

Schauder, Andrew

From: Schauder, Andrew
Sent: Thursday, October 11, 2001 5:57 PM
To: Schauder, Andrew; Newstead, Jennifer; Ciongoli, Adam;
'Bradford_A._Berenson@who.eop.gov%inetgw';
'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan;
'Heather_Wingate@who.eop.gov'; Ullman, Kristen A; Long, Linda E; Benedi,
Lizette D; Rabjohns, Lori; Day, Lori Sharpe;
'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick
O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw';
'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet;
'Ziad_S._Ojakli@who.eop.gov%inetgw'; Carroll, James W (OLP)
Subject: judicial media review
Attachments: Judicial Media Review 10-11-01.wpd

[Please see attached review](#)

Media Review - Judicial Nominations

Thursday, October 11, 2001

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General Judicial Articles

Conservative Pow-Wow to go Back to Basics

By Barbra Murray
White House Weekly
Wednesday, October 10, 2001

In the first national conservative gathering since last month's terrorist attacks, conservatives will get back to the business at hand from Oct. 25-27 at the Leadership Institute's annual Congressional Leadership Conference. While the attacks will color parts of the agenda, politics and campaigning issues will take center stage.

The three-day event is scheduled to take place in Arlington, Va., where a who's who list of conservative leaders will speak. Among the participants are: Sen. Mitch McConnell (R-Ky.), Reps. Bob Barr (R-Ga.), Roscoe Bartlett (R-Md.), Asa Hutchinson (R-Ark.), and Forbes Inc. President Steve Forbes. In addition to an array of speakers-who will lecture on topics such as campaign finance reform, the 2002 elections, the economy, and energy policy and environmentalism-attendees will also have the opportunity to choose among a variety of training sessions. Those sessions will cover aspects of campaign organization, communication, fund-raising, public relations and political technology.

"The program is unique among conservative national gatherings in that there is an equal balance between presentations on issues, current events and political philosophies on the one hand, and a practical training program on the other," said Leadership Institute President Morton Blackwell.

The state of judicial nominations is one of the big issues for conservatives to be discussed at the conference. "Judicial appointments are the single most important domestic issue because the kind of judge that sits on the bench will determine how the country is governed," explained Thomas Jipping, director of the Free Congress Foundation's Center for Law & Democracy. Jipping will cover the topic at the conference.

Jipping said there is a campaign of obstruction among Democrats to hinder confirmations of President Bush's judicial nominees. He said he will tell the conference attendees that there are three keys to turning around the situation. The first task, he explained, "is educating the public about the fundamental issues about the judiciary; second, telling the country the truth about the facts of the current situation and essentially what hypocrites the Senate Democrats are being; and third, urging Senate Republicans and the Republican administration to fight for the confirmations"

Specifically, Jipping will call for the president himself to get more involved in the nominations process. He said the audience of conservative movers and shakers are certain to understand and convey the message back in Washington. "[It is] going to require active presidential leadership on this to get them confirmed," Jipping explained. "Making good nominations is not good enough. That won't get judges appointed; you have to get them confirmed."

Speaking about public support for the president's judicial nominations and other conservative issues, Blackwell said there will be a new wave of conservatism on the president's side, partly due to his response to the terrorist attacks.

"I think we are in a new phase of politics in this country," he said. "George W. Bush is going to remain more popular for the balance of his term and certainly for the balance of the difficulty we will have with terrorists; more popular than he was on September 10. This is a different political environment."

He added that liberal lawmakers are straying away from the unity they showed with other lawmakers in the days immediately following the attacks. It is a change, he said, of which the patriotic American public will not approve.

"In the current environment, [liberals] are passe," Blackwell said. "There's going to be happening to the left what they have tried to do to conservatives for so long, and that is isolate us and make us appear to be the odd man out, and try to make our positions politically unacceptable. I think the reverse is happening."

The conference will not be all business; there will be gala events, as well. "What's on the minds of everybody is the fact that we're Americans, and we're going to celebrate that," said Conservative Leadership Conference Coordinator Mike Krempasky.

In addition to honoring firefighters from Arlington, Va. and New York who will attend as guests, the conference will also have a video tribute to Barbara Olson. Olson, a lawyer and conservative commentator who spoke at the conference in the past, perished in one of the hijacked airplanes that hit the Pentagon.

And while they are not expecting more than the 600 who attended last year's event due to many citizens' wariness of travel since the attacks, conference officials said they do expect a significant showing of students. "Since we confirmed [conservative author and actor] Ben Stein as our keynote speaker, students from all over the country have been registering," Krempasky said.

Metairie Lawyer Tapped for Judge Post; LA Delegation Backs US Court Nominee

By Bill Walsh

The Times-Picayune

Thursday, October 11, 2001

President Bush on Wednesday nominated Metairie defense lawyer Jay Zainey to a vacancy on the U.S.

District Court in New Orleans.

Zainey, 50, had the backing of the Louisiana congressional delegation to fill one of two vacancies at the federal court. Metairie lawyer Kurt Engelhardt was tapped for the other post. A third seat will open up should U.S. District Judge Edith Clement be confirmed, as expected, by the U.S. Senate for a slot on the 5th U.S. Circuit Court of Appeals. The Senate Judiciary Committee considered her nomination last week.

It's unclear when Bush will nominate a candidate for U.S. attorney in New Orleans. Gretna lawyer Fred Heebe is the choice of the delegation, but his background check reportedly has been stalled as the FBI focuses its attention on the Sept. 11 terrorist attacks.

Zainey, a graduate of the University of New Orleans and the Louisiana State University School of Law, was president of the Louisiana Bar Association from 1995 to 1996.

He has an unusual political pedigree among Bush judicial nominees. Five years ago, he managed the U.S. Senate campaign of Louisiana Attorney General Richard Ieyoub, a Democrat. He also worked on and contributed money to Ieyoub's races for attorney general. Ieyoub's office awarded Zainey state legal contracts collecting debts at Charity Hospital and pursuing polluters.

Two years ago, Zainey managed the unsuccessful congressional campaign of former Gov. David Treen, a Republican.

Between 1976 and 1986, Zainey worked with prominent defense lawyer James McPherson before striking out on his own. His most prominent client in recent years was Frank Bedell, the driver of the tour bus that crashed on Mother's Day 1999, killing 22 people.

Zainey's judicial experience includes posts as a traffic hearing officer and ad hoc assignments in First Parish Court and Juvenile Court in Jefferson Parish.

Mobile Judge Nominated to Circuit Court Post

The Associated Press
Wednesday, October 10, 2001

President Bush has nominated U.S. Magistrate Judge Williams Steele of Mobile, Ala., to the 11th U.S. Circuit Court of Appeals in Atlanta.

The nomination was forwarded to the Senate on Tuesday. The Constitution requires the Senate to approve all federal judicial nominees, but a hearing before the Senate Judiciary Committee isn't expected until next year.

Forty-one Bush nominees are already awaiting hearings.

Steele, 50, has been a federal magistrate since 1990. He previously served as a state and federal prosecutor.

His formal nomination for the lifetime appointment had been delayed while the White House looked into complaints over Steele's dismissal of an employment discrimination lawsuit in April, said Sen. Jeff Sessions.

The Southern Christian Leadership Conference had hoped to stop Steele's nomination.

Steele didn't return a Tuesday phone call from the Mobile Register seeking comment.

If confirmed, Steele would earn \$153,900 per year.

Bush Taps Two for 11th Circuit Appeals Court, Middle District

[R. Robin McDonald](#)
Fulton County Daily Report
Wednesday, October 10, 2001

The White House has nominated an Alabama federal magistrate to fill a vacant seat on the 11th U.S. Circuit Court of Appeals.

William H. Steele, 50, is President George W. Bush's pick to replace Circuit Judge Emmett R. Cox, who took senior status last year. Steele still must be confirmed by the U.S. Senate.

Steele has been a federal magistrate in the Southern District of Alabama in Mobile since 1990. A native of Tuscumbia, Ala., Steele received his B.A. in political science from the University of Southern Mississippi in 1972. He was awarded his law degree at the University of Alabama in 1980. From 1972-1978, Steele was a Marine Corps pilot.

A year after he graduated from law school, Steele joined the district attorney's office in Mobile, Ala., as an assistant district attorney. He remained there for six years, then joined the staff of the U.S. Attorney for the Southern District of Alabama in 1987. President George Bush appointed Steele to the bench as a federal magistrate in 1990.

John Crowder Cunningham, a partner with Cunningham, Bounds, Yance, Crowder & Brown in Mobile, who knows Steele and has appeared before him in federal court, says Steele "will be a great judge. He has practiced law as an individual practitioner and handled a wide range of cases. He has an appreciation of what lawyers go through on a daily basis, how the average lawyer has to deal with cases."

"He's not a former white-shoe lawyer from a big firm who has no idea what goes on in real life in daily practice," Cunningham says.

Cunningham also says that Steele is thoughtful and measured in his deliberations. "I don't think he has an agenda, one way or the other," he says. "I don't think he has any political agenda that will impact his rulings. I'm a Democrat, and I feel perfectly comfortable having him decide any case."

Macon's Royal chosen for federal judgeship

The White House has nominated C. Ashley Royal to be U.S. District Judge for the Middle District of Georgia in Macon. Royal is an attorney with Jones, Cork & Miller, where he has been

a partner since 1985.

If confirmed by the U.S. Senate, he would fill the slot vacated by U.S. District Judge DuRoss Fitzpatrick. Fitzpatrick, 66, was the Chief Judge of Georgia's Middle District until he took senior status in February. But Fitzpatrick has said that his new post as a senior judge won't affect his caseload, which he has said he does not plan to reduce for at least five years.

Royal, 52, is a graduate of the University of Georgia, where he earned a bachelor's and master's degree. He was awarded his J.D. from UGA in 1974.

That same year, he began his career as an assistant district attorney in the Augusta Judicial Circuit. After a year there, he became a partner at Howard, Howard & Royal and public defender of Glynn County.

He also has worked as a sole practitioner and at the firms of Falligant, Kent & Toporek; Fulcher, Fulcher, Hagler, Harper & Reed; and Kent, Barrow & Royal.

Republican Senators Push Judiciary Committee for More Judges, U.S. Attorneys

[Jesse Holland](#)

[The Associated Press](#)

[Tuesday, October 9, 2001](#)

Republicans pushed Senate Judiciary Chairman Patrick Leahy to increase the speed of judicial and U.S. attorney confirmations, saying "there is no higher priority" - after fighting terrorism, that is.

Only six judges - three federal appeals court and three U.S. district judges - have been confirmed by the Senate this year. There are 107 vacancies and 48 Bush nominees who have not yet been confirmed. Bush sent four new nominations to the Senate on Friday:

-Julia S. Gibbons to be a U.S. Appeals Court Judge in the 6th Circuit.

-William H. Steele of Alabama to be a U.S. Appeals Court Judge in the 11th Circuit.

-C. Ashley Royal of Georgia to be a U.S. District Judge in Georgia.

-Phillip R. Martinez to be a U.S. District Judge in Texas.

"In our view, once the anti-terrorism legislation is completed, there is no higher priority than filling the vacancies that exist in our federal courts," the nine GOP senators on the Judiciary Committee said. "And because of the recent tragic events, the other priority is confirmation of U.S. Attorney nominees."

Republicans have complained most of the year that the Senate has not moved quickly enough on

Bush's nominations.

"At a time when we're fighting terrorism, we believe that it's important that our judiciary branch is fully staffed," said Ron Bonjean, spokesman for Senate Minority Leader Trent Lott, R-Miss.

Democrats say the committee, now under their control, is moving more quickly on Bush's nominees than the GOP-controlled committee did with former President Clinton's nominees.

Leahy, D-Vt., has said that in 1993, Clinton's first year, the first U.S. Appeals Court judge was not confirmed until September.

"This has been a tumultuous and unprecedented year in the Senate but our numbers still compare favorably to recent years," Leahy spokeswoman Mimi Devlin said. "Despite the committee's focus on the anti-terrorism legislation, we are ahead of the pace for confirmation and hearings of judges during the first year of the Clinton and the first Bush administrations."

Interest Groups/Press Releases

Leahy, Brock, and the FBI; The FBI Investigates David Brock's Accusations Against a Bush Nominee

By Byron York

National Review

Thursday, October 11, 2001

At the request of Senate Judiciary Committee chairman Patrick Leahy, the FBI has begun an investigation of allegations made by former conservative writer David Brock against Terry Wooten, a Bush White House nominee to the United States District Court in South Carolina.

Last August, Brock sent a letter to the Judiciary Committee accusing Wooten of illegally giving out secret FBI files in the early 1990s, when Wooten was a top aide to Republicans on the committee. At the time, Brock was writing a book that was highly critical of Anita Hill, the woman who accused

Supreme Court Justice Clarence Thomas of sexual harassment. Brock, who has disavowed much of his old work and has admitted to knowingly publishing false information about the Thomas case, said Wooten gave him FBI material on Angela Wright, a woman who has said she was harassed by Thomas but did not testify at Thomas's confirmation hearings.

In his letter to the committee, Brock said, "Mr. Wooten handed me copies of several pages of Ms. Wright's raw FBI file....I removed the FBI material from his office and took it to my house in Northwest Washington, where I was writing the book."

At his confirmation hearing in late August, Wooten denied Brock's charge. "There is not one scintilla or one iota of truth to that allegation," he told the committee. A Washington Post account of the hearing reported that Leahy "indicated that he believed Wooten would be

confirmed."

But on September 17, when much of the committee was deeply involved in antiterrorism legislation, Leahy sent a letter to Attorney General John Ashcroft requesting an FBI investigation of Brock's story. "This is a serious allegation requiring further investigation," Leahy wrote, adding that "the committee cannot continue to process [Wooten's] nomination without further investigation..."

One of the issues apparently involved in the probe is whether Brock has any documentary evidence to back up his accusations. It is not clear whether Brock has provided anything to the committee, but FBI agents have contacted R. Emmett Tyrrell Jr., the editor-in-chief of the Spectator, as well as Terry Eastland, the magazine's former publisher, to ask them if they know the whereabouts of Brock's notes.

When Brock and the magazine parted ways in late 1997, he left several boxes of materials at the Spectator's offices in Arlington, Virginia. The magazine's management sent him a number of written requests to pick up the materials. After several months, when Brock had not responded to the inquiries, the management threw the materials away. The FBI has asked Tyrrell and Eastland if they knew what was in the boxes, but it appears that neither they nor anyone else at the magazine knew the boxes' contents. Also, it is not known whether any of Brock's materials were sent to the Hoover Institution, which is handling much of the Spectator's archives.

Finally, it is not clear how extensive the FBI investigation will be and how long Wooten's confirmation will be delayed. Leahy's letter to the Justice Department asks only that the FBI interview Brock, Wooten, and "any other individuals as the Bureau deems necessary."

On Judges, Back to the Battle; The Renewed Fight Over Judicial Nominees

By Byron York

National Review

Tuesday, October 9, 2001

There are plenty of signs that pre-September 11 conflicts are re-emerging on Capitol Hill, but none is stronger than the renewed fighting that will likely erupt next week over the issue of President Bush's judicial nominations.

Last week Republicans sent Senate Judiciary Committee chairman Patrick Leahy a letter saying that "once the anti-terrorism legislation is completed, there is no higher priority than filling the vacancies that exist in our federal courts." The letter, signed by every Republican on the Judiciary Committee, reminds Leahy that the Senate has confirmed just six of the nearly 50 judicial nominees the president has sent to the Hill.

