

Case Study

Lawrence Berkeley Laboratory Records: Who Should Collect and Maintain Them?

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Abstract: This article addresses the many challenges the Lawrence Berkeley Laboratory (LBL), the nation's oldest scientific laboratory, faces in maintaining its records. One of the most serious problems is the number of archival repositories which collect LBL records. The author discusses what the implications are for LBL and the archival profession in having institutional records alienated, and what safeguards are in place to protect the identification and integrity of federal records, but how those safeguards fall short of the objective in actual practice. Lastly, this article discusses one possible model for LBL to work with other archival repositories, as they build special collections which include federal records of post-World War II science.

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“While libraries have often collected public archives, this practice is to be deprecated.”
Theodore Schellenberg¹

BIG SCIENCE, THE COMPLEX of specialized instruments, interdisciplinary research teams, and facilities began at the Lawrence Berkeley Laboratory (LBL). Originally the University of California Radiation Laboratory, LBL helped transform the research, funding, and educational patterns of World War II and post-World War II scientists and their projects. The achievements of LBL, which include being the oldest of the national scientific laboratories and the home institution of more Nobel scientists than anywhere else in the world, indicate that LBL is an important center of twentieth-century science, and, therefore, an important center for records of science and science policy.²

It is the very importance of the records generated by the scientific work at LBL which has created the problem in archival management addressed in this paper. Records created at the Lawrence Berkeley Laboratory are, in fact, federal records and therefore subject to the jurisdiction of the National Archives and Records Administration. Yet the records of this federally-funded scientific research have often been sought by other archival repositories in what amounts to a clear violation of ethical guidelines for collecting records as well as disregard for the laws governing the maintenance of federal records.

The Lawrence Berkeley Laboratory was founded in 1931 at the University of California in Berkeley, and operated as an independent research center within the UC Berkeley Physics Department for ten years. Since 1941, the Department of Energy (DOE) and its predecessors—including the Manhattan Engineering District and the Atomic Energy Commission—have operated and funded LBL. Other Department of Energy national labs include Argonne, Brookhaven, Fermi, Hanford, Livermore, Los Alamos, Oak Ridge, Sandia, and the Stanford Linear Accelerator Center. Like the other national laboratories, LBL is government-owned and contractor-operated. That means that the Department of Energy owns LBL, but it is managed and operated by the University of California.

The University of California system is comprised of nine campuses, Berkeley and the University of California at Los Angeles (UCLA) being the most well known, and three national laboratories. It is important to emphasize that Lawrence Berkeley Laboratory, like Los Alamos National Laboratory and Lawrence Livermore National Laboratory, is organizationally on the same level as the nine campuses. (*Readers should note that the Lawrence Berkeley Laboratory is not a sub-unit of the University of California at Berkeley.*)

LBL has an annual operating budget of \$280 million and employs over thirty-five hundred people. The facility is stretched across 134 acres in the Berkeley hills, and the laboratory leases approximately 400,000 square feet of the University of California, Berkeley campus to carry out its research.

According to the prime contract, the records created and used at LBL are federally-owned. The contract states that “Except for the University’s fiscal and administrative records [which have now been enumerated to be ten records series]. . . title to all materials . . . shall pass directly from the vendor to the Government. . . [and] shall be the property

¹Theodore R. Schellenberg, *Modern Archives: Principles and Techniques* (Chicago: University of Chicago Press, 1956), 20.

²John L. Heilbron and Robert W. Seidel, *Lawrence and His Laboratory: A History of the Lawrence Berkeley Laboratory* (Berkeley: University of California Press, 1989) vol. 1; Peter Galison and Bruce Hevly, eds., *Big Science: The Growth of Large-Scale Research* (Stanford: Stanford University Press, 1992).

of the Government.”³ Therefore, the records of the Lawrence Berkeley Laboratory belong to the DOE and are governed by the Federal Records Act. The contract and federal law are violated if records are separated from the provenance of their originating institution without explicit permission of the DOE and the National Archives and Records Administration (NARA).

Federal agencies and management and operating contractors who create federal records are legally required to manage records according to the Federal Records Act and its subsequent regulations. LBL has attempted to manage its records according to the federal laws and regulations issued by the Department of Energy and the National Archives. LBL's records management program has existed since 1958 and its archives program was established in 1978. LBL has an Archives and Records Office staff of five career employees, and has hired professional and temporary employees to assist on specific projects such as a comprehensive records inventory. In addition, LBL has an extensive network of approximately 100 employees, who serve as Records Liaison Officers. They are trained by the Archives and Records Office to assist their divisions, departments, and research groups in complying with the Department of Energy and federal records regulations regarding the care, maintenance, transfer, and disposition of LBL records. To date, more than 20,000 cubic feet of LBL records have been transferred to the National Archives-Pacific Sierra Region and the Federal Records Center-San Francisco. With the continued success of LBL's archives and records program, the volume of records will reach 35,000 cubic feet within the next five years.

Scientists, historians, and other scholars will have a wealth of records with which to study the history of LBL and its role in the scientific community due to the close working relationship between LBL's research community and the archives and records management program. Current records are easily retrieved at the Federal Records Center-San Francisco, and promptly brought to LBL via courier. This enables the Archives and Records Office to support its mission and the information needs of Laboratory and other users. The Lawrence Berkeley Laboratory Archives and Records Office staff assists researchers in obtaining appropriate access to current records, and is available for reference assistance to anyone interested in current or non-current records.

Non-current, historically valuable LBL records must be transferred to the National Archives-Pacific Sierra Region when they reach thirty years of age. The regional archives is located five miles from the San Francisco Airport, therefore easily accessible to visiting scholars, and is midway between the University of California at Berkeley and Stanford University, so their respective faculties and students can research the records. The records held by the National Archives are open to researchers and are available in a public repository with reference personnel, finding aids, and copying facilities. The records storage facilities afford the records maximum protection against deterioration and disaster. The fact that the National Archives-Pacific Sierra Region houses the historically valuable, non-

³University of California, Contract Between the United States of America and the Regents of the University of California for the Management of the Lawrence Berkeley National Laboratory, Contract Number DE-AC03-76SF00098, 1 October 1987, Article VI, Clause 10. In the 1992 contract re-negotiation, the University of California specified records which it owned. Those records are: personnel and medical records, workers' compensation files, internal health and safety files, employee relations files, employee discipline files, employee charges of discrimination, records and files relating to wage, salary, compensation, and benefits, confidential communications of LBL with other units of the University about relations with the Department of Energy, and legal files and legally privileged documents. All other records created and maintained at Lawrence Berkeley Laboratory are the property of the U.S. Department of Energy.

current records of three Department of Energy laboratories—the Lawrence Berkeley Laboratory, the Stanford Linear Accelerator Center, and the Lawrence Livermore National Laboratory—as well as a host of other federally-funded scientific research and development facilities, makes the regional archives a significant source of scientific documentation, and provides a context for the government's role in scientific research.

According to federal laws and regulations, DOE research laboratories, like other federal government entities, must preserve adequate documentation of the organization, policies, actions, decisions, and processes of the laboratory program. This documentation includes administrative, legal, scientific, and historically valuable records. No records can be destroyed without prior authorization of the United States Archivist. Records storage facilities, micrographics efforts, storage of electronic media, and care of vital records must meet Code of Federal Regulation requirements. Audits, program reviews, federal agency assistance visits, program assessments, appraisals, and even an occasional visit from Congress's watchdog agency, the General Accounting Office, are all part of a larger structure, which assures that LBL's information resources are being adequately managed, and the laws and regulations—some of which carry criminal penalties—are being fulfilled.

During the past twenty-five years, particularly the last seven, archivists from the University of California, Berkeley, the University of Georgia, the Smithsonian, the Hoover Institute, the Library of Congress, the University of Iowa, the University of Tennessee Archival Center for Radiation Studies, the National Radiobiology Archives, and the Center for the American History of Radiology at the American College of Radiology have contacted, and in some instances successfully persuaded, LBL scientists to donate records to their repositories. In some instances, LBL scientists, engineers, and administrators have initiated the contact, and donated Laboratory records to other repositories. As federal records, Lawrence Berkeley Laboratory records may not be removed from federal custody without proper authorization, nor may they be knowingly collected by institutions without prior approval of the Department of Energy and the National Archives.⁴

The fact that so many repositories have archivists or representatives who will cross LBL boundaries in order to obtain Lawrence Berkeley Laboratory records, even though the records are federal and LBL has an institutional archives and records management program in place, raises grave questions which deserve the archival profession's attention. This paper seeks to identify and analyze some of the inherent problems associated with repositories obtaining an institution's records, particularly an institution where the records are owned by the federal government.

