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THE WHITE HOUSE

Office of the Press Secretary

Transcript Internal
November 1, 2001

PRESS ROUNDTABLE WITH
WHITE HOUSE COUNSEL ALBERTO GONZALES

Room 180
Dwight D. Eisenhower Executive Office Building

1:20 P.M. EST

JUDGE GONZALES: We're here to talk about presidential records. Before 1978, presidential records belonged to the outgoing President of the United States, and they would make their own decision about what to do with their own records, what type of records to release, and when to release them. And typically, someone would make a request -- let's say

for Jimmy Carter's records -- of the Carter Library. And President Carter or his representatives would make the decision what kind of documents to release. And they had the unfettered right to withhold any documents they wanted to, for however long they wanted to.

In 1978, the Presidential Records Act was passed, and I think it went into effect in 1981. And pursuant to that act, presidential records then became the property of the National Archives. And it first affects Ronald Reagan's records; he is the first President, former President, whose records are going to be subject to the Presidential Records Act.

Now, the act clearly recognizes that not all documents are to be released. In fact, I brought a copy of the statute that governs this. And the relevant statute is entitled, "Restrictions on Access to Presidential Records." So, clearly, Congress anticipated that certain documents would not be released.

And what we have done in this executive order is to provide a process, an orderly process, to help the Archivist, the former President, and the incumbent President deal with requests for information with respect to the presidential records of a former President. And that is what this order is intended to do. It does not in any way decide what kind of documents can be released. That decision is ultimately to be made by the former President and by the incumbent President.

There was an executive order that was signed by Ronald Reagan dealing with his presidential records. That will be rescinded by this order. And the reason that we are rescinding that order is because that order gives no deference whatsoever to the opinions of a former President. It basically says -- it gives, basically, the decision making to the incumbent President.

And we felt that was inconsistent with current Supreme Court precedent, and also, quite frankly, reflected bad policy. And we thought it would be more appropriate to really give the primary responsibility regarding presidential records to the former President whose records they belong to, and to have the incumbent President sort of be the backstop in making decisions about whether or not those documents should in fact be released.

So, with that, I'm happy to take any questions.

Q Some of the historians are saying that the proposed executive order is pretty much putting the PRA on its head, that there are plenty of exemptions under the current PRA to withhold things that are of national security concern, or personal concern, or third-party concerns, or even proprietary concerns, and that there's really no need for any further restriction.

JUDGE GONZALES: Well, this does not impose any additional restrictions. I want to be very clear about this: the privileges that can be asserted by a former President or by an incumbent President exist pursuant to the laws -- by decisions by the U.S. Supreme Court. This order could not create, you know, that kind of privilege. It is a privilege that exists out there already, irrespective of this order.

All this order does is provide the process by which, again, as I said, the archivist, the former President, and the incumbent President can deal with requests for information. But even if we didn't have this order -- even if we didn't have this order -- if Ronald Reagan's representative wanted to assert a privilege because he felt a privilege was appropriate, he could go ahead and assert it without this order.

Q Well, Judge, as you noted, the Reagan papers are the first to come under this situation. And both the Reagan Library and the National Archives, which obviously are reviewing national security concerns, okayed these papers for release. What's wrong with letting these -- what's wrong with letting these papers out?

JUDGE GONZALES: There hasn't been a decision by the Reagan representative to allow specific documents to be released. This is not something that this White House developed entirely on its own. The reason it has taken some time to put this executive order in place is because we consulted extensively with representatives of the Reagan Library, the Bush 41 Library, representatives from President Clinton. We have consulted extensively with the Department of Justice, and we consulted extensively with the archivist and the officials there, to put together a process that we think provides an orderly way to deal with requests for information.

And, listen, there is no way to anticipate -- I mean, I fully anticipate that a lot of the documents that are within the Reagan Library will be released, and will be released in due course. But there are certain kinds of documents that I think it is appropriate, particularly for national security reasons, that we have a process in place to make sure that you don't release something that hurts the national security of this country.

Q What prompted you to do this? If all of these exemptions existed, and there's a process that is already being worked out when it comes to the Reagan papers, why insert yourself in the middle of it?