The GOP senators also stress that Majority Leader Tom Daschle made a commitment to

Minority Leader Trent Lott in late September that the Senate would act on the more than three dozen nominees who had been sent to the Senate by the time of the August recess. And the Republicans use Leahy's own words to press the point that there are now 107 vacancies on the federal bench. "When Bill Clinton was president and there were fewer than 85 vacancies," the letter says, "you took the position that 'any week in which the Senate does not confirm three judges is a week in which the Senate is failing to address the vacancy crisis.'" The GOP senators offer to help Leahy schedule more hearings and executive sessions to consider nominations more quickly.

Also last week, Leahy received a stern letter from White House counsel Alberto Gonzales about an issue that threatens to become a major point of contention in coming days. It concerns the questionnaire that the Judiciary Committee requires each judicial nominee to complete. Leahy wants to change the questionnaire to include a number of queries that were previously handled only by the FBI during its extensive background check of nominees. For example, the new questionnaire asks candidates to list "prior use, possession, purchase or distribution of any illegal substance."

In the past, that information was contained in the FBI report on a candidate a report that was closely guarded and available only to senators and a few top staff members. The questionnaire will be available to more staffers, and Republicans fear that will mean potentially embarrassing information about nominees will be more likely to leak than under the old system. In his letter, Gonzales urges Leahy to "consider that the FBI report is the proper vehicle, as it historically has been, to inform senators regarding nominees' sensitive personal information."

Gonzales is also concerned about a section of the questionnaire that asks nominees to disclose prior arrests or convictions, as well as another section that asks nominees whether they have ever been "a party in any civil or administrative proceeding" both questions that were handled by the FBI under the old system. "Because such information may include divorce or other private or family-related proceedings, it too may be highly sensitive for nominees and therefore is more appropriately disclosed in the confidential section [of the FBI report]," Gonzales writes.

Finally, Gonzales objects to the questionnaire's requirement that nominees "itemize all political contributions." "It is unclear how a nominee's history of political giving would bear on that nominee's fitness for office," Gonzales writes. "By asking this question, the questionnaire creates the invidious impression that such contributions are of great relevance in assessing a nominee's fitness for judicial office."

The conflict over nominations is likely to break into public view next week as Republicans debate strategies to pressure Democrats to hold more confirmation proceedings. The most potent weapon available to the GOP is the minority's power to hold up appropriations bills. An aide to one Republican senator says of his boss, "He firmly believes that's our only point of something every time we move an appropriations bill."

Such a strategy, if adopted by the Republican leadership, could paralyze the Senate and open the

GOP up to charges of divisiveness and breaking the bipartisan spirit that has prevailed since the terrorist attacks of September 11. But some frustrated Republicans are ready to go ahead. "Is it breaking the bipartisan spirit?" asks one aide. "The question is what is more divisive, shutting down the confirmation process or complaining about the shutdown of the confirmation process."

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, October 11, 2001 2:35 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: need number for FBI general counsel

Jason,

Can you give Brett Larry Parkinson's number? He is not in SIOC any more--his office.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, October 11, 2001 2:27 PM
To: Dinh, Viet
Subject: need number for FBI general counsel

007104-002957

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, October 10, 2001 3:55 PM
To: 'Courtney_S._Elwood@who.eop.gov'; Newstead, Jennifer; Elwood, John; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Legislation-- (b) (5)



-----Original Message-----

From: Courtney_S._Elwood@who.eop.gov
[mailto:Courtney_S._Elwood@who.eop.gov]
Sent: Wednesday, October 10, 2001 2:46 PM
To: Newstead, Jennifer; Elwood, John; Dinh, Viet;
Brett_M._Kavanaugh@who.eop.gov
Subject: Legislation-- (b) (5)

Could you each provide me with the top 3 issues that you'd like to see changed in the House bill?

----- Forwarded by Courtney S. Elwood/WHO/EOP on 10/10/2001 02:44 PM -----

John B. Bellinger
10/10/2001 02:35:55 PM

Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP; Stephen W. Devine/MSO/EOP@EOP; John B.

007104-002958

TO: Courtney S. Erwood/WHO/EOP@EOP, Stephen W. Devine/NSC/EOP@EOP, John B. Wiegmann/NSC/EOP@EOP

CC:

Subject: Legislation--(b) (5)

Ambassador Jerry Bremer, Chairman of the President's Commission on Terrorism, is testifying before House Government Operations tomorrow. When I noted that the House had not included many of our legislative provisions (b) (5) Jerry asked me for some more examples that he can note in his testimony. (b) (5)

Can you all give me a few provisions of our provisions that either the House or Senate failed to include for Jerry to highlight? Need some ideas in the next couple of hours. Thanks.

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, October 10, 2001 1:36 PM
To: Thorsen, Carl; Karp, David J; Bryant, Dan; O'Brien, Pat
Cc: Newstead, Jennifer; 'brett_m._kavanaugh@who.eop.gov'; Burton, Faith
Subject: RE: House consideration of terrorism bill

As my grandfather would say, excelente!

-----Original Message-----

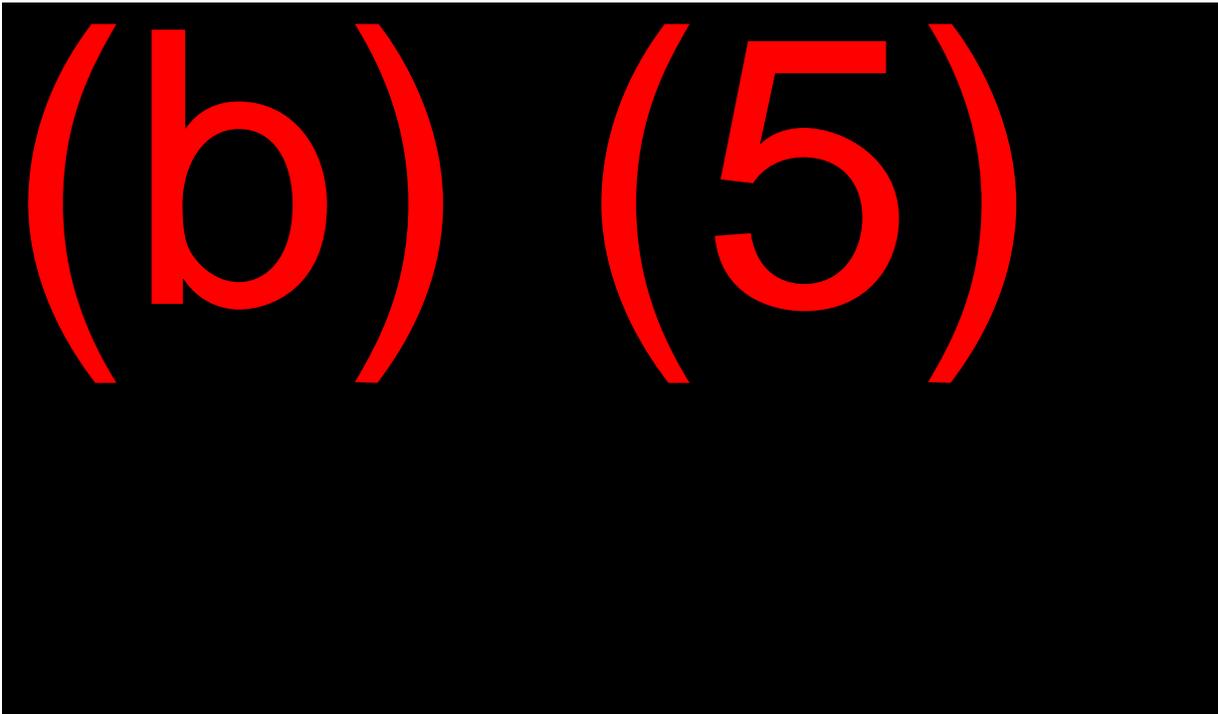
From: Thorsen, Carl
Sent: Wednesday, October 10, 2001 1:32 PM
To: Karp, David J; Dinh, Viet; Bryant, Dan; O'Brien, Pat
Cc: Newstead, Jennifer; 'brett m. kavanaugh@who.eop.gov'; Burton, Faith
Subject: RE: House consideration of terrorism bill

By the way, I'm advise (b) (5) [REDACTED]. Faith Burton in OLA is going to coordinate an effort (b) (5) [REDACTED].

-----Original Message-----

From: Karp, David J
Sent: Wednesday, October 10, 2001 1:20 PM
To: Dinh, Viet; Thorsen, Carl; Bernhardt, Gena; Bryant, Dan; O'Brien, Pat
Cc: Newstead, Jennifer
Subject: RE: House consideration of terrorism bill

In greater detail, the amendments to the House bill I am drafting are as follows:



[I am working on full language for these amendments and should have it ready in an hour or two.]

-----Original Message-----

From: Dinh, Viet
Sent: Wednesday, October 10, 2001 12:03 PM
To: Thorsen, Carl; Bernhardt, Gena; Bryant, Dan; O'Brien, Pat
Cc: Newstead, Jennifer; Karp, David J
Subject: RE: House consideration of terrorism bill

Carl,



-----Original Message-----

From: Thorsen, Carl
Sent: Wednesday, October 10, 2001 11:56 AM
To: Bernhardt, Gena; Bryant, Dan; O'Brien, Pat
Cc: Newstead, Jennifer; Karp, David J; Dinh, Viet
Subject: RE: House consideration of terrorism bill

Thanks for the update Gena. David, how goes the progress on an amendment to address issues in the House bill...we need to get a comprehensive concept, if not language, document asap. Thanks.

-----Original Message-----

From: Bernhardt, Gena
Sent: Wednesday, October 10, 2001 11:50 AM
To: Bryant, Dan; O'Brien, Pat; Thorsen, Carl
Subject: House consideration of terrorism bill

The latest scoop I have about what the House is going to do with the terrorist bill is that the bill is still on the schedule to be considered on the floor Thursday and that the leadership is still inclined to consider H.R. 2975, not the Senate bill. (b) (5)

[Redacted text block]

[Redacted text block]

[Redacted text block]

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, October 10, 2001 12:21 PM
To: Newstead, Jennifer
Cc: Bryant, Dan; Walter, Sheryl L; Kris, David; 'Courtney_S._Elwood@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Nancy_P._Dorn@who.eop.gov'; 'Candida_P._Wolff@ovp.eop.gov'; O'Brien, Patrick
Subject: RE: FISA amendments for manager's package

On the Feingold amendments, they are cleared from WH per Courtney, so we can move. The WH has to clear (b) (5)

(b) (5)

-----Original Message-----

From: Newstead, Jennifer
Sent: Wednesday, October 10, 2001 12:12 PM
To: Dinh, Viet
Subject: FW: FISA amendments for manager's package
Importance: High

-----Original Message-----

From: Walter, Sheryl L
Sent: Wednesday, October 10, 2001 12:11 PM
To: O'Brien, Pat; Bryant, Dan; Newstead, Jennifer
Cc: Kris, David; Jones, Gregory M
Subject: FISA amendments for manager's package
Importance: High

(b) (5)

(b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, October 10, 2001 11:59 AM
To: 'Courtney_S._Elwood@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
'Nancy_P._Dorn@who.eop.gov'; 'Candida_P._Wolff@ovp.eop.gov';
'Robert_Marsh@who.eop.gov'; Bryant, Dan; Newstead, Jennifer; Kris, David;
O'Brien, Patrick
Subject: Inquiry from Cantwell

All,

Cantwell's CoS, Caroline Fredickson (224-3441), just called me to get reaction on a proposal to limit the "a significant purpose" change to only non-U.S. citizens. I said that we would be opposed because it does not make sense conceptually and impossible operationally. I said that fears of misuse of FISA for criminal investigations are unfounded, etc., but she said she would still try to pursue it.

best,

VDD

007104-002965

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Sunday, October 7, 2001 2:52 PM
To: Dinh, Viet

what's status of (b) (5) ?

Dinh, Viet

From: Dinh, Viet
Sent: Friday, October 5, 2001 12:15 PM
To: (b)(6) Jeff Howard email
Cc: Newstead, Jennifer; 'Bradford_A._Berenson@who.eop.gov';
'Brett_M._Kavanaugh@who.eop.gov'; 'Heather_Wingate@who.eop.gov'
Subject: Thanks for reaching out

Dear Jeff,

Thanks for reaching out concerning your confirmation. We received your rating yesterday: Qualified, minority Not Qualified. (b) (5)

(b) (5)

(b) (5)

Viet Dinh

Jennifer:

Following up my voicemail today (b) (5)

(b) (5)

(b) (5)

So, I stand ready to take any guidance from you, even if it is to sit down and be quiet.

Please respond to (b) (6) .

Thanks,

Jeff Howard

007104-002967

Karp, David J

From: Karp, David J
Sent: Friday, October 5, 2001 9:20 AM
To: Payne, Michael; Kris, David; Lindemann, Michael; Newstead, Jennifer; Madan, Rafael; Geise, Jack; Cassella, Stefan; Elwood, John
Cc: 'brett_m._kavanaugh@who.eop.gov'; 'courtney_s._elwood@who.eop.gov'; Dinh, Viet
Subject: RE: URGENT: Senate and House bill comparison

Your comparison regarding material support is incomplete because section 306 of the House bill includes additional amendments to 18 USC 2339A. I am including a comparison of all relevant provisions in the part of the side-by-side I am preparing.

-----Original Message-----

From: Michael Payne
Sent: Thursday, October 04, 2001 5:04 PM
To: Karp, David J; Kris, David; Lindemann, Michael; Newstead, Jennifer; Madan, Rafael; Geise, Jack; Cassella, Stefan; Elwood, John
Cc: brett_m._kavanaugh@who.eop.gov; courtney_s._elwood@who.eop.gov; Dinh, Viet
Subject: Re: URGENT: Senate and House bill comparison

Date: 10/04/2001 05:12 pm -0400 (Thursday)
From: Michael Payne
To: "DKarp".WTGATE2.CRMGW; "DKris2".WTGATE2.CRMGW; "MLindema".WTGATE2.CRMGW; "wJNewstea".WTGATE2.CRMGW; "wRMadan3".WTGATE2.CRMGW; Cassella, Stefan; Elwood, John; Geise, Jack
CC: "brett_m._kavanaugh@who.eop.gov@inetgw".WTGATE2.CRMGW; "courtney_s._elwood@who.eop.gov@inetgw".WTGATE2.CRMGW; "wVDinh".WTGATE2.CRMGW
Subject: Re: URGENT: Senate and House bill comparison

Jennifer:

Attached is the final text of for the side-by-side comparison of the Senate anti-terrorism bill with sections 401 through 404 of the House anti-terrorism bill. The changes from the draft I sent earlier are an elaboration of the additional amendments to 18 USC 2339A in section 806 of the Senate bill as compared to section 402 of the House bill and (b) (5)

(b) (5)

Mike Payne

>>> Newstead, Jennifer 10/04/01 11:31AM >>> All -- as you know we're in the home stretch of the legislative process on the terrorism bill. Now that Senate and House text have been

007104-002969

separately "agreed", we are about to become embroiled in negotiations over what the final bill should look like.

To that end, we need to develop ASAP a side-by-side comparison of the new Senate and House bills (the Senate version is attached: I will forward the House version as soon as I have it). Viet requests that each of you take responsibility for producing the section of the side by side in your areas of expertise as follows (please delegate this if needed, but we ask that you or your designee set aside as much of the day today as possible to get this done). We ask that you start immediately and provide us with a preliminary draft by 3:30, and a final text no later than 7 pm. We will use the preliminary draft for the first round of pre-conference discussions which start at 4.

Please use the attached format (5 columns as marked) to assist me in generating one document at the end of the process.

Thanks very much for your help.