After analyzing key issues, a case study will be presented as a model for resolving the matters discussed. The case study shows how an institutional archives, within Federal Records Act regulations, can successfully work with another archives to assure that federal records and personal papers are cared for cooperatively to the benefit of the two institutions, the family members, and scholars. In such cases, it is important to ensure the maximum care and protection of, and access to, valuable records. The case study will highlight

⁴National Archives and Records Administration, *Proper Disposition of Federal Records and Personal Papers*, Bulletin 93-2, 13 November 1992; National Archives and Records Administration, *Personal Papers of Executive Branch Officials: Management Guide*, 1992; National Archives and Records Administration, *For the Record: Guidelines for Federal Records and Personal Papers*, revised, 1988; National Archives and Records Administration, *Scientists and Engineers: Federal Records and Personal Papers*, draft, 1993; Lawrence Berkeley Laboratory, "1.17 Archives and Records Management," *Regulations and Procedure Manual*, July 1993; Lawrence Berkeley Laboratory Administrative Memo, Policy and Procedure, "Retention of LBL Records and Personal Papers," 20 February 1990.

what I call complementary archives, towards which I believe modern archival and manuscript repositories need to move.

Discussion of the Key Issues

What is a record? What are personal papers? What are non-record materials? Who owns each of these, and what are the regulations pertaining to each of these types of materials?

See Table 1 for a summary of certain federal records management laws. According to the Federal Records Act,⁵ records are documentary materials, regardless of format, if they are (1) made or received by a federal agency in pursuit of conducting public business; and (2) "preserved, or appropriate for preservation, as evidence of agency activities or because of the value of the information they contain."⁶ Federal agency heads are delegated the power to determine what is a record and what is not a record. A federal agency can request assistance from the National Archives and Records Administration, and NARA can advise the agency, but only the agency is delegated the authority to make the determination.

Non-records include: extra copies of documents that are not annotated, library publications, vendor catalogues, and raw stock forms. These records may be removed with the permission of the agency. Under regulations in the Federal Property Management Regulation (FPMR) Bulletin B-106, "Government officials may be permitted to retain extra copies [of documents], provided that retention would not (1) diminish the official records of the agency; (2) violate confidentiality required by national security, privacy, or other interests protected by law; or (3) exceed normal administrative economies."⁷ This is the gray area that agencies, and the National Archives in advising agencies, use to allow documents to be removed from federal custody. If one cannot withstand the political heat in determining a record, one simply states that the documentary materials are non-records. Agencies are permitted to give non-record material to departing officials and scientists, and those materials can become a part of their personal papers.

"Personal Papers are (1) papers accumulated by a person before joining government service; (2) materials related solely to the person's private affairs, such as those connected with family matters, political party, or church affiliations; and (3) diaries, journals, or other personal notes that are not prepared or used to transact government business."⁸ Employees are strongly advised to retain personal papers separately from federal records. Where the personal papers are in file cabinets at a federal facility, the filing drawers or shelves and the folders should be clearly marked, "Personal Papers."

⁵The Federal Records Act is written in 44 U.S.C., chs. 29 and 31. For a provocative discussion on the limitations and alternative definitions of what constitutes a record, archivists are encouraged to read United Nations, *Management of Electronic Records: Issues and Guidelines* (New York: United Nations, 1990), 19–20. The United Nations defines records as "documentary materials, regardless of physical type, received or originated by the United Nations, or by members of its staff...." The United States Government definition of a record as an "item that documents the actions of an agency in the conduct of its business" is broader but may require interpretation by employees. The United Nations report continues by saying, "Content-based definitions have proved impractical...."

⁶General Accounting Office, *Federal Records: Document Removal by Agency Heads Needs Independent Oversight* (GAO/GGD-91-117, August 1991), 2; General Accounting Office, *Federal Records: Removal of Agency Documents by Senior Officials Upon Leaving Office* (GAO/GGD-89-91, July 1989).

⁷General Services Administration, *Federal Property Management Regulation (FPMR) Bulletin B-106*, 30 October 1980.

⁸General Accounting Office, *Federal Records: Document Removal by Agency Heads*, 3.

Table 1. Highlights of Federal Records Management Laws as Related to This Article

<p>44 U.S.C. Chapter 21</p> <p><i>National Archives and Records Administration</i></p> <ul style="list-style-type: none">● Acceptance of records for historical preservation.● Responsibility for custody, use, and withdrawal of records.
<p>44 U.S.C. Chapter 29</p> <p><i>Records Management by the Archivist of the United States and by the Administrator of General Services</i></p> <ul style="list-style-type: none">● Definitions.● Objectives of records management.● Custody and control of property.● General responsibilities for records management.● Retention of records.
<p>44 U.S.C. Chapter 31</p> <p><i>Records Management by Federal Agencies</i></p> <ul style="list-style-type: none">● Records management by agency heads; general duties.● Charged to make and preserve records containing adequate and proper documentation.● Establishment of a program of management.● Transfer of records to the records centers.● Establishment of safeguards against the removal or loss of records.● Unlawful removal, destruction of records.
<p>44 U.S.C. Chapter 33</p> <p><i>Disposal of Records</i></p> <ul style="list-style-type: none">● Definition of records.● An inventory of the records in the agency's custody.● Establishment of a system for the appropriate identification, selection, appraisal, and scheduling of records.
<p>5 U.S.C. Section 522</p> <p><i>Freedom of Information Act (FOIA)</i></p> <ul style="list-style-type: none">● Federal agencies required to make information available to the public about agency rules, opinions, orders, records, and proceedings.● Information must be made available for public inspection or copying.● Withholding of information by the Federal government is permissible, but must be justified by one of nine specific exemptions.
<p>5 U.S.C. Section 522a</p> <p><i>Privacy Act</i></p> <ul style="list-style-type: none">● Limits the disclosure of personal information to authorized persons and agencies.● Requires the maintenance of accurate, relevant, timely, and complete records.● Requires the use of administrative, technical, and physical safeguards to ensure the security and integrity of records.

The government, of course, does not own personal papers. Regulations allow individuals to remove photocopies of federal records, if the cost is not prohibitive and the records are not lessened in value if photocopied. Non-records can be removed with the permission of the agency and the National Archives.

The Federal Records Act and the Records Disposal Act of 1943, as amended, prescribe what is to occur if records are removed from federal custody.⁹ Agency heads are required to establish programs and procedures to prevent the alienation of records. Agency officials who are aware of unlawful removal of records are to secure the records, or ask the assistance of the U.S. Archivist in obtaining the assistance of the Attorney General. If the agency head does not act in a timely manner in recovering the records or in asking for assistance, the U.S. Archivist can initiate recovery actions.

As stated in "Scientists and Engineers: Federal Records and Personal Papers," published by the National Archives in 1994, "It is important that you understand the legal requirements that apply to Federal records because substantial penalties have been established for their willful mismanagement. Federal records management requirements are contained in 44 U.S.C. Chapter 31, and penalties for concealment, *removal*, or mutilation of records and reports are stated in 18 U.S.C. Chapter 101 Section 2071. The penalty for concealment, *removal*, or mutilation, obliteration, falsification, or destruction of records is a fine of not more than \$2,000 or imprisonment of not more than three years, or both, in addition to forfeit of office and disqualification from holding any office in the United States."¹⁰

Additionally, 18 U.S.C. §641 prohibits individuals from embezzling, stealing, or knowingly converting *any government record or thing of value* to their own or another's use. According to the analysis of the General Accounting Office, "the government retains a continuing interest in removed documents if they are (1) records or (2) non-record materials that were not authorized to be removed. In either case, the government may sue to retrieve the materials."¹¹

Have the fundamental archival concepts of provenance, organic wholeness, and integrity of the records become secondary to "archival avarice"?

It is critical to administrative decision-making, public policy, and historical research to maintain the integrity of a body of public records; in archival terms, to respect its provenance and the provenance of the originating institution.¹² The tendency to turn LBL records series into manuscript collections destroys the provenance of the records. The inclusion of LBL records among collections of selected personal papers handicaps current LBL administrative uses of the records, separates the records from the body of scientific work in which they were created, and removes them from their larger context within federal programs and activities, as well as the network of scientific establishments and other national laboratories. This mishandling may be detrimental to scholarly research because the provenance and order of the records has been violated.

In addition, many of the scientists working at scientific research laboratories work in teams, spend segments of their careers in other laboratories, hold numerous appoint-

⁹Records Disposal Act of 1943, as amended, 44 U.S.C., ch. 33.

¹⁰National Archives and Records Administration, *Scientists and Engineers: Federal Records and Personal Papers*, draft, 1993 (emphasis added); 44 U.S.C., ch. 31; penalties are stated in 18 U.S.C. §2071 and 18 U.S.C. §641. Two court cases that provide amplification on these matters are *United States v. Rosner*, 352 F. Supp. 915 (S.D.N.Y. 1972) and *United States v. DiGilio*, 538 F.2d 972 (3d Cir. 1976).

¹¹General Accounting Office, *Federal Records: Document Removal by Agency Heads*, 15.