JUDGE GONZALES: Well, we didn't insert ourselves in the middle of it. What really prompted this was because in -- I think in May, there was a huge request for documentation from the Reagan Library. And they didn't know how to deal with it. And so it made us realize we need to have some kind of process in place to deal with this.

And so we began in May, I believe, to work on the executive order. We worked on it through the summer, had it basically ready to go at the end of August. The archivist came to us, asked that we actually sample some of the documents, which we did. I think we sampled something like 2,000 documents provided to us by the archivist. And we -- but basically we have been ready to go with this executive order.

Again, what motivated this was the need to have an orderly process. That's what motivated this effort.

Q Well, let me ask this. I haven't read the order. But if the reports that I read are correct, the presumption really is in favor of not disclosing. For example --

JUDGE GONZALES: I don't agree.

Q Well, for example, if it is true, as I read, that the order states that the archivist "must withhold, if possible," when requests are made under the Freedom of Information Act, that would seem to be an attempt not to disclose.

JUDGE GONZALES: I don't believe that the order provides for that. What the order provides for is a request be made to the archivist, for the incumbent President and the former President to be given a copy of those documents, and to make a decision within a certain period of time as to whether or not it's appropriate to assert a privilege. That's what it provides for.

Q Is there a "must withhold"?

JUDGE GONZALES: They must withhold it if the former President or the incumbent President wants to assert a privilege.

Now, let me make sure that everyone understands that this is not the end of the dispute, when that decision is made. That can be appealed to a court of law. And the President or the former President will only succeed on their decision to assert a privilege if, in fact, there is a legitimate reason to do so. This is not about trying to protect from embarrassing documentation or anything like that. This is about legitimately asserting privileges provided for under the Constitution.

Q Will there be a special office created to deal with this? Because I would imagine that you, if you say you had a huge number of requests in May, somebody's got to deal with those huge number of requests, both getting them through you and former Presidents. Are you creating a special office to, essentially, deal with these requests?

JUDGE GONZALES: We -- quite frankly, we haven't thought much about that. I think it will be headed primarily through the Counsel's Office, but we haven't thought about establishing a special office to deal with this.

We are going to give a lot of deference to the former President, because they are, in fact, his documents. And so we will look to the representative of the former President to decide whether or not a privilege should be asserted. And the executive order makes clear that except for compelling circumstances, that this administration will agree with the decision by President Reagan's representative.

Q What about the just cause burden, that you have to show that there's a real reason that you need to make this request?

JUDGE GONZALES: That's language that comes from the U.S. Supreme Court. The Supreme Court says that when there is a legitimate privilege, constitutional privilege that has been asserted, and can be made, that the only way to override that is to show a just cause reason to do so. So this is not a standard that we created. This is a standard created in law, by the --

Q Does this apply to all the documents, or is there a category where -- just broad, general public access, and a category where

this --

JUDGE GONZALES: Again, every request made for documentation will go through the archivist, through this very orderly process. And the process applies to all the documents. I think for the vast majority of the documents, there will not be any privileges asserted.

Q But all must be reviewed?

JUDGE GONZALES: All will be reviewed. But a decision -- the executive order provides, and this is one of the reasons why it's less restrictive than, say, former Presidents' programs have been, in that the incumbent President and the former President have to try to make a decision as to whether or not to assert a privilege within 90 days. And, hopefully, within that period of time a decision is made to release the documents, and people will have the opportunity to look at these documents.

Q Okay, well, what if there's no decision? Does it default to releasing them or does it default to --

JUDGE GONZALES: There will be a decision made. I mean, the full intent is to have a decision made by the representative of President Reagan and by this administration within 90 days, if at all possible.

Q There are people such as Congressman Hefley, a Republican, who basically says that the administration, either this administration or past administrations, tends to use executive orders in a much wider scope. Do you feel that -- I mean, obviously you don't feel, but what about the question, that this executive order may be really legislating Congress, rather than Congress legislating the law?

JUDGE GONZALES: Well, Congress did not provide for any kind of mechanism or process to deal with this -- to deal with how to deal with the former President's records. And we have an obligation to make sure the laws are faithfully executed, that we have an orderly process in place to deal with this. And that's what this executive order is intended to do.

Q But the presumption seems to be for secrecy, Judge.