Title I Wiretap: Jack Geise

Title I FISA: David Kris

Title II: Mike Lindemann

Title III (substantive crim. law): David Karp Title III (crim. procedure): John Elwood Title IV: Stef Casella

Title V and VI: Rafe Madan

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, October 04, 2001 6:15 PM
To: Dinh, Viet; Killion, Maureen; Kris, David; Lindemann, Michael; Cassella, Stefan; Madan, Rafael; Karp, David J; Elwood, John; Newstead, Jennifer
Cc: Sutton, Jason; O'Brien, Pat; Bryant, Dan; 'Brett_M._Kavanaugh@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'; 'heather_wingate@who.eop.gov'; 'Nancy_P._Dorn@who.eop.gov'; 'Timothy_E._Flanigan@who.eop.gov'
Subject: Plan for Side-by-Side

This is a follow-up to various e-mails from Jennifer and me today--apologies for all the activity, but you are all aware of the moving targets here.

We will in all likelihood not get final versions of the Senate and House bills until later tonight or early tomorrow morning. We will circulate both ASAP. We need to ask you to revise and complete your side-by-side analyses based on the final versions of the bills. For the "description" and "difference" columns, please include both a plain language explanation and a technical description. That would help both to compare the version and to effectuate any needed fixes. (b) (5) so we very much appreciate your help in this final push. The timing may change depending on when we get the bills, etc., but please plan on having your final s-b-s to Jennifer by noon tomorrow, Friday. Thank you so much.

Viet

007104-002971

Schauder, Andrew

From: Schauder, Andrew
Sent: Thursday, October 04, 2001 5:29 PM
To: Schauder, Andrew; Newstead, Jennifer; Ciongoli, Adam;
'Bradford_A._Berenson@who.eop.gov%inetgw';
'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan;
'Heather_Wingate@who.eop.gov'; Ullman, Kristen A; Long, Linda E; Benedi,
Lizette D; Rabjohns, Lori; Day, Lori Sharpe;
'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick
O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw';
'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet;
'Ziad_S._Ojakli@who.eop.gov%inetgw'; Carroll, James W (OLP)
Subject: judicial media review
Attachments: Judicial Media Review 10-04-01.wpd

[Please see attached review](#)

Media Review - Judicial Nominations

Thursday, October 4, 2001

General Judicial Articles

"Lott's Push for Judges Imperils Partisan Truce," [1](#)
Paul Kane, *Roll Call*, October 4, 2001

"Grassley: Suspect Underscores Need for Confirmation," [4](#)
The Associated Press, October 2, 2001

Op/Eds

NONE

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

[General Judicial Articles](#)

Lott's Push for Judges Imperils Partisan Truce

By Paul Kane

Roll Call

Thursday, October 4, 2001

Revisiting a pre-Sept. 11 strategy, Senate Republicans plan to block and delay the appropriations process until they get solid guarantees that the Democratic majority will begin to confirm more judicial nominees.

Senate GOP leaders acknowledge this tactic may slow the appropriations process during a period of otherwise unprecedented bipartisanship, but contend that they have no other means of forcing Democrats to confirm more Bush administration judicial nominees. The move appears to have at least the tacit blessing of the White House.

"If they don't approve a significant number of them, it's going to be hard to get those appropriations bills moving," said Senate Minority Leader Trent Lott (R-Miss.). "I'm going to assume that they are going to move them, so we won't have to resort to any extraordinary measures. If they don't, we will have to." Democrats contend Lott's approach is unreasonable, considering that Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) has focused almost entirely on anti-terrorism legislation since terrorists crashed airplanes into the World Trade Center and the Pentagon.

"We're doing the best we can on nominations," said Majority Whip Harry Reid (D-Nev.). "It's not as if Senator Leahy hasn't been busy."

Reid, who has been a key player in negotiating with Republicans on nominations, said Senate Democrats have gone out of their way to quickly approve "scores" of President Bush's nominees to key security-related posts since the attacks.

Noting that Leahy was holding a hearing today on five more judicial nominees, aides to the Judiciary chairman and Senate Majority Leader Thomas Daschle (D-S.D.) said the process is clearly moving forward again.

Any delays in approving the 13 appropriations bills would only hinder Congress' ability to meet the Oct. 16 deadline for the expiration of the current continuing resolution funding the federal government and jeopardize the goal for a late October adjournment, Daschle warned Wednesday. "We have 13 bills to go and 13 days to do them."

Republicans claim that while Democrats have helped move many key agency nominees in the weeks since the attacks, they have been slow to act on individuals nominated to the bench. Moreover, in the wake of the attacks and the new anti-terrorism laws likely to be passed in the coming weeks, Senate Republicans believe they have gained political leverage in forcing Democrats to quickly move more judges.

With 107 vacancies on the federal bench, Lott and Republicans are confident they can make the argument that new investigative powers to intercede against potential terrorists will be weakened because there won't be enough federal judges to approve warrants to execute searches.

"If we don't have the third branch of government staffed, we're all in trouble," said Sen. Orrin Hatch (R-Utah), ranking member of Judiciary.

In the weeks after Democrats assumed the majority in the summer, Republicans employed a similar strategy of blocking Daschle and Reid's attempts to move to appropriations until they allowed votes on agency nominations, a strategy GOP aides believe resulted in the confirmation of dozens of agency appointees.

Shortly after Labor Day, Republicans signaled they were ready to adopt the same tactic in an effort to secure more confirmations of judicial nominees, who they felt were being stonewalled in Judiciary because of their conservative leanings.

However, Sept. 11 ushered in what some consider a remarkable run of comity that has helped pave the way for almost unanimous passage of several bills aimed at dealing with the crisis.

This week, though, Lott decided to return to the confrontational approach to nominees, and a Bush official said the White House "appreciates" the strategy. Bush, however, is not expected to have a high profile on the issue.

Aides and Senators say the decision to go forward with the strategy rests almost entirely with Lott, who is not expected to rely on deputies such as Sen. Larry Craig (R-Idaho) and Sen. Jon Kyl (R-Ariz.) to make the objections to Daschle's attempts to bring up appropriations.

Asked where the decisions were coming from, Craig said, "From the top - above my pay grade."

Some Republicans have their doubts about the strategy.

Sen. Ted Stevens (R-Alaska), ranking member on Appropriations, said he agreed with GOP leaders that there has been a "severe delay" in getting judicial nominations approved, but questioned the amount of political pressure that could be applied to Judiciary members, whose interests aren't necessarily the same as those of appropriators.

"I don't think there is any leverage. They're not interested in appropriations," Stevens said. "I don't agree with [the strategy], but it's going to happen."

Another GOP leadership aide predicted the new offensive "may not prove as fruitful as they would like" and suggested that the issue would end up being settled through a private, diplomatic set of negotiations between Reid and one of Lott's deputies.

Democrats say a more partisan approach to the issue isn't likely to succeed. The Senate has already confirmed three circuit court judges, as many as then-President Clinton had on the bench in his first year, and Democrats expect to approve a few more circuit-level judges before adjournment. In his first year in office, in 1989, President George H.W. Bush had five circuit court judges approved.

Leahy has taken an almost personal offense to Republicans who have questioned his pace in confirming judges. He wasn't able to hold any judicial nomination hearings until early July, after the GOP had put up a four-week fight over the reorganization of committees when Democrats claimed the majority in early June.

The Vermont Democrat then held hearings and allowed for the confirmation of FBI Director Robert Mueller within weeks of his nomination, and also allowed for speedy confirmations of the new directors of the Immigration and Naturalization Service and the U.S. Marshals Service, as well as 12 U.S. attorneys.

Within days of a personal request from Lott, Leahy held a hearing for a Mississippi nominee to the district court. And in a recent floor speech, Leahy said in the past three weeks, he has given "virtually undivided attention" to the anti-terrorism package.

"It's been anything but a typical year, but despite that, the committee's been handling nominees a lot faster than Republicans ever did with Democratic nominees," said David Carle, Leahy's spokesman.

One senior GOP leadership aide said Republicans would be content if the chairman simply offered a guarantee to start holding more hearings, possibly doubling up on the number of circuit court nominees at each hearing or holding more hearings each week.

Of the 49 pending nominees, GOP aides said 28 have received their ratings from the American Bar Association, with half of those earning what legal experts call the "gold standard" - meaning a majority of the ABA board rated the candidate as "well qualified."

GOP aides say they hope to make Democrats appear to be the ones playing petty politics over judgeships.

"We have some critical needs that have to be filled," said the administration official. "I don't think it's dangerous partisanship to say we want judges to be given fair consideration."

Grassley: Suspect Underscores Need for Confirmation

The Associated Press
Tuesday, October 2, 2001

The arrest of a man in Cedar Rapids in connection with a federal terrorism investigation underscores the need for Senate confirmation of key law enforcement and judicial appointment, U.S. Sen. Charles Grassley said Tuesday.

"As we work to fight terrorism, it is imperative that key federal law enforcement and judicial vacancies are filled so that the U.S. Attorneys offices and federal courts can function at full capacity," Grassley said. Grassley released a letter he sent Senate Judiciary Committee Chairman Patrick Leahy urging quick action on appointments. He argued that 35 U.S. Attorneys and 51 federal judges await confirmation.

In Iowa, there are four appointments which have been made, with confirmation awaiting. Chuck Larson Sr. was named U.S. Attorney for the Northern District, Steve Colloton was named U.S. Attorney for the Southern District, James Gritzner, of West Des Moines, has been named to a district judge post and District Judge Michael Melloy, of Cedar Rapids, has been appointed to the Eighth Circuit Court of Appeals.

Michael Payne

From: Michael Payne
Sent: Thursday, October 4, 2001 5:04 PM
To: Karp, David J; Kris, David; Lindemann, Michael; Newstead, Jennifer; Madan, Rafael; Geise, Jack; Cassella, Stefan; Elwood, John
Cc: brett_m._kavanaugh@who.eop.gov; courtney_s._elwood@who.eop.gov; Dinh, Viet
Subject: Re: URGENT: Senate and House bill comparison
Attachments: terrorte.wpd

Date: 10/04/2001 05:12 pm -0400 (Thursday)

From: Michael Payne

To: "DKarp".WTGATE2.CRMGW; "DKris2".WTGATE2.CRMGW;
"MLindema".WTGATE2.CRMGW; "wJNewstea".WTGATE2.CRMGW;
"wRMadan3".WTGATE2.CRMGW; Cassella, Stefan; Elwood, John;
Geise, Jack

CC: "brett_m._kavanaugh@who.eop.gov@inetgw".WTGATE2.CRMGW;
"courtney_s._elwood@who.eop.gov@inetgw".WTGATE2.CRMGW;
"wVDinh".WTGATE2.CRMGW

Subject: Re: URGENT: Senate and House bill comparison

Duplicative

Senate Bill Provision No.	Senate Bill Description	Corresponding House Bill No.	Differences from Senate Bill	Preference
	(Please provide a brief description of what the Senate provision does)		(Please explain how the House provision differs from the Senate provision, if at all)	(b) (5)
810 and 815	section 810 adds 18 U.S.C. § 2339B to 18 U.S.C. §2332b(g)(5)(B) which section 815 incorporates into 18 U.S.C. § 1961(1), all of whose offenses are specified unlawful activities (SUAs) for money laundering under to 18 U.S.C. § 1956(c)(7)(A)	401	House bill specifically add 18 U.S.C. §2339B (material support to foreign terrorist organizations) as a new specified unlawful activity (SUA) for money laundering offenses at 18 U.S.C. § 1956(c)(7)(D)	
806	Amendments to 18 U.S.C. §2339A (material support for terrorism)	402	Senate version includes both House version amendments plus amendments that add 18 U.S.C §229 (chemical weapons offenses); the Senate version's proposed 18 U.S.C. §1993 (attacks on mass transportation systems); 42 U.S.C. § 2284 (sabotage of nuclear	

			facilities); and 49 U.S.C. 60123(b) (damage or destruction of pipeline facility to the list of offenses for which material support is prohibited by section 2339(A , and "expert advice or assistance" to the definition of material support.	(b) (5)
807	amends 18 U.S.C. §981(a)(1) to provide civil forfeiture of assets involved with terrorism	403	no differences	
808	technical clarification relating to provision of material support to terrorism under 18 U.S.C. §§ 2339A and 2339B	404	no differences	

Michael Payne

From: Michael Payne
Sent: Thursday, October 4, 2001 3:32 PM
To: Karp, David J; Kris, David; Lindemann, Michael; Newstead, Jennifer; Madan, Rafael; Geise, Jack; Cassella, Stefan; Elwood, John
Cc: brett_m._kavanaugh@who.eop.gov; courtney_s._elwood@who.eop.gov; Dinh, Viet
Subject: Re: URGENT: Senate and House bill comparison
Attachments: terrorte.wpd

Date: 10/04/2001 03:41 pm -0400 (Thursday)

From: Michael Payne

To: "DKarp".WTGATE2.CRMGW; "DKris2".WTGATE2.CRMGW;
"MLindema".WTGATE2.CRMGW; "wJNewstea".WTGATE2.CRMGW;
"wRMadan3".WTGATE2.CRMGW; Cassella, Stefan; Elwood, John;
Geise, Jack

CC: "brett_m._kavanaugh@who.eop.gov@inetgw".WTGATE2.CRMGW;
"courtney_s._elwood@who.eop.gov@inetgw".WTGATE2.CRMGW;
"wVDinh".WTGATE2.CRMGW

Subject: Re: URGENT: Senate and House bill comparison

Jennifer:

Draft side-by-side for sections 401-404 is attached .

Mike Payne

Duplicative

007104-002980

Senate Bill Provision No.	Senate Bill Description	Corresponding House Bill No.	Differences from Senate Bill	Preference
	(Please provide a brief description of what the Senate provision does)		(Please explain how the House provision differs from the Senate provision, if at all)	(b) (5)
810 and 815	section 810 adds 18 U.S.C. § 2339B to 18 U.S.C. §2332b(g)(5)(B) which section 815 incorporates into 18 U.S.C. § 1961(1) all of whose offenses are specified unlawful activities (SUAs) for money laundering pursuant to 18 U.S.C. § 1956(c)(7)(A)	401	House bill specifically adds 18 U.S.C. §2339B (material support to foreign terrorist organizations) as a new specified unlawful activity (SUA) for money laundering offenses at 18 U.S.C. § 1956(c)(7)(D)	
806	Amends 18 U.S.C. §2339A (material support for terrorism)	402	Senate version includes House amendments plus additional amendments.	
807	amends 18 U.S.C. §981(a)(1) to provide civil forfeiture of assets involved with terrorism	403	no differences	
808	technical clarification relating to provision of material support to terrorism under 18 U.S.C.	404	no differences	

	§§ 2339A and 2339B			

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, October 4, 2001 3:23 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Miguel Estrada

my fax is 514-2424. Yes, it may be hard, but recall Carl's positive reaction and instructions to Chris at the meeting yesterday.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, October 04, 2001 3:05 PM
To: Dinh, Viet
Cc: Newstead, Jennifer; Estrada, Laury; Koebele, Steve;
Bradford_A._Berenson@who.eop.gov
Subject: Re: Miguel Estrada

Steve: I have a full file of letters re Estrada, I believe. Let me know your FAX number.

Also, before September 11, (b) (5)

(b) (5)

(b) (5)

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 10/04/2001 02:57:06 PM
pic20315.pcx)

Record Type: Record

To: "Koebele, Steve" <Steve.Koebele@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

cc: "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) , "Estrada, Laury" <Laury.Estrada2@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), Bradford A. Berenson (MHO/EOP), Brett M. Kavanaugh (MHO/EOP) Subject: Miguel

007104-002983

requested, Bradford A. Berenson/WHO/LOF, Brett M. Kavanaugh/WHO/LOF Subject: Miguel Estrada

Dear Steve,

Please ensure that our file on Miguel has collected all the endorsements and statements supporting the nomination that may be variously housed in the Senate, DoJ-IGA, DoJ-OLA, WH Counsel, WH Public Liason, or in Miguel's files. (b) (5)

(b) (5)

Thanks.