¹²Schellenberg, *Modern Archives*, 174–93; James M. O'Toole, *Understanding Archives and Manuscripts* (Chicago: Society of American Archivists, 1990), 36, 55–57, 58 and 65; Fredric M. Miller, *Arranging and Describing Archives and Manuscripts* (Chicago: Society of American Archivists, 1990), 10–30; related to provenance is the issue of "sanctity of evidence," espoused by Hilary Jenkinson, *A Manual of Archival Administration* (London: P. Land, Humphries, 1937), 20–21.

ments at research, industrial, or educational institutions, or participate in multi-institutional collaborations.¹³ In order to properly document the research conducted at a particular facility, it is essential that the records produced by scientists, individually or in teams, remain an integral part of the documentation created by the facility. Similarly, records generated by laboratory administrators, many of whom may also have held posts as scientists or professors, are the records of the research facility, not the papers of individuals. Specifically, Lawrence Berkeley Laboratory, as required by the Department of Energy, makes this explicit in a patent agreement which each new employee must sign as a condition of employment. This patent agreement has been required of all new employees since the late 1940s.

It is important that the records generated by individuals employed at LBL remain part of LBL's documented history. For the sake of scholarship, it is the integrity of the Laboratory's records that is at risk through the separation of an individual scientist's records from their originating context, not the integrity of a relatively few manuscript collections. One repository, particularly interested in obtaining a few premium accessions of records from LBL, wrote in a memorandum that their repository "is not interested in becoming the repository for *all* papers of LBL. We have neither the space, staff, nor the interest in such a mammoth undertaking."¹⁴ Selectively separating LBL records to make artificial manuscript collections, however, is not in the best interest of scholarship, documentation, or public accountability. It is reminiscent of earlier decades, when manuscript libraries collected only the records of white, wealthy males and did not perceive a responsibility for their holdings to mirror the functions and activities of the larger society. This is a particularly significant issue in the identification, appraisal, preservation, and use of the records of Big Science.

If the records of only the nine Nobelists at the Lawrence Berkeley Laboratory are worthy of collection and preservation, a very distorted picture of post-World War II Big Science emerges. Indeed, America has a romantic ideal about the lone scientist working at his bench, but that image denies the reality and complexity of federally-funded Big Science. Big Science requires thousands of employees, elaborate bureaucracies, and numerous participants, as well as the ever-present overseers who are providing the funding. To remove selected records from this immense web is to denigrate the work of those collaborating with key scientists, as well as to deny the genius, perseverance and accomplishment of the notables. In some instances, the documentation demonstrates that these

¹³For further information, see *AIP Study of Multi-Institutional Collaborations, Phase I: High-Energy Physics* (New York: Center for History of Physics, American Institute of Physics, 1992). When LBL scientists participate in multi-institutional collaborations, the records created, received, and maintained are federal records. As such, the records are to be retained according to appraisal guidelines in authorized retention schedules. Much of the AIP's work concentrates on the lack of a single owner or responsible party and how records of multi-institutional collaborations are "decontextualized records," as Stephen C. Wagner of the History of Science Collections, University of Oklahoma, has called them.

¹⁴Memo from Roger Hahn, professor of the history of science at UC Berkeley to Arthur L. Norberg, head of the History of Science and Technology Office at the Bancroft Library, then on sabbatical with the National Science Foundation, 23 May 1979 (emphasis added). Hahn was faculty advisor to the History of Science and Technology Office and was responding to a letter from Norberg to Andrews Sessler, director of the LBL, 7 May 1979. Norberg requested that LBL transfer all historically valuable records to the Bancroft Library because the National Archives and DOE were not prepared to care for the records. Norberg wrote to Hahn on 7 June 1979, "As long as people delay enacting some inalterable system, we – The Bancroft – stand a better change to obtain many more of our goals. We are organized. They [LBL, the Department of Energy and the National Archives and Records Administration] are not. We know our desires. They have yet to appreciate theirs. We can act quickly. They cannot." Lawrence Berkeley Laboratory, Archives and Records Office.

individuals accomplished what they did in spite of the elaborate bureaucratic system they had to manage. In contrast to collecting only the records of the Nobelists, the Lawrence Berkeley Laboratory Archives and Records Office is bound by LBL directive, and the National Archives is bound by statute, to preserve and make accessible all historically significant records. In addition to the regulations, there is a professional consideration to maintain the provenance and the integrity of the records.

There is another issue embedded here. To remove the records of the notable scientists and leave the perceived "unspectacular records of the Laboratory" with the institution's archives and records office is to terminally impoverish the program. Just as manuscript libraries benefit from "magnet collections" that attract benefactors, grants, researchers, and public information attention, institutional archives must also have significant records to remind subsequent generations of directors and administrators that they have a legacy that must be preserved and protected.

Currently, two archival repositories, in addition to Lawrence Berkeley Laboratory Archives and Records Office, hold the records of Dr. John H. Lawrence. John Lawrence, the brother of the Laboratory's namesake, Ernest O. Lawrence, joined Ernest at LBL in 1936 and became a critical participant in the development of nuclear medicine. LBL has thirty-three cubic feet of records of John Lawrence, plus over 1,200 cubic feet of inactive records that were created by the division that John Lawrence headed. One repository has ten linear feet of Dr. Lawrence's records, which Dr. Lawrence permitted them to use while a researcher was writing a history of nuclear medicine. Another repository has 2.5 linear feet, which Dr. Lawrence had in his office while he served as a research fellow when he was at a "think tank organization." It appears that neither of the two repositories have deeds of gift granting them permission to retain the records, some of which are federal. Archival avarice is not a productive behavior in professional archival administration. Archival administration and collection policy should not be guided by the cliché "Possession is nine-tenths of the law."

How can there be democratic accountability if federal records are removed from their context? Is the concept of the rule of law firmly grounded in the archival community? What if one disagrees with the laws? What are an archivist's obligations?

The United States of America's governmental system is based on democratic accountability. There can be no democratic accountability if there are not complete and accurate records. Documenting the public's business is too important to permit records to be "merely an accident of custody."¹⁵ Only through creating and maintaining "trustworthy records" with an unbroken chain of custody can an organization assert what actions took place and were legitimately authorized. Only in creating records in the normal course of business and in maintaining those records properly can an entity, public or private, substantiate itself before its stakeholders, citizens, a court, or any oversight body.¹⁶

The need for public record keeping is critical. As is stated by the General Accounting Office, and well known by archivists:

¹⁵Megan Floyd Desnoyers, "Personal Papers," in *Managing Archives and Archival Institutions*, edited by James Gregory Bradsher, paperback edition (Chicago: University of Chicago Press, 1991), 79; and Richard C. Berner, "Archival—Records Management Relations," *Archival Theory and Practice in the United States: A Historical Analysis* (Seattle: University of Washington Press, 1983), 178–80.

¹⁶Donald S. Skupsky, *Recordkeeping Requirements: The First Practical Guide to Help You Control Your Records...What You Need to Keep and What You Can Safely Destroy!* (Denver: Information Requirements Clearinghouse, 1991), 140–42.

The proper creation, maintenance, and disposition of federal records is critical to (1) protecting the legal, financial, and other interests of the government; (2) ensuring continuity and consistency in administration of the government; (3) assisting agency officials and their successors in making informed decisions; and (4) providing the information required by Congress and others for overseeing agency activities....Improperly removed records deprive the government of information needed to reconstruct the development of policies, understand actions taken, and record accomplishments.¹⁷

In the past six years, the Lawrence Berkeley Laboratory has needed to substantiate its involvement with Operation Crossroads, a series of nuclear test blasts in which army personnel and Marshall Islanders were exposed to radioactive fallout. LBL must also substantiate what role it played in nuclear blasts and monitoring at the government's Nevada Test Site. LBL has also been asked to substantiate its role in disposing radioactive waste off the Farallon Islands, the waters around which are now the largest marine sanctuary in the world. Recently, LBL and all DOE sites and contractors were directed to determine their roles in human radiation experiments since 1936. In fact, the Human Radiation Experiment Records Search and Retrieval Project more than doubled the Archives and Records Office budget, and the new staff had to review and inventory over seven million pages of LBL documentation. One current lawsuit which will require the review of scientific records is for \$110 million!¹⁸

Other major records searches demonstrated that LBL could not have been named a "potential responsible party" in a multi-million dollar Superfund site. Another record search provided evidence to state regulators that won the right for LBL machine shops to continue operating and therefore continue to build scientific instruments. In each of the instances so far, being able to find the contemporaneous records of LBL, which were cared for and maintained in the normal course of business with an unbroken chain of custody, has helped to establish that the records were trustworthy and supported LBL's position.

¹⁷General Accounting Office, *Federal Records: Document Removal by Agency Heads*, 3.