JUDGE GONZALES: This presumption is not --

Q It seems to be for secrecy.

JUDGE GONZALES: Sir, I don't know -- when you say "the presumption is for secrecy", I disagree with that. I don't think you can presume. There's no way of knowing how many of these documents will in fact be released. A lot will depend on the type of documents that are requested, and the review and the final decisions by the incumbent President and the former President.

Q That's a Catch-22. It can be blocked by either one.

JUDGE GONZALES: And can be released by either one.

Q No, not if the other one disagrees.

JUDGE GONZALES: But, again, there is a strong presumption in favor of the former President. If he wants to release documents, except for exceptional circumstances, this administration will abide by that decision.

Q Well, at the top here, you walked us through what had been the case prior to 1978, and obviously the big changes that we had then with the Records Release Act. And you just said twice, we are going to give a lot of deference to former Presidents. I mean, how does that not take us back to the pre-1978 period, when in fact they had almost exclusive control over their own papers?

JUDGE GONZALES: Because today, now, the former President cannot withhold documents if there is not a legitimate constitutional privilege basis on which to do so. And also now, today, the former President has to make that decision within a certain period of time. So in those two respects, this mechanism may in fact make it easier to get documents than before.

Q What would prevent a former President, though, from saying -- giving any reason, let's say, for saying I don't want these documents released? National security, privacy -- I mean, you're saying that unless he can make a strong case on why they shouldn't be released, they will be released. But what will stop that former President from coming up with any argument to hold on to those papers?

JUDGE GONZALES: Well, again, a former President could attempt to do that. And then if that former President is challenged in court -- if, in fact, there's not a legitimate reason to assert that privilege, the public will have access to that information.

Q Is this executive order in effect right now? Has it taken effect?

JUDGE GONZALES: No, it is not in effect.

Q Well, where is it right now in the process?

JUDGE GONZALES: We are in the final stages of trying to finalize it. And hopefully we will get it done relatively soon.

Q What about the issue of redaction? What about the issue of redaction? I mean, lots of documents that have come out relating to Iran-Contra, for instance, were released but redacted almost to the point of uselessness. I mean, will that be part of this process, too?

JUDGE GONZALES: This executive order, again, does not deal with redaction at all.

Q Do you try to establish what is a legitimate reason to withhold?

JUDGE GONZALES: Well, part of our job will be to advise this President with respect to whether or not we think there's a constitutional

basis to assert a privilege.

Now, the President may decide not to assert the privilege. There are many instances where, in the past, a former President may release documents, even though that President or the President's representatives may view it okay to go ahead and release the documents, even though a privilege can be asserted. That will still continue. There will be instances where former Presidents and this President will go ahead and decide to release documents, even though a privilege could be asserted. There's no reason to believe that that won't continue.

MR. FLEISCHER: Judge, excuse me one second. Before you walked in, Larry and Ed, the Judge held up the statute that Congress wrote that created this process, that led to the process that the Judge has created. And it says in the statute that there is a restriction on documents that can be released. So that is from the organic statute; this EO is a reflection of that.

Q Regardless of whether or not the documents will eventually be released, or how many, it does set up another obstacle. It does set up another barrier.

JUDGE GONZALES: It provides an orderly process, is what it does. Because you have to -- even without this EO, what would happen --

Q It must -- it will mean delay in the release of papers.

JUDGE GONZALES: But even without this EO, what would happen is that you would have to go to the archivist and get the papers anyway, ask for the papers. The archivist, because the archivist understands that a former President and an incumbent President have a constitutional basis to assert a privilege, will check with the former President and with the incumbent President to see, can I release these documents?

This provides an orderly process, trying to impose some time restraints, so that the decision can be made in an orderly fashion as quickly as possible.

Q Judge, how much time do you figure that you and your office have spent on this issue? And, prospectively, how time consuming do you expect it to be after the executive order is in effect?

JUDGE GONZALES: I can't anticipate the latter -- I don't know. We spent -- you know, this is an important issue. It's the first time this process has had to have been implemented. And as I said before, we have consulted with a lot of folks to make sure this is a process that makes sense under these circumstances.

