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# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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June 7, 2010

The Honorable Jeff Sessions  
Ranking Republican Member  
Senate Committee on the Judiciary  
152 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Jeff:

I was at my farm in Vermont when you sent a letter last week. I suspect that our receipt of more than 46,000 pages of documents from the Clinton Library related to Elena Kagan's service in the Clinton White House and White House counsel Bob Bauer's response to your letter to him have answered most of your questions.

With our receipt last week of the documents related to Elena Kagan's service on the Domestic Policy Council, we have received more information from this administration at this point in the confirmation process than was made available at this point in the process for either the Roberts or Alito nominations. I understand based on staff discussion with the General Counsel for the National Archives, that the Clinton Library is on pace to fulfill the commitment made in the Archives' May 21 letter to complete its production on a rolling basis this week and next. I hope that the document production from the Clinton Library has assuaged any concerns that you may have had about our ability to hold a fair hearing on this Supreme Court nomination on June 28. I, too, believe that we have ample time to process this nomination the right way.

The Archivist's May 21 letter detailed the Archives' search for records responsive to our request. The methodology used by the professional archivists is focused on getting the Committee the records most likely to be relevant to Solicitor General Kagan's nomination in a timely manner. The Archives have followed through on the commitment in that letter by making documents available to the Committee starting last week.

The search the Archives has outlined is much more comprehensive than that undertaken in response to the requests of Senate Democrats for high-priority documents related to Chief Justice Roberts nomination in 2005. You will recall that no Republicans joined that request. Nor did Republicans complain when it could not be met in time.

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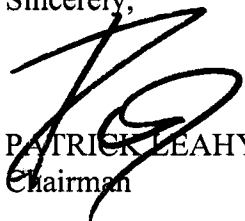
I have joined in a broad request for documents related to the Kagan nomination. As when Democrats made a targeted request for documents in 2005, I do not believe we should ask the Archives to further expand their search now in a manner that could undermine the efforts to provide us in a timely manner with the documents most likely to be relevant. I appreciate that in your letter you agree that asking for a large sampling of additional emails on which the nominee's name appears or in which she was in the distribution chain is not the priority.

I also appreciate the efforts taken by the Archives to maximize the responsive production of documents. No documents were withheld from the Committee on national security grounds and the Archives took steps to reduce the number of documents withheld under the personal privacy restriction. As it did in connection with the nomination of Chief Justice Roberts, the Archives did not provide the Committee with presidential records withheld under the personal privacy restriction. However, unlike the prior production, in the production of the documents related to the Kagan nomination, the Archives "made every effort to withhold as little as possible and to provide portions of documents where possible, rather than withholding an entire document."

In fact, no documents were withheld from the Committee on any other basis. With respect to the small number of documents on which President Clinton asserted statutory restrictions against public release under the Presidential Record Act, the Archives offered to provide them to the Committee on the condition that they be designated and treated as "Committee Confidential." After our staffs briefly discussed the matter, I accepted the documents on that basis in order to permit the Committee prompt access to them. This enables easier access to the materials for Senators and designated staff than the *in camera* process you outlined as reasonable and acceptable for Committee review of materials withheld from the public. Let me know if you have changed your mind and now think we should return them to the Archives and not accept documents on that basis. Most importantly, these documents have not been withheld from the Committee. They were produced pursuant to an accommodation never extended to the Committee by the Bush administration with respect to documents withheld from us during our consideration of the nominations of Chief Justice Roberts and Justice Alito.

As you know, our schedule mirrors the timeline we used successfully with respect to the nomination of Justice Sotomayor last year and the schedule I agreed to with the Republican chairman for the initial Supreme Court nomination of John Roberts to succeed Justice O'Connor. Also already available to us, as you have noted, are papers from the nominee's clerkship for Justice Thurgood Marshall and the voluminous materials we collected last year in connection with Solicitor General Kagan's nomination to the position of "the tenth Justice." We have already begun receiving and reviewing the Clinton Library documents about which you were concerned last week. I look forward to a fair hearing.

Sincerely,



PATRICK LEAHY  
Chairman