Viet

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Wednesday, October 3, 2001 9:25 PM
To: Dinh, Viet; Alberto_R._Gonzales@who.eop.gov;
Timothy_E._Flanigan@who.eop.gov; Courtney_S._Elwood@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Nancy_P._Dorn@who.eop.gov;
Candida_P._Wolff@ovp.eop.gov
Cc: Robert_Marsh@who.eop.gov
Subject: FYI: House Judiciary Committee votes 36-0 in favor of anti -terrorism bill

007104-002985

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, October 3, 2001 12:59 PM
To: Elwood, John; 'Brett_M._Kavanaugh@who.eop.gov'; Daley, Cybele K; 'courtney_s._elwood@who.eop.gov'; Newstead, Jennifer
Cc: Bryant, Dan; O'Brien, Pat; Reynolds, James
Subject: RE: Sen. Biden/Bioterrorism

(b) (5)

-----Original Message-----

From: John Elwood
Sent: Wednesday, October 03, 2001 12:25 PM
To: Brett_M._Kavanaugh@who.eop.gov; Daley, Cybele K; courtney_s._elwood@who.eop.gov; Newstead, Jennifer; Dinh, Viet
Cc: Bryant, Dan; O'Brien, Pat
Subject: RE: Sen. Biden/Bioterrorism

Date: 10/03/2001 12:33 pm -0400 (Wednesday)
From: John Elwood
To: "Brett_M._Kavanaugh@who.eop.gov@inetgw".WTGATE2.CRMGW;
"CDaley2".WTGATE2.CRMGW;
"courtney_s._elwood@who.eop.gov@inetgw".WTGATE2.CRMGW;
"wJNewstea".WTGATE2.CRMGW; "wVDinh".WTGATE2.CRMGW
CC: "wDBryant".WTGATE2.CRMGW; "wPO'Brien3".WTGATE2.CRMGW
Subject: RE: Sen. Biden/Bioterrorism

Viet:

(b) (5)

>>> Dinh, Viet 10/03/01 11:35AM >>>

(b) (5)

-----Original Message-----

From: John Elwood

Sent: Wednesday, October 03, 2001 11:30 AM

To: Brett_M._Kavanaugh@who.eop.gov; Daley, Cybele K;
courtney_s._elwood@who.eop.gov; Newstead, Jennifer; Dinh, Viet; Corken,
Cathleen; Reynolds, James; Weglian, Stephen

Cc: Milkman, Louise; Bryant, Dan; O'Brien, Pat

Subject: Re: Sen. Biden/Bioterrorism

Date: 10/03/2001 11:39 am -0400 (Wednesday)

From: John Elwood

To: "CDaley2".WTGATE2.CRMGW; "wJNewstea".WTGATE2.CRMGW;
"wVDinh".WTGATE2.CRMGW; Brett_M._Kavanaugh@who.eop.gov; Corken,
Cathleen; Courtney_s._elwood@who.eop.gov; Reynolds, James;
Weglian, Stephen

CC: "LMilkman".WTGATE2.CRMGW; "wDBryant".WTGATE2.CRMGW;
"wPO'Brien3".WTGATE2.CRMGW

Subject: Re: Sen. Biden/Bioterrorism

(b) (5)

>>> Daley, Cybele K 10/03/01 11:01AM >>>

All -- I am advised by the Biden staff that Bioterrorim is about to be dropped by Leahy due to
opposition from the groups. (b) (5)

(b) (5)
(u) (j)

(b) (5)

Please let me know if there is something I can do!!

Karp, David J

From: Karp, David J
Sent: Wednesday, October 03, 2001 12:46 PM
To: Thorsen, Carl; Elwood, John; Reynolds, James; Weglian, Stephen
Cc: Newstead, Jennifer; Dinh, Viet; 'brett_m._kavanaugh@who.eop.gov'
Subject: supervised release periods amendment
Attachments: terroramendsuprel.wpd

In case opportunities arise to suggest amendments -- either now or later in the process -- I am enclosing amendment text with a (b) (5)

[Redacted text block]

(b) (5)

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Wednesday, October 3, 2001 12:03 PM
To: Karp, David J
Cc: Thorsen, Carl; Newstead, Jennifer; Elwood, John; Dinh, Viet
Subject: RE: House Judiciary Markup @ 2pm Tomorrow
Attachments: pic21743.pcx

understood. I think another problem we have had is that there is a commonsense disconnect here:



(Embedded
image moved "Karp, David J" <David.J.Karp@usdoj.gov>
to file: 10/03/2001 11:16:42 AM
pic21743.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>, "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>, "Dinh, Viet" <Viet.Dinh@usdoj.gov>, "Elwood, John" <John.Elwood@usdoj.gov> Subject: RE: House Judiciary Markup @ 2pm Tomorrow



007104-002990

(b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, October 03, 2001 11:07 AM
To: Karp, David J
Cc: Thorsen, Carl; Newstead, Jennifer; Elwood, John; Dinh, Viet
Subject: RE: House Judiciary Markup @ 2pm Tomorrow

thanks for the memo; (b) (5)

(b) (5)

(b) (5)

(Embedded
image moved "Karp, David J" <David.J.Karp@usdoj.gov> to file: 10/03/2001 10:37:58
AM pic17374.pcx)

Record Type: Record

To: "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>, "Elwood, John"
<John.Elwood@usdoj.gov>

cc: "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>, "Dinh, Viet"
<Viet.Dinh@usdoj.gov>, Brett M. Kavanaugh/WHO/EOP@EOP Subject: RE: House Judiciary Markup
@ 2pm Tomorrow

(1) I will attend the markup.

(2) I am enclosing a memo which (b) (5)

(b) (5)

(3) At Viet's direction (b) (5)

(b) (5)

(b) (5)

-----Original Message-----

From: Thorsen, Carl
Sent: Wednesday, October 03, 2001 9:23 AM
To: Elwood, John
Cc: Karp, David J; Newstead, Jennifer
Subject: RE: House Judiciary Markup @ 2pm Tomorrow

Thanks. David, can you be there as well on these same issues?

-----Original Message-----

From: John Elwood
Sent: Wednesday, October 03, 2001 8:04 AM
To: Thorsen, Carl
Subject: Re: House Judiciary Markup @ 2pm Tomorrow

Date: 10/03/2001 08:13 am -0400 (Wednesday) From: John Elwood To: "wCThorsen".WTGATE2.CRMG
W Subject: Re: House Judiciary Markup @ 2pm Tomorrow

Carl:

I will try to make it to the markup. But things are on a fast boil on the Senate side. I was here until 2:30 last night, I am not functioning at full capacity, and there is a lot to do to get the Leahy bill into shape.

>>> Thorsen, Carl 10/02/01 07:54PM >>>

Can you guys plan to be at the markup in the event questions come up in your respective areas? Chairman Sensenbrenner has requested that make experts (this means you Elwood) available, and Dan specifically requested you three. We'll get seats in the front row; (b) (5)

(b) (5)

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Wednesday, October 03, 2001 11:34 AM
To: Karp, David J
Cc: Thorsen, Carl; Newstead, Jennifer; Elwood, John; Dinh, Viet
Subject: RE: House Judiciary Markup @ 2pm Tomorrow
Attachments: terrortueshell.wpd; pic03143.pcx

I should also say that I agree (b) (5)

(Embedded
image moved "Karp, David J" <David.J.Karp@usdoj.gov>
to file: 10/03/2001 10:37:58 AM
pic03143.pcx)

Record Type: Record

To: "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>, "Elwood, John"
<John.Elwood@usdoj.gov>

cc: "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>, "Dinh, Viet"
<Viet.Dinh@usdoj.gov>, Brett M. Kavanaugh/WHO/EOP@EOP Subject: RE: House Judiciary Markup
@ 2pm Tomorrow

Duplicative

007104-002993

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, October 03, 2001 11:13 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: FW: Sen. Biden/Bioterrorism
Importance: High

-----Original Message-----

From: Newstead, Jennifer
Sent: Wednesday, October 03, 2001 11:05 AM
To: Dinh, Viet
Subject: FW: Sen. Biden/Bioterrorism
Importance: High

(b) (5)

-----Original Message-----

From: Daley, Cybele K
Sent: Wednesday, October 03, 2001 11:02 AM
To: Elwood, John; Reynolds, James; Corken, Cathleen; Weglian, Stephen; Newstead, Jennifer; Dinh, Viet
Cc: Milkman, Louise; O'Brien, Pat; Bryant, Dan
Subject: Sen. Biden/Bioterrorism
Importance: High

Duplicative

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Wednesday, October 03, 2001 10:23 AM
To: Dinh, Viet
Subject: FW: amendments
Attachments: tmp.htm; BARR_032.PDF; BARR_033.PDF; BARR_034.PDF; BARR_035.PDF; ATTACHMENT.TXT; pic02429.pcx

your thoughts

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 10/03/2001 10:22 AM -----

(Embedded
image moved "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
to file: 10/03/2001 09:55:08 AM
pic02429.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc: "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) Subject: FW: amendments

Barr amendments to be offered today dealing with: Exec Orders/assassination; concealed carry exemption for I.e.o's; cause of action for vics of terrorism; and, regulations for private security officers (I think). Administration guidance please.

(b) (5)

-----Original Message-----

From: Pinkos, Steve [mailto:Steve.Pinkos@mail.house.gov]
Sent: Wednesday, October 03, 2001 8:12 AM
To: Thorsen, Carl
Subject: FW: amendments

007104-002995

we will reserve seats

> -----Original Message-----

> From: Moschella, Will

> Sent: Tuesday, October 02, 2001 4:57 PM

> To: Kiko, Phil; Pinkos, Steve; Apperson, Jay; Sokul, Beth; Crooks, Katy;

> McLaughlin, Sean; Hultman, Eric

> Subject: FW: amendments

>

>

>

> -----Original Message-----

> From: Mosychuk, Susan

> Sent: Tuesday, October 02, 2001 4:08 PM

> To: Moschella, Will

> Subject: amendments

>

>

>

>

>

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> <<BARR_032.PDF>> <<BARR_033.PDF>> <<BARR_034.PDF>> <<BARR_035.PDF>>

>

>

>

>

Message Sent To: _____

"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested)
Daniel J. Keniry/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Robert Marsh/WHO/EOP@EOP
"Elwood, John" <John.Elwood@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)

AMENDMENT TO H.R. _____
OFFERED BY MR. BARR OF GEORGIA

Add at the end the following:

1 **TITLE —TERRORIST**
2 **ELIMINATION**

3 **SEC. 01. SHORT TITLE.**

4 This title may be cited as the “Terrorist Elimination
5 Act of 2001”.

6 **SEC. 02. FINDINGS.**

7 Congress finds that

8 (1) past Presidents have issued Executive or-
9 ders which severely limit the use of the military
10 when dealing with potential threats against the
11 United States of America;

12 (2) these Executive orders limit the swift, sure,
13 and precise action needed by the United States to
14 protect our national security;

15 (3) present strategy allows the military forces
16 to bomb large targets hoping to eliminate a terrorist
17 leader, but prevents our country from designing a
18 limited action which would specifically accomplish
19 that purpose;

20 (4) on several occasions the military has been
21 ordered to use a military strike hoping, in most



1 cases unsuccessfully, to remove a terrorist leader
2 who has committed crimes against the United State;

3 (5) as the threat from terrorism grows, America
4 must continue to investigate effective ways to com-
5 bat the menace posed by those who would murder
6 American citizens simply to make a political point;
7 and

8 (6) actions by the United States Government to
9 remove such persons is a remedy which should be
10 used sparingly and considered only after all other
11 reasonable options have failed or are not available;
12 however, this is an option our country must main-
13 tain for cases in which international threats cannot
14 be eliminated by other means.

15 **SEC. 03. NULLIFICATION OF EFFECT OF CERTAIN PRO-**
16 **VISIONS OF VARIOUS EXECUTIVE ORDERS.**

17 The following provisions of Executive orders shall
18 have no further force or effect:

- 19 (1) Section 5(g) of Executive Order 11905.
20 (2) Section 2 305 of Executive Order 12036.
21 (3) Section 2.11 of Executive Order 12333.



**AMENDMENT TO H.R. _____
OFFERED BY MR. BARR OF GEORGIA**

Add at the end the following:

1 **TITLE —COMMUNITY**
2 **PROTECTION**

3 **SEC. 01. SHORT TITLE.**

4 This title may be cited as the “Community Protection
5 Act of 2001”.

6 **SEC. 02. EXEMPTION OF QUALIFIED LAW ENFORCE-**
7 **MENT OFFICERS FROM STATE LAWS PROHIB-**
8 **ITING THE CARRYING OF CONCEALED FIRE-**
9 **ARMS.**

10 (a) IN GENERAL. Chapter 44 of title 18, United
11 States Code, is amended by inserting after section 926A
12 the following:

13 **“§ 926B. Carrying of concealed firearms by qualified**
14 **law enforcement officers**

15 “(a) Notwithstanding any other provision of the law
16 of any State or any political subdivision thereof, an indi-
17 vidual who is a qualified law enforcement officer and who
18 is carrying the identification required by subsection (d)
19 may carry a concealed firearm that has been shipped or
20 transported in interstate or foreign commerce, subject to
21 subsection (b).



1 “(b) This section shall not be construed to supersede
2 or limit the laws of any State that

3 “(1) permit private persons or entities to pro-
4 hibit or restrict the possession of concealed firearms
5 on their property; or

6 “(2) prohibit or restrict the possession of fire-
7 arms on any State or local government property, in-
8 stallation, building, base, or park.

9 “(c) As used in this section, the term ‘qualified law
10 enforcement officer’ means an employee of a governmental
11 agency who

12 “(1) is authorized by law to engage in or super-
13 vise the prevention, detection, investigation, or pros-
14 ecution of, or the incarceration of any person for,
15 any violation of law, and has statutory powers of ar-
16 rest;

17 “(2) is authorized by the agency to carry a fire-
18 arm;

19 “(3) is not the subject of any disciplinary action
20 by the agency; and

21 “(4) meets standards, if any, established by the
22 agency which require the employee to regularly qual-
23 ify in the use of a firearm.

24 “(d) The identification required by this subsection is
25 the photographic identification issued by the governmental



1 agency for which the individual is, or was, employed as
2 a law enforcement officer.”.

3 (b) CLERICAL AMENDMENT. The table of sections
4 for such chapter is amended by inserting after the item
5 relating to section 926A the following:

“926B. Carrying of concealed firearms by qualified law enforcement officers.”.

6 **SEC. 03. EXEMPTION OF QUALIFIED RETIRED LAW EN-**
7 **FORCEMENT OFFICERS FROM STATE LAWS**
8 **PROHIBITING THE CARRYING OF CON-**
9 **CEALED FIREARMS.**

10 (a) IN GENERAL. Chapter 44 of title 18, United
11 States Code, is further amended by inserting after section
12 926B the following:

13 **“§ 926C. Carrying of concealed firearms by qualified**
14 **retired law enforcement officers**

15 “(a) Notwithstanding any other provision of the law
16 of any State or any political subdivision thereof, an indi-
17 vidual who is a qualified retired law enforcement officer
18 and who is carrying the identification required by sub-
19 section (d) may carry a concealed firearm that has been
20 shipped or transported in interstate or foreign commerce,
21 subject to subsection (b).

22 “(b) This section shall not be construed to supersede
23 or limit the laws of any State that



1 “(1) permit private persons or entities to pro-
2 hibit or restrict the possession of concealed firearms
3 on their property; or

4 “(2) prohibit or restrict the possession of fire-
5 arms on any State or local government property, in-
6 stallation, building, base, or park.