¹⁸For background information on these issues see John F. Ahearne, "Fixing the Nation's Nuclear-Weapons Plants," *Technology Review* 92 (July 1989): 24-29; Howard Ball, "Government Failure to Take Due Care in a Risky Technology and the Question of Redress," *Public Administration Review* 52 (May/June 1992): 281-87; Naomi Caiden, "Budgeting for Time-Bombs: Recent General Accounting Office Reports on the Crises of the Nuclear Weapons Complex and the Savings and Loan Industry," *Public Budgeting and Finance* 9 (Winter 1989): 83-93; Mark Crawford, "Weapons Legacy: A \$110-Billion Mess?" *Science* 241 (8 July 1988): 155; Kenneth R. Feinberg, "In the Shadow of Fernald: Who Should Pay the Victims?" *Brookings Review* 8 (Summer 1990): 41-46; Irwin Goodwin, with reporting by Corey S. Powell, "Perils of Aging U.S. Weapons Plants Stir Outrage and Fear of A 'Time Bomb'," *Physics Today* 41 (November 1988): 49-50; Peter Gray, "Will the Department of Energy Finally Stop Nuking America?" *The Washington Monthly* 22 (April 1990): 38-46; Minard Hamilton, "Body Snatchers," *Mother Jones* 16 (July/August 1991): 15-16; Stephen J. Hedges with Sharon F. Golden, "Messing Up the Nuclear Cleanup: The Department of Energy and its Consultants are Over Budget and the Real Work Has Hardly Begun," *U.S. News and World Report* 108 (19 February 1990): 26-28; Gregg LaBar, "Can DOE Clean House at Its Weapons Plants?" *Occupational Hazards* 51 (October 1989): 89-94; Eliot Marshall, "DOE's Guide to Weapons Plant Spills," *Science* 242 (16 December 1988): 1500-1501; James E. Martin, "Nuclear Weapons Complex: What Went Wrong?" *Forum for Applied Research and Public Policy* 6 (Spring 1991): 6-15; David C. Morris, "Revamping the Atomic Archipelago," *Government Executive* 23 (June 1991): 46-49; Dick Russell, "In the Shadow of the Bomb: Cleaning Up After the Bomb," *The Amicus Journal* 12 (Fall 1990): 18-30; Keith Schneider, "Hanford Radiation Peril Is Assessed," *New York Times*, 12 July 1990; United States Senate, Committee on Governmental Affairs, *Early Health Problems of the U.S. Nuclear Weapons Industry and Their Implications For Today: Report of the Majority Staff*, December 1989; Douglas Pasternak and Peter Cary, "Department of Horrors," *U.S. News and World Report* 116 (24 January 1994): 47-51.

Time and time again, retaining proper and adequate documentation has served LBL's interests.

When records are not treated as federal records, it gives the impression that they are the personal property of an individual, and the individual can destroy any or all of what he or she wishes; take them home, hold them for decades and allow the family to dispose of the records when the scientist or administrator dies; sell the records to the highest bidder, which is currently the state of one Nobelist's records; or donate the LBL records to a repository of the person's choosing. When records take this diversion, their survival is far from guaranteed, and, if, per chance, they are deposited in an archives of the person's choosing, there is no assurance that the creating organization will know where the records were deposited or whether the government will have access to them. Furthermore, the hope that the records will be adequately appraised, arranged, and described, and enjoy the support of knowledgeable reference services, is also greatly diminished, because Big Science records are complex, and because archivists in the estranged/unconnected repository may know little or nothing about the larger research and organizational context, function, and purpose of the records. Lastly, it has been found that individuals donating government records often place access restrictions on the records as if they were their personal property, subverting the provisions of the U.S. Freedom of Information Act and/or, possibly, the U.S. Privacy Act.

Archivists have worked arduously for decades alongside historians, librarians, scholars, scholarly societies, and professional groups to craft good legislation and regulations to identify, protect, and make accessible, valuable public information. The National Archives itself was born out of a concerted effort by many groups and individuals to construct a comprehensive records system that would protect the nation's federal records.¹⁹ How is it that, several decades later, there are archivists who are not aware of these efforts, and who appear to believe that the proper response to laws and regulations that do not serve their interests is to ignore them? Truly, if archivists believe that they should be allowed to obtain federal records, why aren't these individuals raising the issue through professional associations, obtaining peer review and input, and working on the issues through the profession's legislative initiative panels? To push the issue one step further, if obtaining federal records outside of federal custody is against the law (complete with criminal penalties), why are the key professional organizations so reluctant to raise the issue and bar professional association entrance and leadership positions to archivists who are known to orchestrate the alienation of federal records? Is the archival profession slipping from one that actively assists in forming good archives and records public policy to one that practices acquiescence in allowing some to do what they wish? Such seems to be the case in what David Bearman observed in the *Armstrong v. Executive Office of the President* case. Bearman notes that the plaintiffs in the Armstrong case included:

The National Security Archive, the Center for National Security Studies, the American Historical Association, the American Library Association, and several individuals, including former U.S. Senator Gaylord Nelson. The case for the plaintiffs [was]

¹⁹O'Toole, *Understanding Archives and Manuscripts*, 33–37; Berner, *Archival Theory and Practice in the United States*, 11–23.

argued by Alan Morrison of Public Citizens Litigation Group and Kate Martin of the American Civil Liberties Union Foundation. *Where is the SAA?*²⁰

What do archivists believe is appropriate about assisting individuals in taking personal income tax deductions for the donation of valuable federal records? The Internal Revenue Service wrote a lengthy opinion on the matter for the General Accounting Office, stating that there were to be no tax benefits for donated federal records. It is not likely, however, that manuscript curators accepting the donation would acknowledge the documentary materials as federal records; rather, they would identify the materials as personal papers or possibly non-records.²¹

I strongly encourage archivists and manuscript curators to read, research, and analyze statutes, regulations, case law, and contracts.²² The profession must analyze its activities in this area and take a stronger stand to reverse the perception that placing federal records in non-federal repositories is tacitly condoned. We need to be a profession that firmly believes in the rule of law, to the degree that those who break the law do not become office-holding leaders of the professional archival associations, or obtain grants or other related rewards and recognition.

What are the legal obligations of the Department of Energy and the National Archives when they know of records being alienated? Why are the Department of Energy and the National Archives tacitly allowing federal records to be alienated? If the National Archives and a federal executive branch department will not pursue the issue, is it likely or productive for the LBL archivist or records manager to insist on the protection of federal records?

Every complex, protracted organizational issue will have, as its root cause, the lack of effective leadership to resolve the problem. Halting the flow of alienated federal records has certainly been stymied by the historical lack of effective leadership. Laws and regulations are in place, criminal penalties are in place, agency guidelines are in place, and procedures for escalating unresolved cases are in place; however, when it comes to the point that records are being alienated or have been alienated, responsible officials at the Department of Energy and the National Archives timidly say that no one will listen to them. No one in either agency sees it as their charge to promote or impress upon higher-level policy makers that federal records hold a basic and fundamental democratic value to the citizens of this country.

How are these roles and responsibilities officially delineated? The National Archives, according to the Federal Records Act, as amended by the National Archives and Records Administration Act of 1984, shares federal records management with the General Services Administration. The National Archives is to assist federal agencies in “(1) ensuring adequate and proper documentation of the policies and transactions of the federal government and (2) ensuring proper records disposition.” Individual agencies, like the Department of Energy, are required to: make and preserve records; establish a records management pro-

²⁰David Bearman, “The Implications of *Armstrong v. Executive [Office] of the President* for the Archival Management of Electronic Records,” *American Archivist* 56 (Fall 1993): 689 (emphasis added).

²¹General Accounting Office, *Federal Records: Document Removal by Agency Heads*, 29–30.

²²Gary M. Peterson and Trudy Huskamp Peterson, *Archives and Manuscripts: Law* (Chicago: Society of American Archivists, 1985), 10. “The archivist must be aware of the context of laws in which the archival institution operates and must take prudent steps to understand the laws that affect records.”

gram; establish safeguards against the removal or loss of records; and initiate action through the Attorney General to recover unlawfully removed records.²³

To lessen the risk of political turmoil when a prominent official or scientist wishes to take federal records as personal property, some employees of the National Archives have learned how to emphasize the non-record value of records, and write reports emphasizing the presence of small amounts of personal papers to make it appear that little or no federal information is lost if records are removed from federal custody. This has happened to several major accessions of Lawrence Berkeley Laboratory over the past thirty years. In each instance, public interest has been severely damaged. The recent allegations made against the Department of Energy for inappropriately experimenting on human subjects without their consent, contaminating the atmosphere, land, and water, and harming public health in numerous states have demonstrated that key sets of records, critical to addressing these problems, are in non-federal archival repositories. In the case of the Human Radiation Records Search and Retrieval Project, the Department of Energy paid \$36,000 of taxpayer money to microfilm federal records in non-federal repositories.²⁴

In another situation relating to a significant body of records that is approximately 750 linear feet, two federal lawsuits are pending which name a prominent scientist. The great preponderance of the records in his possession are federal records emanating from his nearly fifty-year career as both a federal official and as scientist and administrator at a federally-owned and contracted national laboratory. Certainly these records will be valuable in the proceedings, and the Department of Energy legal counsel will need to review them. The scientist is, however, quite prominent. The Department of Energy and the Na-

²³For archivists who are concerned that federal agencies are required to establish records management programs and not archives, I recommend Berner's appendix on "Archival—Records Management Relations," in *Archival Theory and Practice in the United States*, 178–80. Berner gives us several notable quotes in his writing on the subject. One of the most significant quotes is: "It is well to bear in mind that records management was invented by the National Archives to control the life cycle of records. *Archival management is one end product of a comprehensive records management program.*" (emphasis added).