Q Judge, in the process of deferring to former Presidents, if they give you the green light, will you -- and are you telling us and historians who are curious about this that in almost every case, if the former President gives you the green light, you are going to respect that green light? Or do you see part of your obligation to assert the President's wishes, and contravene the wishes of a former President, if there are issues you think need to be asserted, either constitutionally or on national security?

JUDGE GONZALES: Well, you'll have to remember that a former President may not have knowledge that this President has about, for example, national security issues that are ongoing; and that there may be reasons in which this President may want to go ahead and assert a privilege, even though the former President does not wish to do so, because this President may have knowledge. And it is the responsibility of this President, now, to protect the national security of this country.

Q How do you insulate yourself, then, against questions about that being simply a variation on the current prohibition we have, under the circumstances we're in now, of "not discussing operational details." I mean, isn't that a cloak that you can use to throw over -- how do you counter the accusations that will come from historians and scholars that you're using that, each and every time you do it, as an excuse not to release stuff that is probably of legitimate public value? I mean, you know, how do you plan to deal with that? Because the questions most certainly are going to come, not just today, but every time this happens down the road.

JUDGE GONZALES: Again, all of these decisions can be tested in court. And if in fact we are not making a good faith effort to assert legitimate privileges, that will soon be revealed.

Q Do you anticipate that only the national security exemption would be applied in overruling a previous President's wishes? Or can you see, like, executive communication or --

JUDGE GONZALES: I can't anticipate -- again, it would be unfair for me to restrict this President's decision making, in terms of when he may override a decision of the former President. All I can say is the statute clearly provides for it, but it would require an exceptional circumstance.

Q The average citizen's recourse, if I understand this, the stopgap here, is to take a President or a former President to court.

JUDGE GONZALES: But that would be the recourse even without the order. That's the recourse without the order, because the President and former President still have that privilege, without the order. And so, even without the order, if a citizen wanted access to information, and a former President decides to assert his privilege, the only thing that a citizen can do is take them to court. We're not changing that.

Q Judge, in your conversations with the President, if you've had any on this particular subject, has he given you any indication of what he wants your sort of baseline assumptions to be? The assumption is, release as much as you can, if the former President gives you a green light, or filter everything very carefully and make sure that we are on the other side of the ledger, more toward asserting this privilege?

JUDGE GONZALES: Well, I think that 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. I think we would err on trying to release as much

information as we possibly can.

Q On that point, Judge, could you differentiate between inappropriate and something that would be threatening to the nation? You just said those would be two standards, something that might be inappropriate or something that would be threatening to the nation. Could you distinguish the two?

JUDGE GONZALES: Well, the standard would be whether or not it satisfies the constitutional requirements for fitting in one of the recognized privileges.

Q On the Reagan documents, the 68,000 pages of Reagan documents, tell me again, where are you on that? You are still opposed to that release? You indicated they were going to be released?

JUDGE GONZALES: Well, I don't know what specific requests have been made of the archivist. I do know there have been --

Q The Washington Post reported this morning that you -- that this administration had blocked the release of 68,000 pages of documents that the Reagan administration wanted to be made public. Where are you on --

JUDGE GONZALES: I disagree with that.

Q You did -- that is not accurate?

JUDGE GONZALES: The Reagan representative is on board with this process and supports this process.

Q So therefore -- are we talking about the same thing here?

Q Those records were supposed to be released, by law, in January.

JUDGE GONZALES: They're available for release, but the statute makes quite clear -- makes quite clear that the statute in no way limits the constitutional prerogatives or privileges available to an incumbent President, or a former President. So on January --

Q Those are not national security documents, those are simply policy documents, and policy deliberation documents.

JUDGE GONZALES: But there may be implications for national security reasons. We don't know that. We don't know that, because --

Q Some historians are saying to us that the administration is using this current war on terrorism as a reason to champion national security as a reason to hold back on presidential records.

JUDGE GONZALES: We began this process back in May --

Q And also they say that this is just one more indication of the administration's attempts to restrict access to government records.

JUDGE GONZALES: Well, again, I think this not inconsistent with the battles that -- not battles, but the disagreements that have arisen between an administration and a Congress with respect to access to information. And all we have done here -- again, we have not created any new privileges, we haven't created any new obstacles. We've simply implemented an orderly process to deal with this information.