7 “(c) As used in this section, the term ‘qualified re-
8 tired law enforcement officer’ means an individual who

9 “(1) retired in good standing from service with
10 a public agency as a law enforcement officer, other
11 than for reasons of mental instability;

12 “(2) before such retirement, was authorized by
13 law to engage in or supervise the prevention, detec-
14 tion, investigation, or prosecution of, or the incarcer-
15 ation of any person for, any violation of law, and
16 had statutory powers of arrest;

17 “(3)(A) before such retirement, was regularly
18 employed as a law enforcement officer for an aggre-
19 gate of 5 years or more; or

20 “(B) retired from service with such agency,
21 after completing any applicable probationary period
22 of such service, due to a service-connected disability,
23 as determined by such agency;

24 “(4) has a nonforfeitable right to benefits under
25 the retirement plan of the agency;



**AMENDMENT TO H.R. _____
OFFERED BY MR. BARR OF GEORGIA**

Add at the end the following:

1 **TITLE —JUDGMENT**
2 **ENFORCEMENT**

3 **SEC. 01. ENFORCEMENT OF CERTAIN ANTI-TERRORISM**
4 **JUDGMENTS.**

5 (a) **SHORT TITLE.** This title may be cited as the
6 “Justice for Victims of Terrorism Act”.

7 (b) **DEFINITION.**

8 (1) **IN GENERAL.** Section 1603(b) of title 28,
9 United States Code, is amended

10 (A) in paragraph (3) by striking the period
11 and inserting a semicolon and “and”;

12 (B) by redesignating paragraphs (1), (2),
13 and (3) as subparagraphs (A), (B), and (C), re-
14 spectively;

15 (C) by striking “(b)” through “entity ”
16 and inserting the following:

17 “(b) An ‘agency or instrumentality of a foreign state’
18 means

19 “(1) any entity ”; and

20 (D) by adding at the end the following:



1 “(2) for purposes of sections 1605(a)(7) and
2 1610 (a)(7) and (f), any entity as defined under
3 subparagraphs (A) and (B) of paragraph (1), and
4 subparagraph (C) of paragraph (1) shall not
5 apply.”.

6 (2) TECHNICAL AND CONFORMING AMEND-
7 MENT. Section 1391(f)(3) of title 28, United
8 States Code, is amended by striking “1603(b)” and
9 inserting “1603(b)(1)”.

10 (c) ENFORCEMENT OF JUDGMENTS. Section
11 1610(f) of title 28, United States Code, is amended

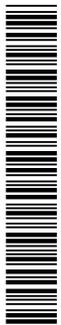
12 (1) in paragraph (1)

13 (A) in subparagraph (A) by striking “(in-
14 cluding any agency or instrumentality or such
15 state)” and inserting “(including any agency or
16 instrumentality of such state)”; and

17 (B) by adding at the end the following:

18 “(C) Notwithstanding any other provision of law,
19 moneys due from or payable by the United States (includ-
20 ing any agency, subdivision or instrumentality thereof) to
21 any state against which a judgment is pending under sec-
22 tion 1605(a)(7) shall be subject to attachment and execu-
23 tion, in like manner and to the same extent as if the
24 United States were a private person.”; and

25 (2) by adding at the end the following:



1 “(3)(A) Subject to subparagraph (B), upon deter-
2 mining on an asset-by-asset basis that a waiver is nec-
3 essary in the national security interest, the President may
4 waive this subsection in connection with (and prior to the
5 enforcement of) any judicial order directing attachment in
6 aid of execution or execution against the premises of a
7 foreign diplomatic mission to the United States, or any
8 funds held by or in the name of such foreign diplomatic
9 mission determined by the President to be necessary to
10 satisfy actual operating expenses of such foreign diplo-
11 matic mission.

12 “(B) A waiver under this paragraph shall not apply
13 to

14 “(i) if the premises of a foreign diplomatic mis-
15 sion has been used for any nondiplomatic purpose
16 (including use as rental property), the proceeds of
17 such use; or

18 “(ii) if any asset of a foreign diplomatic mission
19 is sold or otherwise transferred for value to a third
20 party, the proceeds of such sale or transfer.

21 “(4) For purposes of this subsection, all assets of any
22 agency or instrumentality of a foreign state shall be treat-
23 ed as assets of that foreign state.”.

24 (d) TECHNICAL AND CONFORMING AMENDMENT.
25 Section 117(d) of the Treasury Department Appropria-



1 tions Act, 1999 (Public Law 105 277; 112 Stat. 2681
2 492) is repealed.

3 (e) EFFECTIVE DATE. The amendments made by
4 this section shall apply to any claim for which a foreign
5 state is not immune under section 1605(a)(7) of title 28,
6 United States Code, arising before, on, or after the date
7 of enactment of this Act.



AMENDMENT TO H.R. _____
OFFERED BY MR. BARR OF GEORGIA

Add at the end the following:

1 **TITLE —PRIVATE SECURITY**
2 **OFFICER QUALITY ASSURANCE**

3 **SEC. 01. SHORT TITLE.**

4 This title may be cited as the “Private Security Offi-
5 cer Quality Assurance Act of 2001”.

6 **SEC. 02. FINDINGS.**

7 Congress finds that

8 (1) employment of private security officers in
9 the United States is growing rapidly;

10 (2) the private security industry provides nu-
11 merous opportunities for entry-level job applicants,
12 including individuals suffering from unemployment
13 due to economic conditions or dislocations;

14 (3) sworn law enforcement officers provide sig-
15 nificant services to the citizens of the United States
16 in its public areas, and are only supplemented by
17 private security officers who provide prevention and
18 reporting services in support of, but not in place of,
19 regular sworn police;

20 (4) given the growth of large private shopping
21 malls, and the consequent reduction in the number



1 of public shopping streets, the American public is
2 more likely to have contact with private security per-
3 sonnel in the course of a day than with sworn law
4 enforcement officers;

5 (5) regardless of the differences in their duties,
6 skill, and responsibilities, the public has difficulty in
7 discerning the difference between sworn law enforce-
8 ment officers and private security personnel; and

9 (6) the American public demands the employ-
10 ment of qualified, well-trained private security per-
11 sonnel as an adjunct, but not a replacement for
12 sworn law enforcement officers.

13 **SEC. 03. BACKGROUND CHECKS.**

14 (a) IN GENERAL. An association of employers of
15 private security officers, designated for the purpose of this
16 section by the Attorney General, may submit fingerprints
17 or other methods of positive identification approved by the
18 Attorney General, to the Attorney General on behalf of
19 any applicant for a State license or certificate of registra-
20 tion as a private security officer or employer of private
21 security officers. In response to such a submission, the At-
22 torney General may, to the extent provided by State law
23 conforming to the requirements of the second paragraph
24 under the heading "Federal Bureau of Investigation" and
25 the subheading "Salaries and Expenses" in title II of Pub-



1 lic Law 92 544 (86 Stat. 1115), exchange, for licensing
2 and employment purposes, identification and criminal his-
3 tory records with the State governmental agencies to
4 which such applicant has applied.

5 (b) REGULATIONS. The Attorney General may pre-
6 scribe such regulations as may be necessary to carry out
7 this section, including measures relating to the security,
8 confidentiality, accuracy, use, and dissemination of infor-
9 mation and audits and recordkeeping and the imposition
10 of fees necessary for the recovery of costs.

11 (c) REPORT. The Attorney General shall report to
12 the Senate and House Committees on the Judiciary 2
13 years after the date of enactment of this bill on the num-
14 ber of inquiries made by the association of employers
15 under this section and their disposition.

16 **SEC. 04. SENSE OF CONGRESS.**

17 It is the sense of Congress that States should partici-
18 pate in the background check system established under
19 section 3.

20 **SEC. 05. DEFINITIONS.**

21 As used in this title

22 (1) the term “employee” includes an applicant
23 for employment;

24 (2) the term “employer” means any person
25 that



1 (A) employs one or more private security
2 officers; or

3 (B) provides, as an independent con-
4 tractor, for consideration, the services of one or
5 more private security officers (possibly includ-
6 ing oneself);

7 (3) the term “private security officer”

8 (A) means

9 (i) an individual who performs secu-
10 rity services, full or part time, for consider-
11 ation as an independent contractor or an
12 employee, whether armed or unarmed and
13 in uniform or plain clothes whose primary
14 duty is to perform security services, or

15 (ii) an individual who is an employee
16 of an electronic security system company
17 who is engaged in one or more of the fol-
18 lowing activities in the State: burglar
19 alarm technician, fire alarm technician,
20 closed circuit television technician, access
21 control technician, or security system mon-
22 itor; but

23 (B) does not include

24 (i) sworn police officers who have law
25 enforcement powers in the State,



1 (ii) attorneys, accountants, and other
2 professionals who are otherwise licensed in
3 the State,

4 (iii) employees whose duties are pri-
5 marily internal audit or credit functions,

6 (iv) persons whose duties may inciden-
7 tally include the reporting or apprehension
8 of shoplifters or trespassers, or

9 (v) an individual on active duty in the
10 military service;

11 (4) the term “certificate of registration” means
12 a license, permit, certificate, registration card, or
13 other formal written permission from the State for
14 the person to engage in providing security services;

15 (5) the term “security services” means the per-
16 formance of one or more of the following:

17 (A) the observation or reporting of intru-
18 sion, larceny, vandalism, fire or trespass;

19 (B) the deterrence of theft or misappro-
20 priation of any goods, money, or other item of
21 value;

22 (C) the observation or reporting of any un-
23 lawful activity;



1 (D) the protection of individuals or prop-
2 erty, including proprietary information, from
3 harm or misappropriation;

4 (E) the control of access to premises being
5 protected;

6 (F) the secure movement of prisoners;

7 (G) the maintenance of order and safety at
8 athletic, entertainment, or other public activi-
9 ties;

10 (H) the provision of canine services for
11 protecting premises or for the detection of any
12 unlawful device or substance; and

13 (I) the transportation of money or other
14 valuables by armored vehicle; and

15 (6) the term "State" means any of the several
16 States, the District of Columbia, the Commonwealth
17 of Puerto Rico, the United States Virgin Islands,
18 American Samoa, Guam, and the Commonwealth of
19 the Northern Mariana Islands.



we will reserve seats

-----Original Message-----

From: Moschella, Will

Sent: Tuesday, October 02, 2001 4:57 PM

To: Kiko, Phil; Pinkos, Steve; Apperson, Jay; Sokul, Beth; Crooks, Katy; McLaughlin, Sean; Hultman, Eric

Subject: FW: amendments

-----Original Message-----

From: Mosychuk, Susan

Sent: Tuesday, October 02, 2001 4:08 PM

To: Moschella, Will

Subject: amendments

<<BARR_032.PDF>> <<BARR_033.PDF>> <<BARR_034.PDF>> <<BARR_035.PDF>>

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Wednesday, October 3, 2001 10:23 AM
To: Dinh, Viet
Subject: FW: Zoe Lofgren-Sunset amendment
Attachments: tmp.htm; LOFGRE_001.PDF; pic06525.pcx

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 10/03/2001 10:23 AM -----

(Embedded
image moved "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
to file: 10/03/2001 09:55:19 AM
pic06525.pcx)

Record Type: Record

To: "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), Daniel J. Keniry/WHO/EOP@EOP, Robert Marsh/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: FW: Zoe Lofgren-Sunset amendment

-----Original Message-----

From: Pinkos, Steve [mailto:Steve.Pinkos@mail.house.gov]
Sent: Wednesday, October 03, 2001 8:10 AM
To: Thorsen, Carl
Subject: FW: Zoe Lofgren-Sunset amendment
Importance: High

-----Original Message-----

From: Apelbaum, Perry

007104-003016

Sent: Tuesday, October 02, 2001 7:36 PM
To: Garg, Sampak; Kalo, Ted; Kiko, Phil; Moschella, Will; Pinkos, Steve
Subject: FW: Zoe Lofgren-Sunset amendment
Importance: High

-----Original Message-----

From: Ramanathan, Sue
Sent: Tuesday, October 02, 2001 6:08 PM
To: Deutchman, Scott (E-mail); Apelbaum, Perry (E-mail)
Subject: Zoe Lofgren-Sunset amendment
Importance: High

Here is the amendment that Zoe would like to offer tomorrow. I would appreciate your sharing this with the majority.

-----Original Message-----

From: Fleishman, Susan
Sent: Tuesday, October 02, 2001 5:33 PM
To: 'sue@lofgren.house.gov'
Subject: Sunset amendment

<<LOFGRE_001.PDF>>

***** Susan E. Fleishman Assistant Counsel U.S. House of Representatives Office of the Legislative Counsel 136 Cannon House Office Building Washington, D.C. 20515 Phone: (202) 225-6060 Fax: (202) 225-3437 sfleishman@holc.house.gov

AMENDMENT TO H.R. ____
OFFERED BY MS. LOFGREN

At the end of subtitle A of title II of the bill, insert the following (and amend the table of contents accordingly):

1 SEC. 208. SUBTITLE SUNSET.

2 This subtitle (other than section 206) and the amend-
3 ments made by this subtitle shall take effect on the date
4 of the enactment of this Act and shall cease to have any
5 effect on December 31, 2003.



Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Tuesday, October 02, 2001 7:11 PM
To: Bryant, Dan; Dinh, Viet
Cc: Kristen_Silverberg@who.eop.gov
Subject: section 159

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 10/02/2001 07:10 PM -----

Kristen Silverberg
10/02/2001 06:57:28 PM

Record Type: Record

To: Robert Marsh/WHO/EOP@EOP, Courtney S. Elwood/WHO/EOP@EOP

cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: section 159

(b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, October 02, 2001 6:53 PM
To: Bryant, Dan; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: House bill gathering bipartisan sponsors . . .

Hey, have you put in motion the detention plan yet?

-----Original Message-----

From: Bryant, Dan
Sent: Tuesday, October 02, 2001 6:48 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Dinh, Viet
Subject: RE: House bill gathering bipartisan sponsors . . .

(b) (5) Viet? Are you asleep at the switch?

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, October 02, 2001 4:58 PM
To: Bryant, Dan; Dinh, Viet
Subject: House bill gathering bipartisan sponsors . . .

According to Bob Marsh's latest report, the Sensenbrenner bill now has John Conyers, Sheila Jackson Lee, Adam Schiff, and Marty Meehan signed up as Democratic co-sponsors.

007104-003020

Schauder, Andrew

From: Schauder, Andrew
Sent: Monday, October 1, 2001 6:39 PM
To: Schauder, Andrew; Newstead, Jennifer; Ciongoli, Adam;
'Bradford_A._Berenson@who.eop.gov%inetgw';
'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan;
'Heather_Wingate@who.eop.gov'; Ullman, Kristen A; Long, Linda E; Benedi,
Lizette D; Rabjohns, Lori; Day, Lori Sharpe;
'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick
O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw';
'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet;
'Ziad_S._Ojakli@who.eop.gov%inetgw'; Carroll, James W (OLP)
Subject: judicial media review
Attachments: Judicial Media Review 10-01-01.wpd

[Please see attached review](#)

Media Review - Judicial Nominations

Monday, October 1, 2001

General Judicial Articles

"Bush's Picks for 10th Circuit in Limbo," [1](#)
Bill McAllister, *The Denver Post*, September 30, 2001

"Federal Bench: Evaluate Judicial Nominees Solely on Integrity, Intelligence,
[3](#)
Good Faith, Scholar Says," *AScribe Newswire*, September 28, 2001

Op/Eds

"Time for Senate to Approve Judicial Nominees" [4](#)
Mark Cernak, *The Washington Times*, September 30, 2001

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

[General Judicial Articles](#)

Bush's Picks for 10th Circuit in Limbo

By Bill McAllister
The Denver Post
Sunday, September 30, 2001

One said no to a high political job at the Interior Department. Another is a Utah law professor who has defended vouchers for religious schools.

A third is a retired state judge who flirted with running for the Wyoming Legislature as a write-in candidate. And the fourth was a New Mexico judge who left the bench three years ago to write rules for reforming the Teamsters union.