The Federal Records Act, as amended, 44 U.S.C., chs. 29 and 31 and the Records Disposal Act, as amended, 44 U.S.C., ch. 33, "44 U.S.C. §3303a and 44 U.S.C. §3314 prohibit the destruction or removal from Government custody of any federal records without the approval of the Archivist of the United States; 44 U.S.C. §3105 requires heads of federal agencies to establish safeguards against the removal or loss of records; 44 U.S.C. §3106 requires heads of federal agencies to notify the Archivist of the United States of any actual, impending, or threatened unlawful removal, alteration, or destruction of records in their custody. The Archivist will assist agency heads in initiating action through the Attorney General of the United States for the recovery of records unlawfully removed. If no notification occurs within a reasonable time, the Archivist will request action by the Attorney General and so inform the Congress." National Archives and Records Administration, *Proper Disposition of Federal Records and Personal Papers*, Bulletin 93–2, 13 November 1992. The Department of Energy's general lack of compliance in recordkeeping matters is documented in the National Archives and Records Administration, *Evaluation of the Records Management Program of the Department of Energy*, December 1988; specifically, the General Accounting Office summarized NARA's findings by stating: "In 1988, NARA evaluated DOE's records management program and found over 30 specific deficiencies. Specifically, NARA found that DOE had given insufficient attention to sound records management principles and practices, especially in the areas of documenting decisions and activities, inventorying and scheduling records, educating its employees, and protecting its records from removal. These problems continue to exist at DOE." General Accounting Office, *Department of Energy Management: Better Planning Needed to Correct Records Management Problems* (GAO/RCED 92–88, May 1992).

²⁴In May 1981, National Archives and Records Services archivists reviewed sixteen accessions of LBL scientists' federal records at The Bancroft Library. The archivists were not familiar with LBL's recordkeeping patterns, or with its existing documentary materials, yet they attempted to determine which were federal records and which were personal papers. Errors were made in declaring some of the records to be personal papers. Budget proposal from Lawrence Berkeley Laboratory, Archives and Records Office to the Department of Energy, Office of Human Radiation, 12 August 1994.

tional Archives officials are convinced that they do not have the political clout to say to this scientist that the records should remain in federal care. It is frequently said that "too much political capital would be spent in the effort and the National Archives and the Department of Energy could not win." The federal records are moving at great speed to a non-federal repository. Since the records are perceived to be personal property, the scientist's support staff also determines which should be destroyed and destroy those they wish.²⁵ Interestingly, the accepting institution acknowledged the presence of Lawrence Berkeley Laboratory records in its accession announcement.

If archives and records management leadership in the National Archives and the Department of Energy take this position, is there any reason that an archivist or records manager at a contracting laboratory is going to challenge the creating scientist, LBL management, Department of Energy local operation's offices, Department of Energy headquarters, the National Archives Agency Services Branch, the Office of the U.S. Archivist, and the Department of Justice in order to stop the flow of federal records to non-federal repositories?

The bureaucracy is overwhelming. Each official in the chain of command must be educated and persuaded that there is sufficient harm in having a body of records alienated to the point that they are willing to carry the issue to their superior who must also be educated and persuaded. (See Table 2 for the reporting hierarchy.) Every layer of the bureaucracy has a solid veto power. If one feels strongly that the official is not exercising his or her administrative duty, one can contact the Inspector General of either federal entity, or possibly contact interested Congressional representatives. Should such subterfuge ever be discovered however, the archivist should be willing to terminate his or her position because he or she will not be a trusted member of the institution's management team, or of the scientific community during his or her remaining tenure. Whistle-blower protections are irrelevant when fledgling archival programs need management support and financial resources.²⁶

The only hope in cases like these is that the Department of Energy headquarters would provide a professional and impartial review in determining that the documentary

²⁵Appraisal and Disposition Branch Analyst, Office of Records Administration, National Archives and Records Administration, *Report on the Records of Glenn T. Seaborg*, December 1992. In this particular records review, the National Archives took the position that since a few pieces of the scientist's correspondence were sent to the Laboratory Director, and the Laboratory Director's office filed it in their correspondence files, that served as proof to the National Archives that the scientist's records were duplicative and therefore non-records. Therefore, the National Archives discounted all the other records in the accessions reviewed, declared them to be non-records as well, and advised the Department of Energy that the scientist's records could be sent to a non-federal repository. By such logic, the Laboratory Director's files could also be declared non-records because a few pages he created were filed in the records of the Secretary of the U.S. Department of Energy. Such analysis and reasoning makes an archivist fear for the documentary legacy of the nation and for documentary evidence that accounts for the use and discretion of public funds. The National Archives and Records Administration also declined to provide copies of their appraisal report despite repeated requests. Loretta L. Hefner, Lawrence Berkeley Laboratory Archives and Records Office, *Draft Report on the Records of Glenn T. Seaborg*, December 1992; "Glenn Seaborg Target of Class-Action Suit," *Oakland Tribune* 22 July 1994; *Craft v. Vanderbilt*, No. 3:94-0090 (MD Tenn. 1994) as discussed in Carol Pogash, "Chain Reaction: An In-House Activist Prepares Lieff, Cabraser & Heimann for Two Radiation Class Actions," *California Lawyer* 15 (March 1995): 48-52, 90. The Department of Energy contracted with History Associates, Incorporated for over \$250,000 to determine which records were classified, which were federal records, and which were personal papers. The assigned project archivist reported that History Associates, Incorporated did not have a consistent enough definition of what was a record to make the determination.

²⁶Marcia P. Miceli and Janet P. Near, *Blowing the Whistle: The Organizational and Legal Implications for Companies and Employees* (New York: Lexington Books, 1992), 224-28.

Table 2. Hierarchy in Reporting Alienated Federal Records

U.S. Department of Justice
U.S. Archivist
U.S. Department of Energy Records Officer
U.S. Department of Energy Operations Office Records Officer
U.S. Department of Energy Laboratory Site Officer
Laboratory Director
Laboratory Associate Director
Division Head
Department Head
Laboratory Archivist

materials are records. As of January 1993, the Department of Energy headquarters, for the first time, hired a recognized professional archivist and records manager to lead the DOE records program. However, it is reported that the DOE records officer and her able assistants have no clout or management support. Furthermore, the professionals at DOE headquarters are required to work through a network of local operations offices. The regional offices do not have professional archivists or records managers, rather they employ individuals who have attended occasional workshops and who most likely have many other generalist duties. It is also important to understand that professional laboratory archivists and records managers are not allowed to address problems directly with the professionals at headquarters.²⁷ They are required to follow "chain of command" and work through the non-professionals in the regional DOE office. Some in the National Archives, while trained, seem inclined to avoid the discord with their management and prominent scientists, laboratories, the Department of Energy, and repositories wishing to collect federal records, that could arise from their efforts to protect these records.

This situation parallels *Armstrong v. the Executive Office of the President*, where the plaintiffs' only recourse to preserving the electronic mail system of the Reagan/Bush White House was to sue the Executive Branch, including the National Archives, for its lack of care in retaining the information. The courts firmly ruled for the plaintiffs. There are many critical similarities between this case and the loss of federal records which I am discussing. Must one sue the federal government in order to stop the loss of federal records? I strongly recommend that those interested read David Bearman's article, "The Implications of *Armstrong v. the Executive Office of the President* for the Archival Management of Electronic Records" in the Fall 1993 *American Archivist*.²⁸

In his review of the case, Bearman stated that if archivists do not step forward in an intelligent, articulate way, providing leadership in the electronic records arena, our professional identities, future careers, and roles in information care in the next century are in jeopardy. I would slightly amend Bearman's argument by saying his warning is applicable whether the records are in electronic form or textual form. There needs to be a fundamental shift in the way archivists perceive themselves in organizations. Archivists need to provide front-line leadership. They need to step forward and converse with organizational decision-makers about the long term issues of the care, ownership, and disposition of records. Despite the organizational discomforts, it is detrimental for archivists to play it safe and take orders, thereby letting the documentary heritage be squandered for perceived short-term organizational gain.

It is also clear that stronger archivists *alone* will not prevail in stopping the alienation of records. Federal departments must exercise their administrative discretion in a more

²⁷Loretta L. Hefner, "Building an Effective Partnership Between the U.S. Department of Energy and Its Contractors in Order To Create and Sustain Quality Records Management Programs," Address delivered to the Department of Energy Annual Records Officers Conference, 20 June 1994, Charlotte, North Carolina. Professional archivists and records managers, among the DOE contractors, reported their frustration in not having access to professionals at DOE headquarters to resolve complex records concerns.

In one situation, the LBL Archivist and Records Manager was told to "move out of the way" because the determination to send federal records created by a prominent scientist "was a political decision."