Q May I go back over two things, please, Judge? First, would you explain to us again why you felt it necessary to write a new executive order to replace the Reagan-era executive order? And, second, I'd like to return to the Freedom of Information question. The Post article says that for documents which are not covered by constitutionally based privileges, but are subject to requests under FOIA, the order states that the archivist "must withhold, if possible."

JUDGE GONZALES: I disagree with that. If there is no constitutional basis to assert a privilege, then the archivist -- the mandate on the archivist relates to a decision by a President or a former President. Whether or not that decision by a President or former President is in fact a legitimate one is one that has to be grounded on constitutional precedent.

Q Could you restate the reason for rewriting the executive order?

JUDGE GONZALES: The Reagan documents -- the Reagan executive order does not take into account the desires of a former President. It basically gives entirely the decision about what to do with documents to the incumbent President. We felt that that was inconsistent with Supreme Court precedent, which says that a former President, even though the former President is out of office, still has the ability and right to assert constitutional privileges.

And we also felt it was simply bad policy. We felt that the former President had as much, if perhaps not even more, of a right to decide what happens to his documents. And that was the reason that the executive order will be rescinded.

Q Former Presidents were, at one point, as I understand, given national security briefing updates. Is this still the case? And if that's the case, wouldn't they have a basis, given that information, to make a decision on what documents they want to release?

JUDGE GONZALES: Even if that is true today -- and I'm not going to confirm whether that's true today -- you don't know. I mean, I would venture to guess that that former President is not going to have all of the same information that an incumbent President has, and that the incumbent President will always have more information, and may be in a better position -- well, 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.

Q So you're not going to confirm whether they get updates or not?

JUDGE GONZALES: No.

Q Well, what if a document has been released? Will that be released in perpetuity, so anybody can have access to that same document? Do you envision a process where large categories of documents will be reviewed, and then just opened, released for anyone?

JUDGE GONZALES: It would be like a FOIA request. Someone makes a request for -- these documents, I guess they would be catalogued; and you say, I want documents one through 50. The archivist will then provide a copy to the former President, and the incumbent President. We will review them, the former President's representative will review them, and make a decision whether or not those documents should be released. If they should be, then they get released to the person who requested the documents.

Q So every time somebody wants documents one-two-three, that has to go through that process?

JUDGE GONZALES: Will we go through that process? I don't believe it will go through that process.

Q Okay, so once it's been released, it will be rubber-stamped?

JUDGE GONZALES: It's out in the public domain.

Q And that process you outlined has to happen in 90 days, is that correct?

JUDGE GONZALES: Yes. We call for it to happen in 90 days, if at all possible.

Q Accepting the possibility that something like this becomes law, let's think for a minute about the court challenge. I mean, if you've got a secret document, and we, you know --

JUDGE GONZALES: It's not a secret document.

Q A withheld document that is not part of the public domain.

JUDGE GONZALES: It's a privilege document.

Q A privilege document. How do you have a court proceeding? How does a court proceeding work, and how can the public be satisfied that legitimate standards have been --

JUDGE GONZALES: Well, the statute clearly provides that, with respect to a former President who wants to assert a privilege, that the court of original jurisdiction is the District Court for the District of Columbia. And at that point, the President will have to come in and prove the privilege -- assert the privilege. The requester will have to show compelling circumstance or need to override that privilege.

Q Can I back up to when you all got -- you all got this sort of voluminous request for records from the Reagan Library. Where in

the process did you all get to the point where you decided, look, we need to either formalize this, or -- what was it that created a trigger?

JUDGE GONZALES: Well, we realized very early we didn't have a process to deal with this.

Q Right, and you could have just developed a process. You didn't have to move to the point where you formalized this --

JUDGE GONZALES: Well, we wanted a process that was binding upon the archivist, who is within the executive branch, and the best way to do that is through an executive order. And that's why we did it through this process.

Q But you could not -- you don't believe that the archivist would have simply worked with you all on this? If all of these exemptions -- if you all aren't really writing any new law with this, and if this is, as you say, simply a matter of process, and setting down some clear dates, and that sort of thing, then why did you not believe the archivist would have simply worked with you? Why did you need to rise and take this to the level of an executive order?

JUDGE GONZALES: I guess we wanted to give comfort to the American people that we would have a process in place to ensure that within a reasonable period of time most documents would be released in due course.