What these four Republican lawyers have in common is that President Bush has nominated them for seats on the 10th U.S. Circuit Court of Appeals. That's the Denver-based court that has jurisdiction over Colorado, Kansas, New Mexico, Oklahoma, Wyoming and Utah.

With four of the Denver circuit's 12 judgeships vacant, Court Clerk Patrick Fisher says it may be one of the highest vacancy rates of any circuit in the nation. As a result, the court has had to depend heavily on its corps of eight senior judges, who are by definition semi-retired, for help with its caseload.

Yet as former President Clinton could testify, filling a judgeship in Denver isn't as simple as sending a name to Capitol Hill for confirmation. He tried to get Denver lawyer Jim Lyons, a longtime friend, on the circuit bench there, but Republican Sen. Wayne Allard of Colorado blocked his plans, calling Lyons too partisan for the job.

Now it's Bush's turn. And since the circuit's senators are overwhelmingly Republican, this time they're only too happy to promote their home-state nominees for the lifetime federal jobs. Since the Democrats took control of the Senate, however, only six of Bush's judicial nominees have managed to slip out of the Senate Judiciary Committee.

That's a pace that has some Republicans fuming, but you won't get any of the nominees to pop off. All have been instructed by the White House to keep quiet until their nominations clear the Senate.

Denver lawyer Timothy M. Tymkovich, who gave up a chance to be the No. 3 official at Interior, said last week that he still doesn't know when he'll get a confirmation hearing before the committee. "I suspect late in the year at the earliest," Tymkovich said.

He was nominated May 25, one of the first circuit nominees Bush sent to the Hill. While Tymkovich, 44, a former solicitor general on the Colorado state attorney general's staff, is well known to many in Colorado, the three other nominees to the Denver circuit probably are not.

Perhaps the most controversial of all four is Michael McConnell, a law professor at the University of Utah. In addition to defending the use of school vouchers for religious schools, McConnell has argued there is a need to reinterpret the constitutional mandate for a separation of church and state.

Utah's Sen. Orrin Hatch, the ranking Republican on judiciary, is supporting his nomination. But McConnell is likely to be opposed by groups such as Americans United for Separation of Church and State. The Rev. Barry W. Lynn, executive director of that group, has said the Utah professor is "the religious right's dream court nominee, . . . a conservative Christian who's willing to use the force of government to impose his viewpoint."

A native of Louisville, Ky., McConnell clerked for Supreme Court Justice William Brennan, one of the most liberal members of the high court. Later, as an assistant solicitor general in the Reagan administration, he argued nine cases before the Supreme Court.

"By sheer intellect, compassion and judicial temperament, he is about the brightest the right wing has to offer," Ed Firmage, a college at the Utah law school told the Salt Lake Tribune when McConnell was nominated in May. "He will bring massive scholarship and a great deal of compassion."

Less is known about the legal philosophies of Terrence O'Brien of Gillette, who retired in 2000 after 20 years as a Wyoming district judge. After leaving the bench, O'Brien announced he would run as a Republican write-in candidate against an incumbent Democratic member of the Wyoming House. He later dropped out of the race, saying he didn't have enough time.

New Mexico's Harris Hartz won held a seat on the New Mexico Court of Appeals and was its chief judge before he resigned to join a New Jersey law firm that was drafting a reform program for the Teamsters Union. "I can't think of anything more exciting or important," he said at the time.

Now the Farmington native and Harvard law graduate has apparently decided that the federal bench would be more exciting. "I believe he has truly outstanding credentials and will make New Mexico proud as a new fixture on the 10th Circuit," Sen. Pete Domenici, R-N.M. said after Bush's announcement.

None of the four has a hearing date. A Republican aide at the Judiciary Committee said all their paperwork is completed.

Federal Bench: Evaluate Judicial Nominees Solely on Integrity, Intelligence, Good Faith, Scholar Says

AScribe Newswire

Friday, September 28, 2001

Judging the future actions of judges through the lens of today's "hot-button" political issues is not only unfair, it's not possible, a University of Illinois constitutional law scholar told a U.S. Senate subcommittee studying the judicial confirmation process.

Ronald D. Rotunda, the Albert E. Jenner, Jr. professor of law at the UI's College of Law, pointed out that "commentators, presidents and senators may think that they can predict how a nominee will vote once that person is confirmed, but our historical experience should teach us to be more humble."

History is replete with instances of Supreme Court nominees who make decisions that appear at odds with their record and perceived political leanings. A major reason for this, Rotunda said, is because "we do not know what will be the major legal issues 10, 15, or even five years from now, much less what might be the 'liberal' or 'conservative' answer to them." Hugo Black, a onetime member of the Ku Klux Klan, baffled commentators when he became one of the most vigorous supporters of racial justice on the Supreme Court. The same pattern emerges when one

studies the decisions of modern-day judges, according to the UI legal scholar. "Judge Antonin Scalia, whom the popular culture typically portrays as conservative, voted twice to protect burning the American flag as free speech. Justice John Paul Stevens, whom the media tells us is liberal, dissented in both of those two cases." Rotunda said the process of the law, such as the emphasis on resting a decision on the specific facts of a case, mitigates against cant and frees judges from being swept away by popular opinion.

The batting averages of commentators [as well as senators] in divining how judicial nominees will act once confirmed "have been remarkably poor," Rotunda said, adding, "If a lot of predictions are made, some will be correct. Even a stopped clock is right twice a day."

Instead of trying to set up litmus tests and trick questions about "the judicial philosophy" of a nominee, Rotunda urged the Senate to use its power of confirmation to examine a prospective judge in terms of his or her personal integrity, intellectual ability and good faith. "The Senate should continue to play the constitutionally mandated role of reasoned adviser to the president, not prophet, seer or investigative reporter. Further, nominees should only promise the faithful performance of their judicial duties. Hence, there should be no presumption against confirmation if a nominee chooses not to answer a politically charged question, or if a question requires [or appears to require] the nominee to promise to decide a legal question in a particular way, or if he or she believes an answer will compromise [or will appear to compromise] a judge's ability to later make an independent law-based decision."

Op/Eds

Time for Senate to Approve Judicial Nominees

By Mark Cernak

The Washington Times

Sunday, September 30, 2001

There are now 49 of President Bush's judicial nominees before the Senate - 29 nominated to fill district court vacancies and 20 nominated to fill appellate court vacancies. One-hundred six judgeships are currently vacant, 75 of them in the district courts and 31 in the appellate courts. Forty-one of those have been designated "judicial emergencies" because of their duration and caseload; 20 of Mr. Bush's nominees have been named to fill "emergency" vacancies.

Although Mr. Bush submitted his first 11 nominations on May 9, only six nominees have been confirmed this year. Just one from the initial group of 11 has been confirmed- a Clinton recess appointee whom Mr. Bush re-nominated. Of the 49 nominees before the Senate, only 3 - that is, 6 percent - have had a hearing.

In these times, I think that we need these positions filled immediately; we cannot wait until the war on terrorism is over.(spade)

Dinh, Viet

From: Dinh, Viet
Sent: Monday, October 1, 2001 4:37 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'; 'Alberto_R._Gonzales@who.eop.gov'; 'Timothy_E._Flanigan@who.eop.gov'; 'Nancy_P._Dorn@who.eop.gov'; 'Heather_Wingate@who.eop.gov'; 'Elizabeth_N._Camp@who.eop.gov'; 'Kristen_Silverberg@who.eop.gov'; 'Robert_Marsh@who.eop.gov'
Subject: FW:
Attachments: tmp.htm; MDB_950.PDF
Importance: High

Here it is: House Text.

-----Original Message-----

From: Thorsen, Carl
Sent: Monday, October 01, 2001 4:31 PM
To: Newstead, Jennifer; Dinh, Viet
Subject: FW:
Importance: High

Hot off the presses, the Sensenbrenner-Conyers agreement text.

-----Original Message-----

From: Pinkos, Steve [mailto:Steve.Pinkos@mail.house.gov]
Sent: Monday, October 01, 2001 4:28 PM
To: Bryant, Dan; Thorsen, Carl; Robert H. Marsh (E-mail)
Subject:
Importance: High

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>
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> <<MDB_950.PDF>>

007104-003026

107TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. SENSENBRENNER (for himself and Mr. CONYERS) introduced the following bill; which was referred to the Committee on

A BILL

To combat terrorism, and for other purposes.

1 *Be it enacted by the Senate and House of Representa*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Provide Appropriate
5 Tools Required to Intercept and Obstruct Terrorism (PA-
6 TRIOT) Act of 2001”.

7 **SEC. 2. TABLE OF CONTENTS.**

8 The following is the table of contents for this Act:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Construction; severability.

TITLE I INTELLIGENCE GATHERING

Subtitle A Electronic Surveillance

- Sec. 101. Modification of authorities relating to use of pen registers and trap and trace devices.
- Sec. 102. Seizure of voice mail messages pursuant to warrants.
- Sec. 103. Authorized disclosure.
- Sec. 104. Savings provision.
- Sec. 105. Interception of computer trespasser communications.
- Sec. 106. Technical amendment.
- Sec. 107. Scope of subpoenas for records of electronic communications.
- Sec. 108. Nationwide service of search warrants for electronic evidence.
- Sec. 109. Clarification of scope.
- Sec. 110. Emergency disclosure of electronic communications to protect life and limb.
- Sec. 111. Use as evidence.
- Sec. 112. Reports concerning the disclosure of the contents of electronic communications.

Subtitle B Foreign Intelligence Surveillance and Other Information

- Sec. 151. Period of orders of electronic surveillance of non United States persons under foreign intelligence surveillance.
- Sec. 152. Multi point authority.
- Sec. 153. Foreign intelligence information.
- Sec. 154. Foreign intelligence information sharing.
- Sec. 155. Pen register and trap and trace authority.
- Sec. 156. Business records.
- Sec. 157. Miscellaneous national security authorities.
- Sec. 158. Proposed legislation.
- Sec. 159. Presidential authority.
- Sec. 160. Sunset.

TITLE II ALIENS ENGAGING IN TERRORIST ACTIVITY

Subtitle A Detention and Removal of Aliens Engaging in Terrorist Activity

- Sec. 201. Changes in classes of aliens who are ineligible for admission and deportable due to terrorist activity.
- Sec. 202. Changes in designation of foreign terrorist organizations.
- Sec. 203. Mandatory detention of suspected terrorists; habeas corpus; judicial review.
- Sec. 204. Multilateral cooperation against terrorists.
- Sec. 205. Changes in conditions for granting asylum and asylum procedures.
- Sec. 206. Protection of northern border.
- Sec. 207. Requiring sharing by the Federal Bureau of Investigation of certain criminal record extracts with other Federal agencies in order to enhance border security.

Subtitle B Preservation of Immigration Benefits for Victims of Terrorism

- Sec. 211. Special immigrant status.
- Sec. 212. Extension of filing or reentry deadlines.
- Sec. 213. Humanitarian relief for certain surviving spouses and children.
- Sec. 214. "Age out" protection for children.
- Sec. 215. Temporary administrative relief.

- Sec. 216. Evidence of death, disability, or loss of employment.
- Sec. 217. No benefits to terrorists or family members of terrorists.
- Sec. 218. Definitions.

TITLE III CRIMINAL JUSTICE

Subtitle A Substantive Criminal Law

- Sec. 301. Statute of limitation for prosecuting terrorism offenses.
- Sec. 302. Alternative maximum penalties for terrorism crimes.
- Sec. 303. Penalties for terrorist conspiracies.
- Sec. 304. Terrorism crimes as RICO predicates.
- Sec. 305. Biological weapons.
- Sec. 306. Support of terrorism through expert advice or assistance.
- Sec. 307. Prohibition against harboring.
- Sec. 308. Post release supervision of terrorists.
- Sec. 309. Definition.
- Sec. 310. Civil damages.

Subtitle B Criminal Procedure

- Sec. 351. Single jurisdiction search warrants for terrorism.
- Sec. 353. DNA identification of terrorists.
- Sec. 354. Grand jury matters.
- Sec. 355. Extraterritoriality.
- Sec. 356. Jurisdiction over crimes committed at United States facilities abroad.
- Sec. 357. Special agent authorities.

TITLE IV FINANCIAL INFRASTRUCTURE

- Sec. 401. Laundering the proceeds of terrorism.
- Sec. 402. Material support for terrorism.
- Sec. 403. Assets of terrorist organizations.
- Sec. 404. Technical clarification relating to provision of material support to terrorism.
- Sec. 405. Disclosure of tax information in terrorism and national security investigations.
- Sec. 406. Extraterritorial jurisdiction.

TITLE V EMERGENCY AUTHORIZATIONS

- Sec. 501. Office of Justice programs.
- Sec. 502. Attorney General's authority to pay rewards.
- Sec. 503. Limited authority to pay overtime.
- Sec. 504. Department of State reward authority.

TITLE VI DAM SECURITY

- Sec. 601. Security of reclamation dams, facilities, and resources.

TITLE VII MISCELLANEOUS

- Sec. 701. Employment of translators by the Federal Bureau of Investigation.
- Sec. 702. Review of the Department of Justice.

1 **SEC. 3. CONSTRUCTION; SEVERABILITY.**

2 Any provision of this Act held to be invalid or unen-
3 forceable by its terms, or as applied to any person or cir-
4 cumstance, shall be construed so as to give it the max-
5 imum effect permitted by law, unless such holding shall
6 be one of utter invalidity or unenforceability, in which
7 event such provision shall be deemed severable from this
8 Act and shall not affect the remainder thereof or the appli-
9 cation of such provision to other persons not similarly situ-
10 ated or to other, dissimilar circumstances.

11 **TITLE I—INTELLIGENCE**
12 **GATHERING**
13 **Subtitle A—Electronic Surveillance**

14 **SEC. 101. MODIFICATION OF AUTHORITIES RELATING TO**
15 **USE OF PEN REGISTERS AND TRAP AND**
16 **TRACE DEVICES.**

17 (a) GENERAL LIMITATION ON USE BY GOVERN-
18 MENTAL AGENCIES. Section 3121(c) of title 18, United
19 States Code, is amended

20 (1) by inserting “or trap and trace device”
21 after “pen register”;

22 (2) by inserting “, routing, addressing,” after
23 “dialing”; and

24 (3) by striking “call processing” and inserting
25 “the processing and transmitting of wire and elec-
26 tronic communications”.

1 (b) ISSUANCE OF ORDERS.

2 (1) IN GENERAL. Subsection (a) of section
3 3123 of title 18, United States Code, is amended to
4 read as follows:

5 “(a) IN GENERAL.

6 “(1) Upon an application made under section
7 3122(a)(1), the court shall enter an ex parte order
8 authorizing the installation and use of a pen register
9 or trap and trace device anywhere within the United
10 States, if the court finds that the attorney for the
11 Government has certified to the court that the infor-
12 mation likely to be obtained by such installation and
13 use is relevant to an ongoing criminal investigation.
14 The order shall, upon service thereof, apply to any
15 person or entity providing wire or electronic commu-
16 nication service in the United States whose assist-
17 ance may facilitate the execution of the order.

18 “(2) Upon an application made under section
19 3122(a)(2), the court shall enter an ex parte order
20 authorizing the installation and use of a pen register
21 or trap and trace device within the jurisdiction of
22 the court, if the court finds that the State law-en-
23 forcement or investigative officer has certified to the
24 court that the information likely to be obtained by

1 such installation and use is relevant to an ongoing
2 criminal investigation.”.

