It says it is a document like the duty of the office defined in constitutional right so does that leave out everything that would be not involving the constitutional duty of the office like anything from the president private life? Or private correspondences?

>> The act is pretty clear. In deletion between working things and personal papers. So constitutional statutory or ceremonial treatments of anything that is personal in nature is not covered by presidential act. An expectation that the material is aggregated from the official papers.

>> Suffered president had a personal twitter so all they were doing is interacting, that would not have to go [ Inaudible ]?

>> Right.

>> Some of this is actually addressed so if there's a court case that the argument was made that this is the current ministrations the court found that business was being conducted and why the presidents not able to block [ Inaudible ] so it comes down to the usage of this as well to not just [ Inaudible ] but



suspect she mentioned just the person talking to college buddies that it doesn't seem the most recent court.

>> If there are no last questions let's turn one. -- [ Inaudible ]

>> [ Conference is on break. ]