

George W. Bush Presidential Library

Collection: Counsel's Office, White House

Series: Kavanaugh, Brett – Subject Files

Folder Title: State Department - Victims of
Terrorism [Folder 2]

Withdrawn/Redacted Material

The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Draft	[Letter with attachments] - To: J. Dennis Hastert - From: Colin Powell	20	01/23/2002	P5;
002	Discussion Paper	Compensation for Victims of International Terrorism	4	01/30/2002	P5;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

State Department - Victims of Terrorism [Folder 2]

FRC ID:

9695

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.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

TO: Brett Kavanaugh

DATE: 1-23-02

FAX #: Phone (67984) 61647

FROM:

Jay Lefkowitz
General Counsel
Office of Management and Budget
Washington, DC 20503
Phone: (202) 395-5044
Fax: (202) 395-7289

Number of pages _____ (excluding this page)

Comments:

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Draft	[Letter with attachments] - To: J. Dennis Hastert - From: Colin Powell	20	01/23/2002	P5;

**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:

State Department - Victims of Terrorism [Folder 2]

FRC ID:

9695

OA Num.:

2165

NARA Num.:

2076

FOIA IDs and Segments:

2018-0016-P

2017-0345-F

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.

**Summary of Section 15 of H.R. 3210,
Terrorism Risk Protection Bill**

Generally, Section 15 of H.R. 3210 creates a federal cause of action for claims relating to certified terrorist acts and limits damages and attorneys fees recoverable from defendants other than the perpetrators of the acts and their co-conspirators. Section 15(e) permits judgment holders to satisfy their judgments with blocked assets of the terrorist party or an agency or instrumentality of that party. While different from the Cannon-Issa amendment previously offered to the Anti-Terrorism bill, the attachment provisions of Section 15(e) share the same objective. They make blocked terrorist assets available to satisfy judgments and provide for a very restrictive Presidential waiver, all which conflict with, but do not repeal, the provisions of current law. As discussed below, in major part, subsection (e) bears little relationship to the rest of the provisions of Section 15.

A. Cause of Action

Subsections (a)-(d) are designed to to limit the exposure of insurance companies, airlines, property managers and the like, for liability arising from actions perpetrated by terrorists. While these provisions create a broad and exclusive cause of action for acts determined by the Secretary of the Treasury to be acts of terrorism committed in the United States from the time of enactment until 2003,¹ they provide for remedies that are meant to be restrictive in nature, with certain exceptions. They provide for an exclusive remedy for "claims arising out of, relating to, or resulting from such acts of terrorism," supplanting all other federal and state law causes of action.² The determination by the Secretary giving rise to

¹ Section 5(b) of the bill restricts determinations of "acts of terrorism" to acts occurring within the "covered period," which is defined in Section 20 to mean the period between enactment and January 1, 2003; the section permits the Secretary of the Treasury to extend the period by up to two years. Under Section 19(1)(B)(ii) of the bill, an "act of terrorism" includes only an act occurring within the United States or against U.S. domestic air carriers or U.S. flag vessels.

² Currently, 18 U.S.C. 2333 provides a similar Federal cause of action for international terrorism. It provides:

Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States

the cause of action is not subject to review. Except for the perpetrators of the acts themselves, liability for non-economic damages is limited and, punitive damages may not be awarded, unless the defendant is "any person" who commits or knowingly commits the underlying terrorist act³. Collateral sources of compensation must be offset, and attorneys fees are capped at 20 percent. The United States would be subrogated to all claims that are paid by the United States under the Act.

B. Attachment of Blocked Assets

Subsection (e) provides that persons with judgments for compensatory damages against a terrorist party on the newly created cause of action, or pursuant to section 1605(a)(7) of the Foreign Sovereign Immunities Act, may satisfy those judgments out of the frozen assets of that terrorist party, including those of any agency or instrumentality of the party. The bill's provision for the satisfaction of judgments issued pursuant to section 1605(a)(7) would appear to have no relationship whatsoever to the other provisions of the bill.⁴

This attachment provision does not appear to replace the existing provision at 28 U.S.C. 1610(f)(1)(A) governing the use of blocked assets to satisfy judgments, which has been waived by the President, since no reference is made to an amendment to the Foreign Sovereign Immunities Act. Subsection (e) also provides a Presidential waiver of its own, but applies only to property that is subject to the

and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

18 U.S.C. 2337, however, states explicitly that no action shall be maintained under section 2333 against "a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his or her official capacity or under color of legal authority." The Flatow amendment, 28 U.S.C. 1605 note, cited in most of the terrorism lawsuits against foreign states, provides only for a federal cause of action against the "official, employee or agent of a foreign state," but not against the state itself. Some courts recognize a federal common law cause of action in such cases.

³ See subsection (b).

⁴ Subsection (a) provides for a federal cause of action for acts perpetrated against individuals or organizations, but waivers of immunity are not necessary under section 1605(a)(7).

Vienna Conventions on Diplomatic and Consular Relations and then only to such property if has not been used for any non-diplomatic purpose (including use as rental, property). Thus, it would not permit the President to waive the provision's application to Iran's diplomatic and consular property, since it has all been leased to private parties, with perhaps the exception of the Chancery.