3 (2) CONTENTS OF ORDER. Subsection (b)(1)
4 of section 3123 of title 18, United States Code, is
5 amended

6 (A) in subparagraph (A)

7 (i) by inserting “or other facility”
8 after “telephone line”; and

9 (ii) by inserting before the semicolon
10 at the end “or applied”; and

11 (B) by striking subparagraph (C) and in-
12 sserting the following:

13 “(C) the attributes of the communications
14 to which the order applies, including the num-
15 ber or other identifier and, if known, the loca-
16 tion of the telephone line or other facility to
17 which the pen register or trap and trace device
18 is to be attached or applied, and, in the case of
19 an order authorizing installation and use of a
20 trap and trace device under subsection (a)(2),
21 the geographic limits of the order; and”.

22 (3) NONDISCLOSURE REQUIREMENTS. Sub-
23 section (d)(2) of section 3123 of title 18, United
24 States Code, is amended

1 (A) by inserting “or other facility” after
2 “the line”; and

3 (B) by striking “, or who has been ordered
4 by the court” and inserting “or applied, or who
5 is obligated by the order”.

6 (c) DEFINITIONS.

7 (1) COURT OF COMPETENT JURISDICTION.

8 Paragraph (2) of section 3127 of title 18, United
9 States Code, is amended by striking subparagraph
10 (A) and inserting the following:

11 “(A) any district court of the United
12 States (including a magistrate judge of such a
13 court) or any United States court of appeals
14 having jurisdiction over the offense being inves-
15 tigated; or”.

16 (2) PEN REGISTER. Paragraph (3) of section
17 3127 of title 18, United States Code, is amended

18 (A) by striking “electronic or other im-
19 pulses” and all that follows through “is at-
20 tached” and inserting “dialing, routing, ad-
21 dressing, or signaling information transmitted
22 by an instrument or facility from which a wire
23 or electronic communication is transmitted (but
24 not including the contents of such communi-
25 cation)”; and

1 (B) by inserting “or process” after “de-
2 vice” each place it appears.

3 (3) TRAP AND TRACE DEVICE. Paragraph (4)
4 of section 3127 of title 18, United States Code, is
5 amended

6 (A) by inserting “or process” after “a de-
7 vice”; and

8 (B) by striking “of an instrument” and all
9 that follows through the end and inserting “or
10 other dialing, routing, addressing, and signaling
11 information reasonably likely to identify the
12 source of a wire or electronic communication
13 (but not including the contents of such commu-
14 nication);”.

15 (4) CONFORMING AMENDMENT. Section
16 3127(1) of title 18, United States Code, is
17 amended

18 (A) by striking “and”; and

19 (B) by inserting “and ‘contents’”
20 after “electronic communication service”.

21 (d) NO LIABILITY FOR INTERNET SERVICE PRO-
22 VIDERS. Section 3124(d) of title 18, United States Code,
23 is amended by striking “the terms of”.

1 **SEC. 102. SEIZURE OF VOICE-MAIL MESSAGES PURSUANT**
2 **TO WARRANTS.**

3 Title 18, United States Code, is amended

4 (1) in section 2510

5 (A) in paragraph (1), by striking all the
6 words after “commerce”; and

7 (B) in paragraph (14), by inserting “wire
8 or” after “transmission of”; and

9 (2) in section 2703(a) and (b)

10 (A) by striking “CONTENTS OF ELEC-
11 TRONIC” and inserting “CONTENTS OF WIRE OR
12 ELECTRONIC” each place it appears in a sub-
13 section heading;

14 (B) by striking “contents of an electronic”
15 and inserting “contents of a wire or electronic”
16 each place it appears; and

17 (C) by striking “any electronic” and in-
18 serting “any wire or electronic” each place it
19 appears.

20 **SEC. 103. AUTHORIZED DISCLOSURE.**

21 Section 2510(7) of title 18, United States Code, is
22 amended by inserting “, and (for purposes only of section
23 2517 as it relates to foreign intelligence information) any
24 Federal law enforcement, intelligence, national security,
25 national defense, protective, immigration personnel, or the

1 President or Vice President of the United States” after
2 “such offenses”.

3 **SEC. 104. SAVINGS PROVISION.**

4 Section 2511(2)(f) of title 18, United States Code,
5 is amended

6 (1) by striking “or chapter 121” and inserting
7 “, chapter 121, or chapter 206”; and

8 (2) by striking “wire and oral” and inserting
9 “wire, oral, and electronic”.

10 **SEC. 105. INTERCEPTION OF COMPUTER TRESPASSER COM-**
11 **MUNICATIONS.**

12 Chapter 119 of title 18, United States Code, is
13 amended

14 (1) in section 2510

15 (A) in paragraph (17), by striking “and”
16 at the end;

17 (B) in paragraph (18), by striking the pe-
18 riod and inserting a semi-colon; and

19 (C) by adding after paragraph (18) the fol-
20 lowing:

21 “(19) ‘protected computer’ has the meaning set
22 forth in section 1030; and

23 “(20) ‘computer trespasser’ means a person
24 who accesses a protected computer without author-
25 ization and thus has no reasonable expectation of

1 privacy in any communication transmitted to,
2 through, or from the protected computer.”;

3 (2) in section 2511(2), by inserting after para-
4 graph (h) the following:

5 “(i) It shall not be unlawful under this chapter for
6 a person acting under color of law to intercept the wire
7 or electronic communications of a computer trespasser,
8 if

9 “(i) the owner or operator of the protected com-
10 puter authorizes the interception of the computer
11 trespasser’s communications on the protected com-
12 puter;

13 “(ii) the person acting under color of law is
14 lawfully engaged in an investigation;

15 “(iii) the person acting under color of law has
16 reasonable grounds to believe that the contents of
17 the computer trespasser’s communications will be
18 relevant to the investigation; and

19 “(iv) such interception does not acquire commu-
20 nications other than those transmitted to or from
21 the computer trespasser.”; and

22 (3) in section 2520(d)(3), by inserting “or
23 2511(2)(i)” after “2511(3)”.

1 **SEC. 106. TECHNICAL AMENDMENT.**

2 Section 2518(3)(c) of title 18, United States Code,
3 is amended by inserting “and” after the semicolon.

4 **SEC. 107. SCOPE OF SUBPOENAS FOR RECORDS OF ELEC-**
5 **TRONIC COMMUNICATIONS.**

6 Section 2703(c)(1)(C) of title 18, United States
7 Code, is amended

8 (1) by striking “entity the name, address, local
9 and long distance telephone toll billing records, tele-
10 phone number or other subscriber number or iden-
11 tity, and length of service of a” and inserting the
12 following:

13 “entity the

14 “(A) name;

15 “(B) address;

16 “(C) local and long distance telephone connec-
17 tion records, or records of session times and dura-
18 tions;

19 “(D) length of service (including start date)
20 and types of service utilized;

21 “(E) telephone or instrument number or other
22 subscriber number or identity, including any tempo-
23 rarily assigned network address; and

24 “(F) means and source of payment (including
25 any credit card or bank account number);

26 of a”; and

1 (2) by striking “and the types of services the
2 subscriber or customer utilized,” after “of a sub-
3 scriber to or customer of such service,”.

4 **SEC. 108. NATIONWIDE SERVICE OF SEARCH WARRANTS**
5 **FOR ELECTRONIC EVIDENCE.**

6 Chapter 121 of title 18, United States Code, is
7 amended

8 (1) in section 2703, by striking “under the
9 Federal Rules of Criminal Procedure” each place it
10 appears and inserting “using the procedures de-
11 scribed in the Federal Rules of Criminal Procedure
12 by a court with jurisdiction over the offense under
13 investigation”; and

14 (2) in section 2711

15 (A) in paragraph (1), by striking “and”;

16 (B) in paragraph (2), by striking the pe-
17 riod and inserting “; and”; and

18 (C) by adding the following new paragraph
19 at the end:

20 “(3) the term ‘court of competent jurisdiction’
21 has the meaning given that term in section 3127,
22 and includes any Federal court within that defini-
23 tion, without geographic limitation.”.

1 **SEC. 109. CLARIFICATION OF SCOPE.**

2 Section 2511(2) of title 18, United States Code, as
3 amended by section 106(2) of this Act, is further amended
4 by adding at the end the following:

5 “(j) With respect to a voluntary or obligatory disclo-
6 sure of information (other than information revealing cus-
7 tomer cable viewing activity) under this chapter, chapter
8 121, or chapter 206, section 631(a) of the Communica-
9 tions Act of 1934 shall not apply.

10 **SEC. 110. EMERGENCY DISCLOSURE OF ELECTRONIC COM-**
11 **MUNICATIONS TO PROTECT LIFE AND LIMB.**

12 (a) Section 2702 of title 18, United States Code, is
13 amended

14 (1) by amending the heading to read as follows:
15 **“§ 2702. Voluntary disclosure of customer commu-**
16 **nications or records” ;**

17 (2) in subsection (a)(2)(B) by striking the pe-
18 riod and inserting “; and”;

19 (3) in subsection (a), by inserting after para-
20 graph (2) the following:

21 “(3) a provider of remote computing service or
22 electronic communication service to the public shall
23 not knowingly divulge a record or other information
24 pertaining to a subscriber to or customer of such
25 service (not including the contents of communica-

1 tions covered by paragraph (1) or (2)) to any gov-
2 ernmental entity.”;

3 (4) in subsection (b), by striking “EXCEP-
4 TIONS. A person or entity” and inserting “EXCEP-
5 TIONS FOR DISCLOSURE OF COMMUNICATIONS. A
6 provider described in subsection (a)”;

7 (5) in subsection (b)(6)

8 (A) in subparagraph (A)(ii), by striking
9 “or”;

10 (B) in subparagraph (B), by striking the
11 period and inserting “; or”;

12 (C) by inserting after subparagraph (B)
13 the following:

14 “(C) if the provider reasonably believes
15 that an emergency involving immediate danger
16 of death or serious physical injury to any per-
17 son requires disclosure of the information with-
18 out delay.”; and

19 (6) by inserting after subsection (b) the fol-
20 lowing:

21 “(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER
22 RECORDS. A provider described in subsection (a) may di-
23 vulge a record or other information pertaining to a sub-
24 scriber to or customer of such service (not including the

1 contents of communications covered by subsection (a)(1)
2 or (a)(2))

3 “(1) as otherwise authorized in section 2703;

4 “(2) with the lawful consent of the customer or
5 subscriber;

6 “(3) as may be necessarily incident to the ren-
7 dition of the service or to the protection of the rights
8 or property of the provider of that service;

9 “(4) to a governmental entity, if the provider
10 reasonably believes that an emergency involving im-
11 mediate danger of death or serious physical injury to
12 any person justifies disclosure of the information; or

13 “(5) to any person other than a governmental
14 entity.”.

15 (b) Section 2703 of title 18, United States Code, is
16 amended

17 (1) so that the section heading reads as follows:

18 **“§ 2703. Required disclosure of customer communica-**
19 **tions or records”;**

20 (2) by redesignating paragraph (2) of sub-
21 section (c) as paragraph (3);

22 (3) in subsection (c)(1)

23 (A) in subparagraph (A), by striking “Ex-
24 cept” and all that follows through “only when”
25 in subparagraph (B) and inserting “A govern-

1 mental entity may require a provider of elec-
2 tronic communication service or remote com-
3 puting service to disclose a record or other in-
4 formation pertaining to a subscriber to or cus-
5 tomer of such service (not including the con-
6 tents of communications) only when”;

7 (B) by striking “or” at the end of clause
8 (iii) of subparagraph (B);

9 (D) by striking the period at the end of
10 clause (iv) of subparagraph (B) and inserting “;
11 or”;

12 (E) by inserting after clause (iv) of sub-
13 paragraph (B) the following:

14 “(v) seeks information pursuant to subpara-
15 graph (B).”;

16 (F) in subparagraph (C), by striking “(B)” and
17 inserting “(A)”;

18 (G) by redesignating subparagraph (C) as
19 subparagraph (B); and

20 (4) in subsection (e), by striking “or certifi-
21 cation” and inserting “certification, or statutory au-
22 thorization”.

23 **SEC. 111. USE AS EVIDENCE.**

24 (a) IN GENERAL. Section 2515 of title 18, United
25 States Code, is amended

1 (1) by striking “**wire or oral**” in the heading
2 and inserting “**wire, oral, or electronic**”;

3 (2) by striking “Whenever any wire or oral
4 communication has been intercepted” and inserting
5 “(a) Except as provided in subsection (b), whenever
6 any wire, oral, or electronic communication has been
7 intercepted, or any electronic communication in elec-
8 tronic storage has been disclosed”;

9 (3) by inserting “or chapter 121” after “this
10 chapter”; and

11 (4) by adding at the end the following:

12 “(b) Subsection (a) does not apply to the disclosure,
13 before a grand jury or in a criminal trial, hearing, or other
14 criminal proceeding, of the contents of a communication,
15 or evidence derived therefrom, against a person alleged to
16 have intercepted, used, or disclosed the communication in
17 violation of this chapter, or chapter 121, or participated
18 in such violation.”.

19 (b) SECTION 2517. Paragraphs (1) and (2) of sec-
20 tion 2517 are each amended by inserting “or under the
21 circumstances described in section 2515(b)” after “by this
22 chapter”.

23 (c) SECTION 2518. Section 2518 of title 18, United
24 States Code, is amended

1 (1) in subsection (7), by striking “subsection
2 (d)” and inserting “subsection (8)(d)”; and

3 (2) in subsection (10)

4 (A) in paragraph (a)

5 (i) by striking “or oral” each place it
6 appears and inserting “, oral, or elec-
7 tronic”;

8 (ii) by striking the period at the end
9 of clause (iii) and inserting a semicolon;
10 and

11 (iii) by inserting “except that no sup-
12 pression may be ordered under the cir-
13 cumstances described in section 2515(b).”
14 before “Such motion”; and

15 (B) by striking paragraph (c).

16 (d) CLERICAL AMENDMENT. The item relating to
17 section 2515 in the table of sections at the beginning of
18 chapter 119 of title 18, United States Code, is amended
19 to read as follows:

“2515. Prohibition of use as evidence of intercepted wire, oral, or electronic
communications.”.

20 **SEC. 112. REPORTS CONCERNING THE DISCLOSURE OF THE**
21 **CONTENTS OF ELECTRONIC COMMUNICA-**
22 **TIONS.**

23 Section 2703 of title 18, United States Code, is
24 amended by adding at the end the following:

1 “(g) REPORTS CONCERNING THE DISCLOSURE OF
2 THE CONTENTS OF ELECTRONIC COMMUNICATIONS.

3 “(1) By January 31 of each calendar year, the
4 judge issuing or denying an order, warrant, or sub-
5 poena, or the authority issuing or denying a sub-
6 poena, under subsection (a) or (b) of this section
7 during the preceding calendar year shall report on
8 each such order, warrant, or subpoena to the Ad-
9 ministrative Office of the United States Courts

10 “(A) the fact that the order, warrant, or
11 subpoena was applied for;

12 “(B) the kind of order, warrant, or sub-
13 poena applied for;

14 “(C) the fact that the order, warrant, or
15 subpoena was granted as applied for, was modi-
16 fied, or was denied;

17 “(D) the offense specified in the order,
18 warrant, subpoena, or application;

19 “(E) the identity of the agency making the
20 application; and

21 “(F) the nature of the facilities from which
22 or the place where the contents of electronic
23 communications were to be disclosed.

24 “(2) In January of each year the Attorney Gen-
25 eral or an Assistant Attorney General specially des-

1 ignated by the Attorney General shall report to the
2 Administrative Office of the United States Courts

3 “(A) the information required by subpara-
4 graphs (A) through (F) of paragraph (1) of this
5 subsection with respect to each application for
6 an order, warrant, or subpoena made during
7 the preceding calendar year; and

8 “(B) a general description of the disclo-
9 sures made under each such order, warrant, or
10 subpoena, including

11 “(i) the approximate number of all
12 communications disclosed and, of those,
13 the approximate number of incriminating
14 communications disclosed;

15 “(ii) the approximate number of other
16 communications disclosed; and

17 “(iii) the approximate number of pers-
18 sons whose communications were disclosed.

