

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND)
ETHICS IN WASHINGTON,)
)
Plaintiff,)
)
v.)
)
NATIONAL ARCHIVES AND RECORDS)
ADMINISTRATION,)
)
Defendant.)
_____)

CIVIL ACTION NO.
1:07-cv-00048-RBW

SECOND SUPPLEMENTAL DECLARATION OF GARY M. STERN

I, Gary M. Stern, hereby declare as follows:

1. I am the General Counsel of the National Archives and Records Administration ("NARA"), and have held this position since September 1998. The purpose of this declaration is to supplement my declarations of May 7 and June 21, 2007, in accordance with the Court's Amended Order and Amended Memorandum Opinion of October 28, 2008. In addition to Document 3, on which the Amended Order requires a more detailed explanation to support its partial withholding, I will offer a few observations regarding two of the documents that the Court has ordered the defendant to submit for in camera review, to assist the Court in understanding such documents.

Document 3

2. As stated in my declaration of May 7, 2007, Document 3 is a one-page, undated cover memorandum entitled "U.S. Secret Service White House Division Workers and Visitors Entrance System (WAVES), Job No. N1-87-93-03," along with an attached draft records schedule. NARA

made a discretionary release of the accompanying draft records schedule and a segregable factual portion of the cover memorandum. The withheld portion of the cover memorandum amounts to approximately one-half of a page.

3. In my declaration of May 7, I stated that the withheld portion of Document 3 discusses various legal and recordkeeping issues concerning Worker and Visitor Entrance System ("WAVES") records. In response to the Court's request for a more detailed explanation to support the withholding of a portion of this document, I note that the withheld portion consists of (1) a number of bullet points and (2) a few handwritten notations. The bullet points summarize the input and views of the Secret Service, various NARA offices, and personnel elsewhere in the Executive Branch regarding the proper status and handling of WAVES records. The handwritten notations reflect the thoughts and reactions of an unidentified NARA employee. Nothing in the withheld portion states or even recommends a conclusion or final position by the Archivist of the United States.

4. As noted in my earlier declaration, the cover memorandum appears to have been drafted sometime shortly after receipt of the accompanying draft records schedule in 1996. The internal notation at the top of the memorandum ("Job No. N1-87-93-03") refers to the accompanying draft records schedule, which bears the same notation in the "Job Number" box at its top, right-hand corner.

Documents 13 and 14

5. As reflected in my two prior declarations (paragraphs 18-20 of the May 7, 2007, declaration, and paragraphs 7-8 of the June 21, 2007, declaration), Document 14 is my response, dated January 19, 2001, to a January 17, 2001, memorandum co-authored by counsel at the

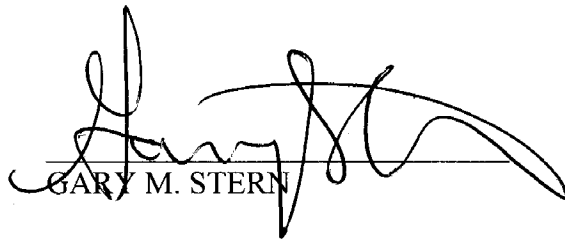
Secret Service and an Associate Counsel to the President (Document 13), in which they analyzed the status of the Clinton Administration WAVES and related records, discussed how the Secret Service was then treating the records, and proposed how to treat specific fields of data contained within such records in terms of transfer to the White House and ultimate disposition. My response (Document 14) reflected my understanding, on the last day of the Clinton Administration, regarding how those records would be treated and how I believed NARA would proceed. As noted in my declaration of June 21, 2007, aside from the Archivist's statutory authority to issue regulations and make final decisions on the permanent or temporary status of federal records, 44 U.S.C. §§ 3102, 3303a, subordinate officials of NARA (including myself) simply provide advice and recommendations regarding federal agencies' compliance with their responsibilities under the Federal Records Act. Document 14 was an exercise of that advisory function.

6. As stated in my June 2007, declaration, "the recommendations contained in Document 13, which I concurred with in Document 14, were not implemented in that form either by the Secret Service or by the Archivist of the United States as the final decisionmaker for NARA. Nor was Document 14 binding on anyone or self-executing in any sense. Rather, the entire matter of the status and handling of the copy of WAVES and related records in the possession of the Secret Service was revisited during the current Administration." The approach reflected in Documents 13 and 14 was ultimately not adopted, as NARA and other components of the Executive Branch continued, after my transmittal of Document 14, to deliberate on the legal and recordkeeping issues concerning the transfer and disposition of WAVES records — as reflected

in Documents 15, 16, 18, 18a, 24, 26, and 27, among others, all of which post-date Documents 13 and 14.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 26, 2008.


GARY M. STERN