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FACSIMILE TRANSMITTAL SHEET

TO:
Brett Kavanaugh, Esq.

FROM:
John A. Mintz

COMPANY:
Associate Counsel to the
President

DATE:
21 APRIL 2003

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202-456-6279

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202-456-7984

SENDER'S REFERENCE NUMBER:
7014-21-22

RE: AMERICAN HISTORICAL
ASSN, ET ALS V. NARA

YOUR REFERENCE NUMBER:

Brett, thank you for your call and the information you provided today regarding a statement that DOJ proposes to submit to the court in captioned suit. We have reviewed the language of the proposed statement and I am authorized to advise you that my client will offer no objection to the proposed filing or to the language of the proposed statement, as you related it to me.

John A. Mintz

RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
2002 NOV 15 PM 4:09

AMERICAN HISTORICAL
ASSOCIATION, et al.,
Plaintiffs,

v.

NATIONAL ARCHIVES AND
RECORDS ADMINISTRATION, et al.,
Defendants.

NANCY M.
MAYER-WHITTINGTON
CLERK

No. 1:01CV02447 (CKK)

DEFENDANTS' RESPONSE TO PLAINTIFFS'
SUPPLEMENTAL STATEMENT OF UNDISPUTED FACTS

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Attorneys for Defendants

Date: November 15, 2002

In accordance with Local Rule 56.1, defendants submit this response to plaintiffs' supplemental statement of undisputed facts filed in support of their motion for summary judgment ("Supp. St.").

1. Plaintiffs' supplemental statement brings to the Court's attention three letters from Gary M. Stern, General Counsel, National Archives and Records Administration ("NARA"), to Scott L. Nelson, plaintiffs' lead counsel in this matter. See Supp. St., Exs. A-C (attaching letters from Mr. Stern to Mr. Nelson dated June 28, 2002, October 25, 2002, and June 21, 2002). As plaintiffs' supplemental statement notes (at 2 n.1), defendants agreed that plaintiffs could bring these letters to the Court's attention. As a factual matter, the information in Mr. Stern's letters relates to records that (a) are not subject to plaintiffs' request for a mandatory injunction (those records have all been released), and (b) have either been released themselves or are still under review in accordance with Executive Order ("EO") 13233. See Supp. St., Exs. A, B, & C; see also Notice of Release of Records Formerly Under Review (filed July 25, 2002). As plaintiffs noted in their motion to file their supplemental statement (at 2), defendants contend that the facts in Mr. Stern's letters do not affect the resolution of the justiciability issue currently before the Court (i.e., the issue whether plaintiffs' facial challenge to EO 13233 is justiciable).

2. Although defendants do not contend that there are any "material facts [in plaintiffs' supplemental statement] as to which . . . there exists a genuine issue to be litigated," Local Rule 56.1, for the sake of clarity, defendants refer the Court to Mr. Stern's actual letters, rather than the selective quotation and characterization of those letters contained in plaintiffs' supplemental statement. In addition, defendants note the following:

a. In paragraph 1, plaintiffs allege that NARA released approximately 8,000

pages of Reagan presidential records on January 3, 2001. See Supp. St. at 1. The referenced records actually were released on January 3, 2002. See Press Release, NARA, Previously Withheld Reagan Presidential Materials to be Released (Dec. 20, 2001) (attached at Tab C to defendants' memorandum in support of their motion to dismiss).

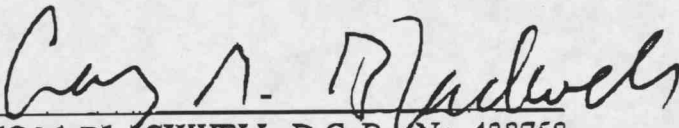
b. In paragraph 2, plaintiffs note that the representatives of former President Reagan "raised questions" as to the releasability under the Presidential Records Act ("PRA") of approximately 1654 pages of presidential records originally withheld under 44 U.S.C. § 2204(a)(5). See Supp. St. at 2 (quoting Mr. Stern's June 28, 2002 letter). Plaintiffs fail to note, however, that the "questions" related to "whether FOIA exemptions might apply [to these pages] and/or whether they might constitute personal records [not subject to release under the PRA]." See Supp. St., Ex. A, at 1 (also quoting Mr. Stern's June 28, 2002 letter). Upon re-review by NARA, some of these pages were in fact determined to be either exempt under FOIA or personal records. See id.

c. Also in paragraph 2, plaintiffs imply that NARA's notice relating to the approximately 1654 pages was issued in response to plaintiffs' requests for access to those pages. See Supp. St. at 2. Mr. Stern's June 28, 2002 letter makes clear, however, that the timing of that notice was unrelated to plaintiffs' access request. See Supp. St., Ex. A, at 1.

Respectfully submitted,

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