

# **George W. Bush Presidential Library**

**Collection:** Counsel's Office, White House

**Series:** Kavanaugh, Brett – Subject Files

**Folder Title:** Archives - 03/15/2002 Releases

# Withdrawn/Redacted Material

## The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Letter	[Letter] - To: Gary Stern - From: Alberto Gonzales	1	03/07/2002	P5;

### COLLECTION TITLE:

Counsel's Office, White House

### SERIES:

Kavanaugh, Brett - Subject Files

### FOLDER TITLE:

Archives - 03/15/2002 Releases

### FRC ID:

9632

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

#### Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

#### Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

# Withdrawal Marker

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**This marker identifies the original location of the withdrawn item listed above.  
For a complete list of items withdrawn from this folder, see the  
Withdrawal/Redaction Sheet at the front of the folder.**

**COLLECTION:**

Counsel's Office, White House

**SERIES:**

Kavanaugh, Brett - Subject Files

**FOLDER TITLE:**

Archives - 03/15/2002 Releases

**FRC ID:**

9632

**OA Num.:**

1824

**NARA Num.:**

1742

**FOIA IDs and Segments:**

2018-0016-P

2017-0345-F

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MAR-11-2002 13:45

PUBLIC CITIZEN

202 588 7795 P.01/03

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**FAX COVER SHEET**

**Date:** March 11, 2002

**To:** Gary M. Stern  
Craig M. Blackwell

**Fax:** 301-713-6040  
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**From:** Scott L. Nelson, Public Citizen Litigation Group

We are transmitting 3 pages, including this cover sheet. If there are problems with the transmission, please call Shane Mudd at (202) 588-7721.

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P.02/03

## PUBLIC CITIZEN LITIGATION GROUP

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March 11, 2001

Gary M. Stern  
General Counsel  
National Archives and Records Administration  
8601 Adelphi Road  
College Park, MD 20740-6001

Re: Formerly Restricted Reagan Presidential Records

Dear Gary:

As you know, one of the purposes of our pending lawsuit, *American Historical Association, et al., v. National Archives & Records Administration*, No. 1:01CV02447 (CKK) (D.D.C.), was to compel the release of the approximately 68,000 pages of records from the Reagan Presidential Library that had been withheld on the basis of the "P5" restriction as of January 20, 2001, when that restriction expired. On January 3 of this year, approximately 8,000 pages of those records were released, leaving a balance of about 60,000 still outstanding.

On February 8, 2002, the government filed its motion to dismiss our lawsuit. Accompanying that motion was a letter of the same date to you from White House Counsel Alberto Gonzales, advising you that President Bush had determined not to make any claim of privilege as to approximately 59,000 of the remaining pages of records. (Also accompanying the government's motion was a previous letter, dated November 29, 2001, from Ms. Joanne Drake, stating that as former President Reagan's representative, she was not objecting to the release of any of the documents. Apparently this is among the letters that have been withheld on purported FOIA Exemption 5 grounds from NARA's response to Bruce Craig's request for communications between NARA and President Reagan's representatives on this subject, which is the subject of a pending appeal.)

The government's motion to dismiss relied on the Gonzales letter to argue that our lawsuit was "moot" to the extent that it sought release of "the approximately 67,000 pages *made public since this action was filed*," and that our "claim for release of these *now-publicly-available records* should be dismissed" (Govt. Mem. 24, n.18) (emphasis added). In other words, the government represented to the Court that the 59,000 pages of records were "publicly-available" as of February 8, 2001.

MAR-11-2002 13:46

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## PUBLIC CITIZEN LITIGATION GROUP

Gary M. Stern  
March 11, 2002  
Page 2

Upon my return to Washington following two weeks out of town, I reviewed the government's motion, and then attempted to find NARA's announcement of the release of the 59,000 pages of records. I was puzzled to find that there had been no announcement, until I learned that there in fact had been no release and that, despite the statements in the government's motion, the 59,000 pages were not yet publicly available. Now, a full month after the government told the court that the records had been "made public" and were "publicly-available," NARA continues to withhold them.

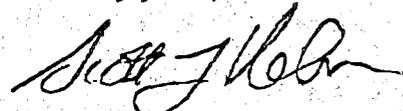
I assume that the factual misstatements in the government's motion were inadvertent and not intended to mislead the court, as the government stated in its latest brief filed Friday after I apprised counsel for the government of the discrepancy between the statement in their earlier brief and the facts. The fact remains, however, that the court was advised that these records are publicly available, yet they are not. Just as importantly, the White House's determination that no privilege will be asserted as to these records, coupled with the Reagan representative's prior disclaimer of any assertion of privilege, removes any possible legal justification for the withholding of these records even under the (unlawful) terms of the Bush Executive Order.

The government's latest brief attaches another letter from the White House Counsel, this one dated March 7, 2002, stating that the White House authorizes the release of all but 150 pages of the records. The letter asks you to make all the rest of the records "available to the public at the earliest practicable time." Despite this latest letter, NARA has still not announced an opening of either the 59,000 pages authorized in February or the additional pages authorized last week. NARA's failure to do so is in sharp contrast to its immediate announcement of plans to release the 8,000 pages whose release the White House authorized in December.

The statutory restriction of these records expired nearly 14 months ago. The possibility that 59,000 pages of the records might be subject to a valid claim of constitutionally based privilege was definitively eliminated a month ago, and the White House's latest letter eliminates any possible basis for restricting nearly 1,000 more pages. The law requires that NARA do what its lawyers told the Court it had done last month: Release the documents.

Accordingly, on behalf of my clients in the *AHA* action, I request that NARA make the nearly 60,000 pages of documents cleared by the White House available to the public forthwith, or else explain to the Court why it continues to withhold them. Please let me know, at your earliest convenience, whether and when you intend to make these records public.

Sincerely yours,



Scott L. Nelson

cc: Craig M. Blackwell