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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

February 13, 2017

Brig. Gen. Patrick X. Mordente
Director
George W. Bush Presidential Library and Museum
2943 SMU Boulevard
Dallas, TX 75205

Dear General Mordente:

We write to request documents in connection with President Trump's nomination of Judge Neil M. Gorsuch to serve as Associate Justice of the Supreme Court of the United States.

Consistent with the processes described in this letter, we request that you provide the following documents to the Committee on an expedited basis:

- (1) Documents relating to Neil Gorsuch's nomination to the Tenth Circuit;
- (2) Documents relating to Neil Gorsuch;
- (3) Emails sent to or received from Neil Gorsuch, including emails on which he was a carbon copy or blind carbon copy recipient, by White House staff during the period Judge Gorsuch served as Principal Deputy to the Associate Attorney General (June 2005 – July 20, 2006).

We recognize that the Committee has not previously made official requests of Presidential Libraries in connection with a nominee who did not serve in the White House. Nevertheless, we believe it appropriate to follow past Committee precedent concerning requests for records from Presidential Libraries in several respects.

Section 2205 of the Presidential Records Act provides for the production of records in response to an official Congressional Committee request, notwithstanding the limitations on public disclosure set forth in Section 2204 of the PRA. Such productions are, by statute, subject to "any rights, defenses, or privileges which the United States or any agency or person may invoke." While we hope that documents responsive to our request will not raise these concerns, we also recognize that responsive documents may be subject to statutory or any other rights, defenses, or privileges.

Even though a Congressional Committee may be entitled under Section 2205(2)(c) to production of documents notwithstanding the PRA's limitations on public disclosure set forth in Section 2204, in the context of prior Supreme Court nominations, the Committee and the Archivist have agreed that only a subset of documents falling within PRA restrictive categories would be produced to the Committee, and then only on a "Committee Confidential" basis.

In this respect, we intend to follow the practices the Committee, the Archivist, and the William J. Clinton Presidential Library followed during Justice Kagan's nomination, and we hope you will agree. At that time, the Archivist and the Clinton Library agreed to provide a subset of the documents entitled to statutory protection on a "Committee Confidential" basis by agreement of the Chairman. The Committee further agreed that such documents could be discussed only during a Closed Session of the Committee.

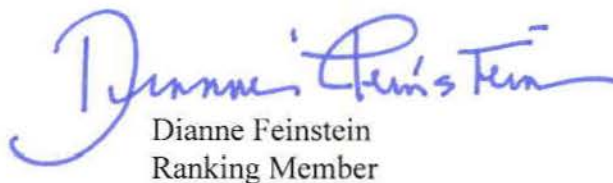
The Archivist further acknowledged that some documents falling within PRA restrictive categories would be withheld, even from Committee production, entirely. With each production, the Archivist identified the total number of documents produced, the number of documents entitled to protection under the PRA that were being produced on the condition that they be treated as "Committee Confidential," and finally the number of documents being withheld entirely pursuant to "rights, defenses, or privileges," including the restrictions set forth in Section 2204. We thus ask that your review identify documents subject to statutory protection for which President Bush's PRA representative is willing to waive such protection for the purpose of "Committee Confidential" production, just as President Clinton's did. We further ask that you produce documents on a rolling basis as you identify documents responsive to our request.

We note that in connection with Justice Kagan's nomination, the Clinton Library attempted to withhold as little as possible and provided portions of documents, rather than withholding entire documents, where possible. We hope you will adopt the same approach. As the Committee has done in the past while considering Supreme Court nominations, most recently in considering Justice Kagan's nomination, we intend then to respect the invocation of privilege by a co-equal branch of our government. For the documents requested by this letter, we further intend to abide by the Committee practice of declining to receive materials reflecting classified national security information or personal privacy information.

We recognize that reviewing the archives and producing these documents is a significant task. We thank you in advance for your cooperation and efforts.

Sincerely,


Chuck Grassley
Chairman


Dianne Feinstein
Ranking Member

cc:

Mr. Donald F. McGahn
Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408

Guidelines

- a) This request is continuing in character. If additional responsive documents come to your attention following your initial production, please provide such documents to the Committee promptly.
- b) As used herein, “document” means the original (or an additional copy when an original is not available), all attached documents, and each distribution copy whether inscribed by hand or by electronic or other means. This request seeks production of all documents described, including all drafts and distribution copies, and contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- c) In the event that any requested document has been destroyed, discarded, or otherwise disposed of, please identify the document as completely as possible, including the date, author(s), addressee(s), recipient(s), title, and subject matter, and the reason for disposal of the document and the identity of all persons who authorized disposal of the document.