²⁸Caution must be exercised in thinking that judicial intervention will deliver a positive, rational, balanced public policy on this matter. I recommend that those considering such alternatives consider Jeremy Rabkin, *Judicial Compulsions: How Public Law Distorts Public Policy* (New York: Basic Books, 1989).

effective fashion, and the National Archives must change its fundamental course if federal records are to be identified, selected, preserved, and made accessible.²⁹

What kind of partnership does the National Archives have with the national laboratories in the care and disposition of federal scientific records?

In 1982, Joan Warnow-Blewett wrote the following in the conclusion of a three-year study of recordkeeping practices at the DOE national laboratories:

We planned to show the laboratories that their records were both valuable and endangered. We had to prove these same things to the National Archives and, in addition, prove that some of its guidelines and policies were contributing to the problems....In short, while agencies can rely on the National Archives for knowledge of basic archival and records management principles, we conclude that it is important to realize that the National Archives lacks knowledge of scientific institutions and their work.

From 1987 to 1992, the National Archives had a cadre of employees who tried to reverse the agency's history of benign neglect concerning the records of the DOE and its predecessor agencies. The NARA employees tried to inform National Archives' leadership about significant federal records outside NARA's care. During those years, the National Archives was working with laboratory archives and records managers to meld federal recordkeeping requirements with the realities of the scientific culture and organization so significant federally-owned scientific records would be retained in the National Archives. The NARA employees interviewed scientists, understood the national laboratory cultures, and learned that national laboratories were created to mimic universities so scientists could concentrate on science and not perceived bureaucratic encumbrances such as files management. What distinguished this cadre of archivists at the National Archives was that, while the scientific records were often unseemly, they took the time to understand the contextual value of the records. Building an effective partnership with the National Archives during those years was supported by laboratory management, because the archivists spoke to the value of scientific records.³⁰

²⁹Kenneth Culp Davis posits that the greatest administrative discretion any public official or administrator ever has is the discretion to *not act*. This theme has been touched on in over twenty books which he has authored. One such volume is *Administrative Law: Case, Text, and Problems* (St. Paul, Minn.: West Publishing Company, 1977), 441–42.

³⁰The most comprehensively researched and carefully formulated review on the care and maintenance of records at the DOE laboratories remains Joan Warnow-Blewett, *Documentation of Postwar Physics* (New York: American Institute of Physics, 1982). Particularly see "Appendix to Final Report" January 1982, pp. 5, 22–25, 35–37. Most of the concerns the AIP addressed in its three-year study from 1979–1982 are issues that still need to be resolved. The lack of NARA-specialized knowledge was again raised in a study sponsored by the National Archives, National Research Council, *Study on the Long-term Retention of Selected Scientific and Technical Records of the Federal Government: Working Papers* (Washington, D.C.: National Academy Press, 1995), 8.

As to the National Archives trying to be proactive and improve the plight of DOE scientific records, readers should refer to National Archives and Records Administration, *Evaluation of the Records Management Program of the Department of Energy* (December 1988); and General Accounting Office, *Department of Energy Management: Better Planning Needed to Correct Records Management Problems* (GAO/RCED 92–88, May 1992). In addition to conducting the two significant audits above, this group of NARA archivists convinced the Department of Energy of the need to hire its first professional archivists and records managers at the headquarters in Washington, D.C., and prompted the undersecretary of the Department of Energy to require a records inventory of its 3.2 million cubic feet of records.

Unfortunately, the individuals responsible for the National Archives developing an improved partnership with the national laboratories no longer work for the National Archives, and no one has continued their efforts. From the field perspective, for the past three years, the National Archives' attention to scientific records has been reduced to regional Federal Records Center employees complaining about the tremendous space LBL records were consuming at the Federal Records Center and about the lack of files management of Laboratory administrators and scientists. Rather than recognize the larger picture that LBL was the one national laboratory that established its program by professional archivists, based on the federal prescriptive life-cycle model, and *wanted* to transfer scientific research and development records (which most other DOE national laboratories resisted), the National Archives prohibited LBL from transferring its research and development records. The records are now being stored on pallets, on the floor, in a grimy, leaky warehouse near the San Francisco Bay.

Such a strategy on the National Archives' part has been received very poorly by LBL leadership and the scientists. Skeptical leadership was quick to mention the observation that the National Archives, by refusing the records transfers and being warned about the poor conditions that the records were being relegated to, forced LBL to violate National Archives issued administrative rules about the care and storage of records. The head of the division to which the Archives and Records Office reported quipped, "We knew laws and regulations regarding the National Archives didn't amount to much." The response from the Department of Energy regional titular records officer was that he preferred to see the records destroyed rather than receive a critical letter from the National Archives.³¹

Such an intense negative focus on a relatively few surviving records, that have not been destroyed outside the purview of provisional retention schedules, when laboratory archives and records management programs are struggling to meet the most basic federal recordskeeping requirements, is disappointing and will result in reduced cooperation and support from the scientific community. More scientific records will be inappropriately destroyed and others will be diverted to non-federal repositories that will recognize the value of the records.

What is a non-federal repository's proper response to finding classified information amidst its holdings?

World War II and post-World War II Big Science is inextricably connected with national security research, and some of the records are national security classified. While "Secret" and "Top Secret" are easy to detect on marked classified documents, there are additional classification markings whose identification would only be known to those trained. To those who believe in the fundamental value of having an informed citizenry in order to have a functioning democratic society where critical issues can be intelligently debated, the fact that the federal government has classified over forty-two million documents prompts many to believe that the nation's national security system was more effective in hiding government actions from its citizens than in keeping vital secrets from hostile

³¹Discussion with Stuart Loken, Division Head of Information and Computing Science and Ruby Tebelak, Department Head of Technical and Electronic Information, 20 June 1995; Loretta L. Hefner, "Report on the Meeting with the U.S. Department of Energy-Oakland Regarding the Transfer of Lawrence Berkeley Laboratory's Scientific Research and Development Records, June 8, 1995," written 10 June and revised 12 July 1995, page 6; Letter from Loretta L. Hefner to the National Archives and Records Administration and the U.S. Department of Energy, 23 June 1995, pages 2-3. The letter was followed up with subsequent telephone conversations but no action was taken by either agency.

foreign interests. It is even clearer that the government will go to some lengths to threaten and intimidate individuals, scientists, internationally respected scientific journals, universities, and even Congressional committees to prevent entities from having information it does not trust them to have.³²

Yet, for discussion's sake, even if an archivist is critical of the United States government's national security document classification system, what is the appropriate professional and institutional response when alienated federal records are found to have national security classified markings? To hide the classified documents in a vault from public view? This has been done, but such action grates against an archivist's obligation to make records accessible. One repository decided to continue collecting LBL records, even those with classification markings, and made the records available in their reference room. Storing the documents in what the national security community would call an "unprotected vault" and permitting access and photocopying are in direct violation of several laws, regulations, and executive orders.³³

In 1994, when an LBL employee needing to review alienated records for a Freedom of Information Act request alerted the reference staff at a repository holding LBL alienated records to the presence of classified documents, the person working at the reference desk responded by telling the LBL employee that, yes, indeed, the document she was showing him was a classified document and there were numerous marked documents throughout the collection she was using. The reference room employee then asked the LBL employee if she would like a photocopy.

Again, federal law and numerous executive orders govern the control and dissemination of national security classified documents. Non-federal repositories with security classified documents in their holdings may not recognize the markings. This lack of knowledge could implicate unknowing employees in criminal violations of federal laws. This is yet one more reason that non-federal repositories should not estrange federal records from their context.

What is an institution's responsibility to respond to a Freedom of Information Act request if the records are alienated?

The issue of access to alienated federal records needs to be further analyzed in light of the Freedom of Information Act (FOIA) requirements.³⁴ As confirmed by Secretary of Energy Hazel O'Leary on December 7, 1993, scientists in the 1940s and 1950s injected ill people with transuranic elements to investigate how the human body metabolized the radioisotopes. This subject has been investigated by the Presidential Advisory Committee

³²Herbert N. Foerstel, *Secret Science: Federal Control of American Science and Technology* (Westport, Conn.: Praeger, 1993); Glenn T. Seaborg, "Secrecy Runs Amok," *Science* 264 (June 1994): 1410-11; Historians Priscilla McMillan, Stanley Goldberg, and Daniel Grossman, along with approximately thirty-five additional signatories, have since 1991 led the battle to declassify millions of Department of Energy documents related to the Cold War era. Their efforts have been officially endorsed by the American Historical Association, the Organization of American Historians and the National Coordinating Committee for the Promotion of History; Tom Blanton, "Open the Secret Government Files!" *American Libraries* 24 (September 1993): 702-4.

³³Atomic Energy Act of 1954, as amended; 18 U.S.C. §§793, 794 and 798; and Executive Orders 12065 and 12356.