Q Judge, is there any -- pardon me if you've already mentioned this, but has there been an instance where a past President has agreed to release papers --

JUDGE GONZALES: Oh, sure.

Q No -- that eventually endangered national security, that actually breached national security somewhere along the line?

JUDGE GONZALES: I'm not aware of that. But, again --

Q Then why would you need a new process to make sure that doesn't happen in the future? The system then was working, was it not?

JUDGE GONZALES: Well, the difference is that, of course, before, those papers belonged to the former President. Now, these papers belong to the United States of America. So there is a difference. There is a difference.

Q How much input did the Bush Library have in this? Do they have any big document requests pending that they're worried about?

JUDGE GONZALES: I don't know of any document requests. But we did consult with former President Bush's representative on it.

Q Is the burden on proof on the historian or the scholar, if this goes to court, to prove that the President who asserts, the former President or the administration is --

JUDGE GONZALES: Major, I'm not certain, so I don't want to answer that question. I don't know. I just don't know the answer to that question.

Q Judge, can I ask on what you just said about -- that this process now, before, the papers belonged to the former President, and now they belong to the United States of America. This sounds to me -- I mean, coming late, but a major change.

JUDGE GONZALES: A major change from --

Q From once belonging to the former Presidents to --

JUDGE GONZALES: I began my remarks by explaining that before 1978, presidential records belonged to the outgoing President. So President Kennedy, President Nixon, President Carter, when they left office, their documents went with them. And they would decide, entirely on their own, which documents to release, on what timetable they would release those documents -- they could refuse to release any documents they wanted to for whatever reason.

In 1978, the Presidential Records Act was passed -- it was made effective, I think, in 1981 -- which basically provided that hereinafter, the presidential records of an outgoing President would belong to the National Archives. The Congress made quite clear that there would be limitations, restrictions on access to presidential records. And this executive order was passed merely to implement an orderly process to deal with requests for presidential records.

Q So one of your goals is to bring the former Presidents back into it?

Q Right, it doesn't sound like you're ensuring that the public has a clear set of guidelines, it sounds like this executive order guarantees a former President a new sense of authority in terms of what they can control and --

JUDGE GONZALES: No, this executive order doesn't create that. Again, the law clearly recognizes that a former President has a constitutional privilege that can be asserted even without this executive order. What we've done is simply implement a process, in terms of educating American citizens, about how that privilege is going to rightfully be asserted.

Q And it also is a process by which the former President can execute those privileges.

JUDGE GONZALES: Sure.

Q If the court gave them the privileges, then it may have been unclear to former Presidents about how and when they should insert themselves in the process, if they want to implement or exercise. This process gives the former Presidents a clear --

Q Blueprint.

Q Blueprint, right -- of how then to exercise any kind of exemptions or objections, if they may want to; is that not also what this does?

JUDGE GONZALES: It does not -- I think it's giving us too much credit to say that we're providing a blueprint as to how a former President can assert a privilege. I think a former President knows very well how to assert a privilege, and when that privilege can be asserted.

Q Other than reasons of national security, what other reasons can you see a current President or former President saying, these papers shouldn't be released?

JUDGE GONZALES: Again, I don't want to get into that. There could be circumstances I just can't foresee, so --

Q Well, they're on the law, aren't they? That's in the law, isn't it?

JUDGE GONZALES: Yes, but it's all very fact-specific, depending upon the facts, and depending upon the document that's being requested.

Q Judge, you mentioned a moment ago that if a scholar or historian takes a President to court, that scholar or historian would need to prove a "compelling need" for the document. Is that a judicially defined term of art?

JUDGE GONZALES: Yes. If you want to check with me later, I can give you the exact language from the U.S. Supreme Court case of Nixon v. Administrator of General Services, where the Court said what has to be shown to overcome a constitutionally based privilege. Don't tie me to those words. I can't remember now -- compelling, or something. Compelling need, or --

Q But there is a judicially defined standard by which a scholar or historian --

JUDGE GONZALES: Yes, there is.

Q -- would have to meet, to prove to the judge, to adjudicate this case, that there was this need to get this past the assertion of either a current President or a former President's privilege?

