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From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
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Subject: : Draft of WP article

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he sent it to me as well

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Mike Allen <allenm@washpost.com>
11/01/2001 07:40:40 PM
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To: Brett M. Kavanaugh/WHO/EOP
cc:
Subject: Draft of WP article

Howdy. If there's a mistake in here or if I've left out an essential point or Clinton is lying, please call my cell P6/b(6) and I'll fix it. Many thanks, Mike

By Mike Allen and George Lardner Jr.
Washington Post Staff Writers

A plan by President Bush to assert control over the records of his last three predecessors drew criticism yesterday from President Bill Clinton and several historians, with critics contending that Bush's policy would have prevented the release of the Watergate tapes.

Administration officials said Bush plans to issue an executive order that would allow either former presidents or the White House to withhold presidential papers from the public. A House subcommittee plans a hearing next week, and critics vowed a court challenge.

The order imposes broad restrictions on the Presidential Records Act of 1978, which made papers of future presidents the property of the National Archives, following a court fight over President Richard Nixon's papers. Administration officials said it was prompted by a request for 68,000 pages of records of President Ronald Reagan, the first president whose records are subject to the act.

Under Bush's order, either the incumbent president or the former president—and in some cases, the family of a deceased president—could veto the release of documents requested by scholars, journalists or others. White

House counsel Alberto R. Gonzales said any decision to withhold documents could be challenged in court, and said the administration would lose if a particular decision did not have solid constitutional grounding. He acknowledged that process could take years. Gonzales said the White House had not created any new privileges or obstacles, but “simply implemented an orderly process to deal with this information.”

“There's a recognition of the importance, for historical reasons, of releasing as much information as we can, being mindful of the fact that there may be reasons that it's inappropriate or harmful to this country not to release certain information,” Gonzales said. “I think we would err on trying to release as much information as we possibly can.”

Gonzales, briefing reporters in a conference room that once was a hideaway office for Nixon, said the administration plans to “give a lot of deference to the former president.” But he said the incumbent president “will be in a better position to decide whether or not the release of documents of a former President do, in fact, jeopardize, say, the national security of this country.”

A Clinton aide said a representative of the president objected to the decision in a recent letter to the White House, arguing that sufficient protections are already on the books. The aide said yesterday that Bush's executive order could hamper public trust in government.

“A government's legitimacy is based on the trust of its people, and when decisions are made on behalf of the American people, citizens eventually have to be able to see the process of how those decisions came to be,” the aide said. The letter was written by Bruce Lindsey, Clinton's deputy White House counsel and now the lawyer for the William J. Clinton Foundation.

Historians said vast troves of documents offering insight into presidential decision-making could be lost, and opponents of Bush's plan said the new policy could have prevented the Watergate tapes from being made public. These opponents said Bush's order would crimp the Presidential Records Act of 1978, which put the papers of future presidents into the public domain, following a court fight over Nixon's papers.

The act applies to the papers of Clinton, Reagan, and Bush's father, President George W. Bush. Many officials of the Reagan and first Bush administration are back in the White House, and critics contend that the executive order may be motivated by a desire to protect them. The White House said the order is necessary because of a law that went into effect this year and required an implementation procedure.

Bush's plan was reported yesterday by The Washington Post. Gonzales said the order would be signed soon, but it will be finalized. He said he would not release the planned order, but the Federation of American Scientists posted an Oct. 29 draft on its Web site (www.fas.org).

A House Government Reform subcommittee headed by Rep. Stephen Horn

(R-Calif.) will hold a hearing on the mushrooming dispute Tuesday. A subcommittee spokesman said the White House would be invited to testify.

Anna K. Nelson, a historian at American University who specializes in the declassification of government records, said Bush appeared to be trying to set a precedent that would give him full control over his own papers 12 years after he leaves office. 'This order sets up a minefield in front of what was a straightforward piece of legislation,' she said. 'It's going to cause a lot of political problems because different parties take over the White House from time to time.'

Thomas S. Blanton, executive director of the National Security Archive, a private research institute specializing in U.S. documents obtained through the Freedom of Information Act, asserted that the new executive order would have prevented release of Nixon's tapes, since courts tend to 'bend over backwards to defer to the government's claims unless on their face those claims are absurd.'

'The default setting for this new system is secrecy,' Blanton said. 'The Presidential Records Act was designed to shift power over presidential records from presidents personally to the government and ultimately to the citizens. This shifts the power back.'

Gonzales said the process being set up by Bush calls for both the former and incumbent presidents to render their judgments 'in 90 days, if at all possible.' He said challenges would be handled by the U.S. District Court for the District of Columbia. 'The requester will have to show compelling circumstance or need to override that privilege,' Gonzales said.

Gonzales referred repeatedly to national security as a possible justification for withholding records. 'It is the responsibility of this president, now, to protect the national security of this country,' he said. However, critics said national security is already protected by the 1978 act and other laws and regulations.