³⁴5 U.S.C. §552.

on Human Radiation Experiments and Congress and has been discussed in journals, newspapers, news shows, and talk shows.³⁵

In the search for pertinent documents, the LBL Archives and Records Office staff found that three FOIA requests could not be completed without visiting other archival repositories to research and copy LBL alienated records, in order to comply with the requests. While these repositories' willingness to provide access to these important documents is to be applauded in the case of the Freedom of Information Act requests, how much better would it have been if the records had been maintained in their original institutional archives? Thus, when researchers and the media requested information, knowledgeable scientists could have discussed the subject matter with those inquiring.

In several cases of alienated records investigated by the General Accounting Office, individuals removing government records were placing restrictions on access to the documentary materials. This is yet another subversion of the people's right to know. However, even if the records are alienated, the records still belong to the citizens of the United States, and they have a continued interest in appropriate access regardless of personal restrictions placed by the public official/donor.³⁶

Will the repository housing the federal records support Freedom of Information Act requests? Will the repository provide the requesting party the information within the specific number of days required under the law? Will the repository notify the relevant federal agency that it has their federal records so when a Freedom of Information Act request is received the agency knows to send the FOIA request to the repository? The issues are complex and become more complex when attempting to work through the problem.

What is a federal institution's responsibility regarding the protection of an individual's right to privacy according to the U.S. Privacy Act if the records are no longer in federal custody?

When a staff member was reviewing human radiation experiment records for the Freedom of Information Act requests mentioned above, the staff member found patient medical records in a collection at a manuscripts library. What is the obligation in this situation of the federal contractor who is required to protect this type of information in a stringent manner according to federal laws and regulations? Does the archivist report to his or her counterpart at the manuscripts repository that the federal records in their custody

³⁵Loretta L. Hefner, "Openness: A Cultural Shift — The Lawrence Berkeley Laboratory's Archives and Records Office's Roles in the U.S. Department of Energy's Human Radiation Experiment Records Search and Retrieval Project," Keynote Address delivered to the Society of California Archivists' Annual Meeting, 28 April 1995, Oakland, California; Eileen Welsome, "The Plutonium Experiment," *The Albuquerque Tribune*, 15–18 November 1993. Ms. Welsome received the 1993 Pulitzer Prize for investigative journalism for this series of articles; ABC News Nightline, "U.S. Government's Secret Radiation Experiments," 3 January 1994; World News Tonight with Peter Jennings, "[Radiation Experiments Revealed]," 28 December 1993; National Public Radio Morning Edition, "Radiation Experiments Continue Despite Recent Reports," 7 January 1994; Good Morning America, News Segment, "Radiation Tests," 31 December 1993; Russell Watson et al., "America's Nuclear Secrets," *Newsweek* 122 (27 December 1993): 14–18; Harvey Wasserman, "Duck and Cover-Up," *The Nation* 258 (31 January 1994): 113–15.

³⁶General Accounting Office, *Federal Records: Document Removal by Agency Heads*, 31–34. The General Accounting Office recommends that federal agencies be required to allow the National Archives independent review of records before they can be removed from federal agency custody. Unfortunately, given the historic timidity the National Archives and Records Administration has demonstrated in effectively preventing the alienation of federal records, this author posits that the General Accounting Office's recommendation proves to be an inadequate remedy.

are inappropriately being made available outside the provisions of the U.S. Privacy Act? What legal and ethical responsibilities does the repository have regarding its holdings?

Government has the dual burden of making information available so its citizens can review the transactions and deliberations of their government and assuring the privacy of individuals will be protected. The government has authority to collect vast amounts of sensitive information about individuals and must assure its citizens that it will provide appropriate safeguards to protect its extensive collections of personal information.³⁷

Having a patient's unredacted medical records in an archives reading room is a serious violation of an individual's right to privacy. If someone disregards federal records management laws and alienates federal records, does the citizen mentioned in the records also forfeit his right to privacy? The answer must be no. Could individuals who have had their privacy violated file a "cause of action" against the institution that was supposed to be protecting the information as well as the one that received and made available the personal information? Federal records require certain procedures and considerations that employees in non-federal government repositories may not be trained to be sensitive to or to administer.

What can other institutions learn about the care and maintenance of their records from the LBL experience of losing institutional records?

One of the most poignant lessons to be learned from the LBL experience in the care and maintenance of its records is the importance of an institution establishing an effective archives and records management program. Ineffective programs that lack leadership, managerial support, and funding, and are not strong enough to operate a comprehensive life-cycle program are much more likely to experience alienated records, in addition to other unauthorized records practices.

Archives and records management programs need to be led and staffed by dedicated professionals with recognized graduate school education and training. Archivists and records managers should work with their management, including legal counsel, to advise, draft, and have management approve strong policies and procedures warning employees about the loss of records. Archivists and records managers should also analyze the culture of the institution and assess what records are likely to be alienated, as well as determine what records are wanted by whom. The archivist and records manager must design and execute an appropriate plan of action based on a thorough review of their institution's particular situation. Management must understand the goals and objectives of archives and records management, be willing to join in the negotiations in a knowledgeable way, and support the archivist and records manager when records have been or are about to be alienated. When records are alienated, institutional heads should be willing to step in and demand of other institutional heads that the records be immediately returned to their proper institution.

What does the SAA Code of Ethics say about collecting records where there is an established archives? Why are so many archival representatives willing to breach the boundaries of an institutional archives to obtain records?

The archival profession has a long-standing prohibition on public records being collected by non-public institutions, and these perspectives have been incorporated into the

³⁷5 U.S.C. §552a.

Society of American Archivists *Code of Ethics*. In 1954 in his famous treatise, *Modern Archives*, Theodore Schellenberg wrote:

While libraries have often collected public archives, this practice is to be deprecated....After a government has established...an archival institution,...the library under such circumstances should not collect public records at all. Nor should it keep archival items that have been improperly alienated from a government, for such items belong with the related records.³⁸

The SAA *Code of Ethics* “reminds experienced archivists of their responsibilities, challenging them to maintain high standards to others...[and] implies moral and legal responsibilities.” The *Code of Ethics* calls on archivists to “obey the laws and [to be] especially familiar with the laws that affect their special areas of knowledge.” In regard to collecting policies, the *Code of Ethics* admonishes archivists not to “solicit the records of an institution that has an established archives,” and to avoid “wasteful competition” between archival repositories. The *Code of Ethics* also states, “Archivists should be aware of problems of ownership and should not accept gifts without being certain that the donors have the right to make the transfer of ownership.” Finally, “Archivists work for the best interests of their institutions and their profession and endeavor to reconcile any conflicts by encouraging adherence to archival standards and ethics.”³⁹

Both public records archivists and manuscript librarians are guided equally by the ethics of the archival profession. The SAA *Code of Ethics* provides relevant guidance to archivists trying to protect records from being alienated as well as guidance to archivists who are contemplating accessioning alienated records. Archivists should obey federal and state laws, and be responsible for making themselves knowledgeable about the issues inherent in the type of records they seek to collect. They must also be confident that those donating the records actually own the records, are admonished not to collect records where there is an established records program, to avoid wasteful competition, and to work cooperatively to resolve conflict based on their knowledge of archival guidelines. All of these principles are relevant to LBL’s efforts to identify, collect, maintain, and make available its records where appropriate.

The SAA *Code of Ethics* is only advisory. Unfortunately, it appears that when an archivist in another institution wants to obtain a set of records, the SAA *Code of Ethics* is of very little help in attempting to dissuade the archivist from removing institutional records. There are no review boards, or panels, or negative consequences if an archivist violates the prescriptions for professional conduct. As discussed elsewhere, archivists who violate the *Code of Ethics* are not censured, denied grants, barred from SAA elected positions, or participation in the Society. Due to the profession’s limited resources and the lack of perceived harm that an archivist could do to an unsuspecting public, there has not been a movement in the profession to institute self-imposed or state-controlled peer review panels similar to those of physicians, attorneys, psychologists, hair stylists, or sprinkler fitters to mention only a few of the regulated professions and trades.

A laboratory or institutional archivist is left to his or her abilities of moral suasion to try to reach a general agreement with those attempting to remove federal records.

³⁸Schellenberg, *Modern Archives*, 20.

³⁹*Code of Ethics for Archivists and Commentary*, adopted by the Council of the Society of American Archivists, 1992.

Resolving the problem of proper placement of LBL federal records and scientists' personal papers has consumed valuable and scarce resources for almost three decades. The present discussion and public awareness of the issues indicate that the issue can be influenced and a new era of collaboration begun.

In response to why so many archivists appear to be willing to breach the boundaries of an institutional archives to obtain records, the answer appears to be two-fold. First, as stated above, there are no penalties for disregarding the SAA *Code of Ethics*. Secondly, archivists receive recognition and rewards for successfully identifying significant records, negotiating with donors, and securing donations of records. Archivists have been taught how to successfully collect records. If they are not cognizant of the prescription against crossing institutional boundaries in collecting records where an archives program is established, their management is even less aware.