JUDGE GONZALES: Right. This is not a standard that we've made up. This is a standard that's recognized by the U.S. Supreme Court.

Q Judge, so that we may describe this as precisely as possible, would you be willing to make available to us the draft of the executive order?

JUDGE GONZALES: No.

Q Why not? You know, you're asking for --

JUDGE GONZALES: First of all, it may change. And, hopefully, we'll get it done quickly, and at that point you'll have a copy of the

signed executive order.

Q Earlier you said in most cases 90 days, or you would try to make it?

JUDGE GONZALES: Yes.

Q Will it -- are there specific provisions in the order for going beyond 90 days --

JUDGE GONZALES: The order says 90 days. The truth of the matter is, if there's a request for 68,000 documents, and the Reagan representative has to review 68,000 documents, the Reagan representative may not be able to get it done in 90 days. It may take him 95 days. And so --

Q Well, it could take him 10 years. Is there any -- is there some specific end point to the review? Ninety days or never?

JUDGE GONZALES: Our objective, again, is to try to have the decision made within 90 days. Obviously, we have limited control upon the representative of a former President. But we would certainly do what we can, what we could do to ensure that we would have a decision within 90 days. That's our goal. We're going to make a good faith effort to make sure the decision is made with 90 days. And so we'll know where we're at in 90 days.

Q Obviously, that's not a binding requirement, and this could, in fact, if it's a document request like this, could take not weeks, not months, but years; isn't that true?

JUDGE GONZALES: I don't know how long it would take. Again, our objective is to try to get an answer to these requests as soon as possible.

Q Is 90 days in the executive order?

JUDGE GONZALES: Yes, 90 days is in the executive order.

Q Is it your goal, Judge, or will it be the goals of the administration on its end, to make its decision within 90 days?

JUDGE GONZALES: Absolutely.

Q So when do you hope to put this out?

JUDGE GONZALES: As soon as we can. I mean, we're still -- we need to finalize it, and get it approved by the President. And we'll get it out as soon as we can.

Q I realize that this isn't your purview, Judge, but it's hard to escape the suspicion that there could be political motives for not disclosing materials which might apply to people who served in this administration, who have served in past administrations -- the Reagan administration to begin with. And that is one thing, I guess, that has put this whole thing under a cloud of suspicion for many who look at it.

I know that's not to do with the legality of it, but I think that's the elephant in the room here.

JUDGE GONZALES: Is there a question there?

Q Nope. (Laughter.) Not unless you care to respond to it.

Q I have a question. Do you have concerns about that perception?

Q Yes. Is there no response to that?

Q How concerned are you about the perception, no matter how diligently this is reported, that this administration is doing everything it can to withhold information?

JUDGE GONZALES: Well, first of all --

Q And using the war as cloak.

JUDGE GONZALES: First of all, again, it wasn't until August, after the executive order had really been drafted, that we even looked at the contents. We don't know what's in those documents. There may, in fact, be embarrassing documents. There may not be any embarrassing documents. We don't know.

If a document is embarrassing, and we assert a privilege, we're going to lose when that claim is litigated. We're going to lose, because that's not a legitimate reason to assert a privilege.

Q But that would be years down the road, wouldn't it, Judge?

JUDGE GONZALES: I don't know how long it will take. I don't know how long. But the bottom line is that this administration does not intend to assert privilege unless there's a constitutional basis to do so. It will not be driven by politics or by what looks good. It will be driven by what is in fact allowed under the Constitution.

Q And can you address Bill's other point, which was the perception by some that there is an effort -- because some of the Reagan people, the people who worked in the Reagan administration now work in this administration -- that there might be some effort to try to make sure there isn't information -- try to protect people who have served in both administrations, that sort of layover that this --

JUDGE GONZALES: Well, again, I don't know what the documents hold. And we will assert a privilege only when there's a legitimate reason to do so. Look, we haven't withheld a single document yet. There's been a delay, no question about it. But there's been no decision not to release a document. Let's see how this process works.

Q Sir, in your conversations with the Reagan folks, was that concern expressed to you or your office that there may be, in fact, some embarrassing documents here?

JUDGE GONZALES: No, not that I'm aware of.

THE PRESS: Thank you.

END

1:55 P.M. EST

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