The one thing that does not appear in this new bill that was in Cannon-Issa is the waiver of U.S. Government sovereign immunity. Thus, Iran FMS Trust Fund monies and Tribunal awards would not be subject to garnishment and attachment. Ironically, therefore, the Iran plaintiffs would be left with virtually nothing but the diplomatic and consular property in this bill, property barely sufficient to satisfy completely even one judgment against Iran.



156 Rm

Dec. 12, 2001

To Jack Scharfen
fax 456-9110

From Lisa Bush

As discussed, for
press on record.

Brett - Nelly Tucker (sp?) Wash Post
article tomorrow. Pls. see NYT oped
by Barry Rosen
Jack

**COMPENSATION FOR U.S. VICTIMS OF TERRORISM ABROAD AND
ROEDER CASE**

Roeder Case

Q: Plaintiffs in the Roeder case assert that the Justice and State Departments are appearing in their case on behalf of Iran. Is this true?

A:

- No. Our briefs and statements to the judge have made clear that we are not appearing in the case for Iran or condoning the acts that brought this lawsuit about. The United States condemns the illegal seizure of the hostages and their subsequent mistreatment in the strongest possible terms.
- We have appeared to intervene in the case because of USG interests at stake. Indeed, the USG has no choice in the matter. The United States is obligated to take steps to have the Roeder case dismissed because of a binding international agreement (the "Algiers Accords") and U.S. law implementing this agreement.
- The Algiers Accords are an international agreement concluded between the United States and Iran in 1981; the Accords brought the embassy hostage crisis to an end. In order to obtain the hostages' release, the United States agreed, in the Accords, to bar the prosecution of any pending or future claims against the Government of Iran by the hostages arising out of their seizure and captivity.
- This obligation was implemented by Executive Order 12283 and relevant Treasury Department regulations issued pursuant to that order. The Executive Order directs the Attorney General to take all appropriate action to notify the courts of the U.S. obligation to bar the prosecution of these suits.
- Our obligation to terminate legal proceedings such as this, in accordance with the Algiers Accords, has been recognized by courts for twenty years. In 1981, the Government took similar steps when other cases were brought, including a case brought by the

former hostages. The U.S. Court of Appeals for the District of Columbia Circuit dismissed the suits. (Note: On October 16th, the *New York Times* erroneously reported that the U.S. Government was "for the first time" seeking dismissal of a suit against Iran by the embassy hostages.) The Algiers Accords themselves were upheld by the Supreme Court in 1981.

Use of Blocked Assets to Compensate Victims

Q: Why does the State Department oppose the use of blocked assets to pay compensation to these victims?

A:

- The Department believes that these victims are deserving of compensation for their suffering and is committed to finding a way to compensate them.
- Using blocked assets is not the answer, because it would undermine the President's ability to use one of his most effective foreign policy tools.
- Keeping hostile state assets blocked as a current economic sanction and for future use in negotiations serves the interests of the whole nation, including providing leverage in the fight against international terrorism and the development of weapons of mass destruction.
- There is no better example than the key role some \$10 billion in blocked Iranian assets played in the USG's ability to negotiate a release of the U.S. hostages in Tehran in 1981. Had we permitted U.S. claimants who had attachments on those assets at the time to execute against them, the assets would not have been available to help obtain the hostages' release.
- With regard to Iran, there are very few blocked assets in any event. According to the Treasury's 2000 Report to the Congress on Assets in the United States Belonging to Terrorist Countries or International Terrorist Organizations, the amount of Iranian blocked assets is \$23.2 million, consisting primarily of diplomatic real estate.

Q: Does the State Department take this position simply because it wants to maintain its turf over blocked assets?

A:

- No. This has nothing to do with turf. The State Department is not the agency charged with the implementation of blocking orders, the issuance of regulations or the reporting to Congress with regard to blocked property. The Treasury is charged with those responsibilities. The State Department's role is to ensure that U.S. foreign policy and national security objectives are not undermined.

Diplomatic Property

- There are separate concerns regarding diplomatic and consular property, which is governed by the Vienna Conventions on Diplomatic and Consular Relations.
- Using diplomatic and consular property to satisfy judgments could cause us to violate our obligations under those conventions, which provide for the sanctity of diplomatic property and persons, even in cases of broken diplomatic relations or armed conflict.
- Such action would be an open invitation to other states to take similar action with regard to our vast diplomatic property holdings abroad. It would also make it difficult for us to invoke other states' Vienna Convention obligations with regard to our property, as we have on numerous occasions in the last few years.
- The United States does not take these obligations lightly.

Compensation for U.S. Victims

Q: Shouldn't these former hostages receive compensation for their detention?

A:

- Congress enacted special legislation in 1980 - the Hostage Relief Act of 1980 - to provide compensation

to these hostages, and all of the plaintiffs in this case who were hostages were eligible to receive such compensation.

- Pursuant to the recently enacted Commerce-State-Justice Appropriations Bill, the Department of State is currently working on a legislative proposal to establish a comprehensive program to ensure fair, equitable, and prompt compensation for all U.S. victims of international terrorism.

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Discussion Paper	Compensation for Victims of International Terrorism	4	01/30/2002	P5;

**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:

State Department - Victims of Terrorism [Folder 2]

FRC ID:

9695

OA Num.:

2165

NARA Num.:

2076

FOIA IDs and Segments:

2018-0016-P

2017-0345-F

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.