Some archivists do take the long term perspective, stepping out of their individual institutional roles and approaching prestigious institutions regarding the benefits and needs of establishing an effective archives and records management program. As the role of the archivist changes, it is hoped that this behavior will become rewarded by the profession and the archivist's manager.⁴⁰

While much has been done to heal the schism between public-record archivists and curators of manuscripts, the problem of alienated federal records points out that further convergence and cooperation are still needed. What is the ultimate solution to these protracted issues?

While the problem I have been discussing has many aspects to it, one of the complicating factors results from the public records tradition versus the manuscripts records tradition in American archival administration. Much has been written about these two divergent perspectives.⁴¹ The response to what I have written is likely to be determined by which tradition the reader has been trained in and feels most allegiance to. Several writers have argued that much of the divergence between the two perspectives has melted away over the past two decades, as each group has learned more about what the other has to offer. In the spirit of showing that both traditions are vital in resolving the complex matters I have outlined, I offer the following case study. Ultimately, the solution to the problem I have been discussing is that archivists and manuscripts curators work cooper-

⁴⁰The Lawrence Berkeley Laboratory archives was established because Joan Warnow-Blewett, of the American Institute of Physics, understood that it was far more effective to convince LBL management that they should establish an archives program than it was for the American Institute of Physics to try to collect "accidental remains" of the Laboratory's records. Ms. Warnow-Blewett's visionary approach is to be commended and emulated by the archival profession.

Regarding actions the archival profession could take within its limited resources, Victoria Davis, former Lawrence Berkeley Laboratory Archivist and Records Manager, has recommended that the two federal funding organizations, the National Endowment for the Humanities (NEH) and the National Historical Publications and Records Commission (NHPRC), make further use of peer reviews to assure that grant funds are not being awarded to applicants to arrange and describe federal records. It is recognized that the NHPRC grant procedures currently require applicants to declare that the collections they are seeking assistance for are not federal records. However, through greater peer review, additional protections might be possible. Ms. Davis also recommends that the Academy of Certified Archivists add relevant ethics questions to the certified archivists' examination, as well as require that new members sign a statement that they understand and will conform to the Society of American Archivists' *Code of Ethics*.

⁴¹O'Toole, *Understanding Archives and Manuscripts*, 30-33; Miller, *Arranging and Describing Archives and Manuscripts*, passim; Berner, *Archival Theory and Practice in the United States*, passim.

atively together. Although I give only one case study, I have seen this approach work on two occasions.

A Brief Case Study

A distinguished scientist at the Lawrence Berkeley Laboratory died. The research division administrators and records liaison officers at LBL were knowledgeable of and had prior experience working with LBL's archives and records management program. Therefore, the staff wanted the assistance of the laboratory's Archives and Records Office in the final care and disposition of the late scientist's records. The scientist had stated in his will that, after his death, all of his records were to be donated to a specific university that had created a scientific environmental special collections department.

The scientist's family felt that the records created and maintained by the late scientist were his personal property. Some members of the LBL research group concurred, even though each individual employed by LBL signed a patent agreement stating that all records created and maintained at LBL were owned by LBL; LBL's prime contract with the federal government declared that all research and development records were owned by the federal government; and LBL policies and procedures, along with periodic policy announcements, clearly stated that the records created and maintained at LBL were the sole property of LBL.

In working with the late scientist's colleagues and family, the laboratory archivist explained LBL's contractual obligations and archival practices to preserve the records. The laboratory archivist talked in terms of evaluating the manuscripts library to see if it was staffed by professionals, could arrange and describe the collection, and was willing to commit the needed resources for producing a finding aid in a timely fashion. The archivist offered to talk with professional colleagues in the area, and with the archivist at the manuscripts library, to ensure the best care of the records. The archivist also worked with paper conservators to select the best acid-free, lignin-free xerography paper with which to photocopy the scientist's federal records, since federal regulations allowed copies of federal records to be removed from LBL. Because the scientist's colleagues and family could see that the laboratory archivist was equally committed to the proper care of the records, relations warmed.

In the end, the research division, the archivist, and the scientist's colleagues and family carefully reviewed the records and determined which series were federal records and which were personal papers. The personal papers were appropriately boxed, numbered, and temporarily held in the LBL archives. The research division purchased prescribed acid-free, lignin-free xerography paper and the scientific research division staff photocopied the federal records. The original federal records were transferred to the LBL Archives. Photocopies, complete with folder headings, were prepared for the intended university's manuscript library.

The laboratory archivist assisted the family members and colleagues in ensuring that the scientist's papers were indeed going to a quality archives program that could care for them. The laboratory archivist called colleagues in the university's region and inquired about the training, facility standards, staffing, and quality of the finding aids coming from the potential repository. After being satisfied with the findings, the laboratory archivist contacted the university archivist to inquire as to their interest. Lengthy professional discussions ensued concerning the quality and appraisal of the records. When the university program agreed that it would allocate the funds to arrange and describe the records, the

laboratory archivist shared these findings with the family. The archivist then assisted the family and the repository in drafting the appropriate language in the donor agreement. Finally, the day came when the scientist's personal papers, along with photocopies of the laboratory's federal records, were sent to a university repository that could care for them, and the original federal records were transferred to the National Archives.

The LBL Archives and the university archives agreed to share finding aids, to cite each other in the national bibliographic databases as the repository holding additional records, and to assist scholars inquiring as to the availability of the records.⁴²

Conclusion

Lawrence Berkeley Laboratory is experiencing additional successes with other repositories in delineating federal records and personal papers while making sure that its contractual and legal requirements are being fulfilled. These efforts help in reaching the goal that we, as archivists, have set to select, preserve, and make accessible significant records. These successes strongly suggest that archivists can work together, maximizing the use of our scarce resources. We can provide a valuable product and service to the citizens of the United States, scholars, public policy overseers, scientists, management, and the archival community.

For cooperative and ethical efforts to be successful, archivists may have to modify the long-valued belief of "the collection" and what constitutes the "integrity of the records." The integrity of the records will be more than just the records cartons a manuscript repository receives from a donor. Archivists and manuscript curators will have to broaden their vision and ask, "What is the context, function and purpose of the records? Are the documentary materials federal records? Are the federal records a part of a larger context?" Manuscript curators will have to be further informed about the larger context so they can start to recognize that the integrity of the records is violated when federal records are removed from their institutional setting, not if personal papers are split from federal records. Therefore, as they relate to scientific research and development records, the scientist's youthful journals, graduate school records, records of other private industry positions, family, political, and church affairs will customarily be deposited in the manuscript repository. The original federal records—which include scientific project planning, project administration, building of scientific equipment and facility creation, efforts to communicate with colleagues and build research teams, data observation and analysis, report writing and information dissemination, conference presentation, manuscript drafts, and papers and professional society records—will all remain within the federal system.

⁴²In discussing this article with colleagues, some thought that another case study was appropriate, particularly reviewing LBL's protracted records negotiations with one repository. The author emphasizes that a number of archival repositories attempt to collect records of the Lawrence Berkeley Laboratory and that fact suggests that there is a more systemic problem to be addressed by the archival profession. Those interested in the LBL-Bancroft Library dispute are encouraged to read Loretta L. Hefner, "Strategic Alliances and the Human Resource Implications for Records Managers," *Records Management Quarterly* 28 (July 1994): 13–19. The issues addressed in the *Records Management Quarterly* concentrate on lost opportunities to maximize resources and cooperate. Also see Judith Axler Turner, "Battle Over Documents at University of California Pits National Archives Against Librarians," *Chronicle of Higher Education* 36 (20 June 1990); "National Archives and Berkeley Dispute Rights to Collection," *American Libraries* 21 (July–August 1990): 627; Letter from Prue Adler, Assistant Executive Director, Association of Research Libraries, to Member Library Directors, 12 June 1990; Terry Link, "A Tug-of-War Over Lab Records," *The Oakland Tribune*, 7 August 1990; and Robin E. Rider, "Saving the Records of Big Science," *American Libraries* 22 (February 1991): 166–67.

Archivists and manuscript curators need to evolve toward a concept of “complementary archives,” which maintains that both repositories, the federal repository as well as the non-federal repository, are essential to documenting federally-funded, post-World War II science. The federal repository will retain original federal records and the federal or contractor archivist will advise the scientist as to whether his or her personal papers, as well as the federal records, are worthy of selection and preservation. The federal or contractor archivist is not simply concerned about contract compliance and federal rules, but about adequate and proper documentation on the history of science. This approach will require that archivists and manuscripts curators broaden their perspectives and be concerned about the whole of documentation, not their more specific institutional interests.

Archivists and manuscript curators will need to work cooperatively to construct donor agreements with appropriate restrictions, and converse about the arrangement and description of the records. They will need to share finding aids, communicate to researchers that additional related records are located at another repository, and cite the other repository as holding related records in the national bibliographical databases. If archivists can learn the delicate art of negotiating, the archival profession will come closer to realizing its goals by using its resources wisely to build enhanced archival programs. This will enrich inter-institutional communications and provide users with a whole new vista of how rich and complex federally-funded science has been for the latter half of the twentieth century.