19 “(3) In June of each year, beginning in 2003,
20 the Director of the Administrative Office of the
21 United States Courts shall transmit to the Congress
22 a full and complete report concerning the number of
23 applications for orders, warrants, or subpoenas au-
24 thorizing or requiring the disclosure of the contents
25 of electronic communications pursuant to sub-

1 sections (a) and (b) of this section and the number
2 of orders, warrants, or subpoenas granted or denied
3 pursuant to subsections (a) and (b) of this section
4 during the preceding calendar year. Such report
5 shall include a summary and analysis of the data re-
6 quired to be filed with the Administrative Office by
7 paragraphs (1) and (2) of this subsection. The Di-
8 rector of the Administrative Office of the United
9 States Courts is authorized to issue binding regula-
10 tions dealing with the content and form of the re-
11 ports required to be filed by paragraphs (1) and (2)
12 of this subsection.”.

13 **Subtitle B—Foreign Intelligence**
14 **Surveillance and Other Informa-**
15 **tion**

16 **SEC. 151. PERIOD OF ORDERS OF ELECTRONIC SURVEIL-**
17 **LANCE OF NON-UNITED STATES PERSONS**
18 **UNDER FOREIGN INTELLIGENCE SURVEIL-**
19 **LANCE.**

20 (a) INCLUDING AGENTS OF A FOREIGN POWER. (1)
21 Section 105(e)(1) of the Foreign Intelligence Surveillance
22 Act of 1978 (50 U.S.C. 1805(e)(1)) is amended by insert-
23 ing “or an agent of a foreign power, as defined in section
24 101(b)(1)(A),” after “or (3),”.

1 (2) Section 304(d)(1) of such Act (50 U.S.C.
2 1824(d)(1)) is amended by inserting “or an agent of a
3 foreign power, as defined in section 101(b)(1)(A),” after
4 “101(a),”.

5 (b) PERIOD OF ORDER. Such section 304(d)(1) is
6 further amended by striking “forty-five” and inserting
7 “90”.

8 **SEC. 152. MULTI-POINT AUTHORITY.**

9 Section 105(c)(2)(B) of the Foreign Intelligence Sur-
10 veillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amend-
11 ed by inserting “, or, in circumstances where the Court
12 finds that the actions of the target of the electronic sur-
13 veillance may have the effect of thwarting the identifica-
14 tion of a specified person, such other persons,” after
15 “specified person”.

16 **SEC. 153. FOREIGN INTELLIGENCE INFORMATION.**

17 Sections 104(a)(7)(B) and 303(a)(7)(B) of the For-
18 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
19 1804(a)(7)(B), 1823(a)(7)(B)) are each amended by
20 striking “that the” and inserting “that a significant”.

21 **SEC. 154. FOREIGN INTELLIGENCE INFORMATION SHAR-**
22 **ING.**

23 Notwithstanding any other provision of law, it shall
24 be lawful for foreign intelligence information obtained as
25 part of a criminal investigation (including information ob-

1 tained pursuant to chapter 119 of title 18, United States
2 Code) to be provided to any Federal law-enforcement-, in-
3 telligence-, protective-, national-defense, or immigration
4 personnel, or the President or the Vice President of the
5 United States, for the performance of official duties.

6 **SEC. 155. PEN REGISTER AND TRAP AND TRACE AUTHOR-**
7 **ITY.**

8 Section 402(c) of the Foreign Intelligence Surveil-
9 lance Act of 1978 (50 U.S.C. 1842(c)) is amended

10 (1) in paragraph (1), by adding “and” at the
11 end;

12 (2) in paragraph (2)

13 (A) by inserting “from the telephone line
14 to which the pen register or trap and trace de-
15 vice is to be attached, or the communication in-
16 strument or device to be covered by the pen
17 register or trap and trace device” after “ob-
18 tained”; and

19 (B) by striking “; and” and inserting a pe-
20 riod; and

21 (3) by striking paragraph (3).

22 **SEC. 156. BUSINESS RECORDS.**

23 (a) IN GENERAL. Section 501 of the Foreign Intel-
24 ligence Surveillance Act of 1978 (50 U.S.C. 1861) is
25 amended to read as follows:

1 “ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN
2 INTELLIGENCE AND INTERNATIONAL TERRORISM IN-
3 VESTIGATIONS

4 “SEC. 501. (a) In any investigation to gather foreign
5 intelligence information or an investigation concerning
6 international terrorism, such investigation being con-
7 ducted by the Federal Bureau of Investigation under such
8 guidelines as the Attorney General may approve pursuant
9 to Executive Order No. 12333 (or a successor order), the
10 Director of the Federal Bureau of Investigation or a des-
11 ignee of the Director (whose rank shall be no lower than
12 Assistant Special Agent in Charge) may make an applica-
13 tion for an order requiring the production of any tangible
14 things (including books, records, papers, documents, and
15 other items) that are relevant to the investigation.

16 “(b) Each application under this section

17 “(1) shall be made to

18 “(A) a judge of the court established by
19 section 103(a) of this Act; or

20 “(B) a United States magistrate judge
21 under chapter 43 of title 28, United States
22 Code, who is publicly designated by the Chief
23 Justice of the United States to have the power
24 to hear applications and grant orders for the

1 release of records under this section on behalf
2 of a judge of that court; and

3 “(2) shall specify that the records concerned
4 are sought for an investigation described in sub-
5 section (a).

6 “(c)(1) Upon application made pursuant to this sec-
7 tion, the judge shall enter an ex parte order as requested
8 requiring the production the tangible things sought if the
9 judge finds that the application satisfies the requirements
10 of this section.

11 “(2) An order under this subsection shall not disclose
12 that it is issued for purposes of an investigation described
13 in subsection (a).

14 “(d) A person who, in good faith, produces tangible
15 things under an order issued pursuant to this section shall
16 not be liable to any other person for such production. Such
17 production shall not be deemed to constitute a waiver of
18 any privilege in any other proceeding or context.”.

19 (b) CONFORMING AMENDMENTS. (1) Section 502 of
20 such Act (50 U.S.C. 1862) is repealed.

21 (2) Section 503 of such Act (50 U.S.C. 1863) is re-
22 designated as section 502.

23 (c) CLERICAL AMENDMENT. The table of contents
24 at the beginning of the Foreign Intelligence Surveillance
25 Act of 1978 (50 U.S.C. 1801 et seq.) is amended by strik-

1 ing the items relating to title V and inserting the fol-
2 lowing:

“TITLE V ACCESS TO CERTAIN BUSINESS RECORDS FOR
FOREIGN INTELLIGENCE PURPOSES

“501. Access to certain business records for foreign intelligence and inter-
national terrorism investigations.

“502. Congressional oversight.”.

3 **SEC. 157. MISCELLANEOUS NATIONAL-SECURITY AUTHORI-**
4 **TIES.**

5 (a) Section 2709(b) of title 18, United States Code,
6 is amended

7 (1) in paragraph (1)

8 (A) by inserting “, or electronic commu-
9 nication transactional records” after “toll bill-
10 ing records”; and

11 (B) by striking “made that” and all that
12 follows through the end of such paragraph and
13 inserting “made that the name, address, length
14 of service, and toll billing records sought are
15 relevant to an authorized foreign counterintel-
16 ligence investigation; and”; and

17 (2) in paragraph (2), by striking “made that”
18 and all that follows through the end and inserting
19 “made that the information sought is relevant to an
20 authorized foreign counterintelligence investiga-
21 tion.”.

1 (b) Section 624 of Public Law 90 321 (15 U.S.C.
2 1681u) is amended

3 (1) in subsection (a), by striking “writing that”
4 and all that follows through the end and inserting
5 “writing that such information is necessary for the
6 conduct of an authorized foreign counterintelligence
7 investigation.”;

8 (2) in subsection (b), by striking “writing that”
9 and all that follows through the end and inserting
10 “writing that such information is necessary for the
11 conduct of an authorized foreign counterintelligence
12 investigation.”; and

13 (3) in subsection (c), by striking “camera that”
14 and all that follows through “States.” and inserting
15 “camera that the consumer report is necessary for
16 the conduct of an authorized foreign counterintel-
17 ligence investigation.”.

18 **SEC. 158. PROPOSED LEGISLATION.**

19 Not later than August 31, 2003, the President shall
20 propose legislation relating to the provisions set to expire
21 by section 160 of this Act as the President may judge nec-
22 essary and expedient.

1 **SEC. 159. PRESIDENTIAL AUTHORITY.**

2 Section 203 of the International Emergency Eco-
3 nomic Powers Act (50 U.S.C. 1702) is amended in sub-
4 section (a)(1)

5 (1) in subparagraph (A)

6 (A) in clause (ii), by adding “or” after
7 “thereof,”; and

8 (B) by striking clause (iii) and inserting
9 the following:

10 “(iii) the importing or exporting of cur-
11 rency or securities,

12 by any person, or with respect to any property, sub-
13 ject to the jurisdiction of the United States;”;

14 (2) by striking after subparagraph (B),
15 “by any person, or with respect to any prop-
16 erty, subject to the jurisdiction of the United
17 States”;

18 (3) in subparagraph (B)

19 (A) by inserting after “investigate” the fol-
20 lowing: “, block during the pendency of an in-
21 vestigation for a period of not more than 90
22 days (which may be extended by an additional
23 60 days if the President determines that such
24 blocking is necessary to carry out the purposes
25 of this Act),”; and

1 (B) by striking “interest;” and inserting
2 “interest, by any person, or with respect to any
3 property, subject to the jurisdiction of the
4 United States; and”;

5 (4) by adding at the end the following new sub-
6 paragraph:

7 “(C) when a statute has been enacted author-
8 izing the use of force by United States armed forces
9 against a foreign country, foreign organization, or
10 foreign national, or when the United States has been
11 subject to an armed attack by a foreign country, for-
12 eign organization, or foreign national, confiscate any
13 property, subject to the jurisdiction of the United
14 States, of any foreign country, foreign organization,
15 or foreign national against whom United States
16 armed forces may be used pursuant to such statute
17 or, in the case of an armed attack against the
18 United States, that the President determines has
19 planned, authorized, aided, or engaged in such at-
20 tack; and

21 “(i) all right, title, and interest in any
22 property so confiscated shall vest when, as, and
23 upon the terms directed by the President, in
24 such agency or person as the President may
25 designate from time to time,

1 “(ii) upon such terms and conditions as
2 the President may prescribe, such interest or
3 property shall be held, used, administered, liq-
4 uidated, sold, or otherwise dealt with in the in-
5 terest of and for the benefit of the United
6 States, except that the proceeds of any such liq-
7 uidation or sale, or any cash assets, shall be
8 segregated from other United States Govern-
9 ment funds and shall be used only pursuant to
10 a statute authorizing the expenditure of such
11 proceeds or assets, and

12 “(iii) such designated agency or person
13 may perform any and all acts incident to the
14 accomplishment or furtherance of these pur-
15 poses.”.

16 **SEC. 160. SUNSET.**

17 This title and the amendments made by this title
18 (other than sections 109 (relating to clarification of scope)
19 and 159 (relating to presidential authority)) and the
20 amendments made by those sections shall take effect on
21 the date of enactment of this Act and shall cease to have
22 any effect on December 31, 2003.

1 **TITLE II—ALIENS ENGAGING IN**
2 **TERRORIST ACTIVITY**
3 **Subtitle A—Detention and Removal**
4 **of Aliens Engaging in Terrorist**
5 **Activity**

6 **SEC. 201. CHANGES IN CLASSES OF ALIENS WHO ARE INELI-**
7 **GIBLE FOR ADMISSION AND DEPORTABLE**
8 **DUE TO TERRORIST ACTIVITY.**

9 (a) ALIENS INELIGIBLE FOR ADMISSION DUE TO
10 TERRORIST ACTIVITIES. Section 212(a)(3)(B) of the Im-
11 migration and Nationality Act (8 U.S.C. 1182(a)(3)(B))
12 is amended

13 (1) in clause (i)

14 (A) in subclauses (I), (II), and (III), by
15 striking the comma at the end and inserting a
16 semicolon;

17 (B) by amending subclause (IV) to read as
18 follows:

19 “(IV) is a representative of

20 “(a) a foreign terrorist orga-
21 nization, as designated by the
22 Secretary of State under section
23 219; or

24 “(b) a political, social, or
25 other similar group whose public

1 endorsement of terrorist activity
2 the Secretary of State has deter-
3 mined undermines the efforts of
4 the United States to reduce or
5 eliminate terrorist activities;”;

6 (C) in subclause (V), by striking any
7 comma at the end, by striking any “or” at the
8 end, and by adding “; or” at the end; and

9 (D) by inserting after subclause (V) the
10 following:

11 “(VI) has used the alien’s promi-
12 nence within a foreign state or the
13 United States to endorse or espouse
14 terrorist activity, or to persuade oth-
15 ers to support terrorist activity or a
16 terrorist organization, in a way that
17 the Secretary of State has determined
18 undermines the efforts of the United
19 States to reduce or eliminate terrorist
20 activities;”;

21 (2) in clause (ii)

22 (A) in the matter preceding subclause (I),
23 by striking “(or which, if committed in the
24 United States,” and inserting “(or which, if it

1 had been or were to be committed in the United
2 States,”; and

3 (B) in subclause (V)(b), by striking “explo-
4 sive or firearm” and inserting “explosive, fire-
5 arm, or other object”;

6 (3) by amending clause (iii) to read as follows:

7 “(iii) ENGAGE IN TERRORIST ACTIV-
8 ITY DEFINED. As used in this Act, the
9 term ‘engage in terrorist activity’ means,
10 in an individual capacity or as a member
11 of an organization

12 “(I) to commit a terrorist activ-
13 ity;

14 “(II) to plan or prepare to com-
15 mit a terrorist activity;

16 “(III) to gather information on
17 potential targets for a terrorist activ-
18 ity;

19 “(IV) to solicit funds or other
20 things of value for

21 “(a) a terrorist activity;

22 “(b) an organization des-
23 igned as a foreign terrorist or-
24 ganization under section 219; or

1 “(c) a terrorist organization
2 described in clause (v)(II), but
3 only if the solicitor knows, or rea-
4 sonably should know, that the so-
5 licitation would further a ter-
6 rorist activity;
7 “(V) to solicit any individual
8 “(a) to engage in conduct
9 otherwise described in this
10 clause;
11 “(b) for membership in a
12 terrorist government;
13 “(c) for membership in an
14 organization designated as a for-
15 eign terrorist organization under
16 section 219; or
17 “(d) for membership in a
18 terrorist organization described
19 in clause (v)(II), but only if the
20 solicitor knows, or reasonably
21 should know, that the solicitation
22 would further a terrorist activity;
23 or
24 “(VI) to commit an act that the
25 actor knows, or reasonably should

1 know, affords material support, in-
2 cluding a safe house, transportation,
3 communications, funds, transfer of
4 funds or other material financial ben-
5 efit, false documentation or identifica-
6 tion, weapons (including chemical, bi-
7 ological, and radiological weapons),
8 explosives, or training

9 “(a) for the commission of a
10 terrorist activity;

11 “(b) to any individual who
12 the actor knows, or reasonably
13 should know, has committed or
14 plans to commit a terrorist activ-
15 ity;

16 “(c) to an organization des-
17 igned as a foreign terrorist or-
18 ganization under section 219; or

19 “(d) to a terrorist organiza-
20 tion described in clause (v)(II),
21 but only if the actor knows, or
22 reasonably should know, that the
23 act would further a terrorist ac-
24 tivity.”; and

25 (4) by adding at the end the following:

1 “(v) TERRORIST ORGANIZATION DE-
2 FINED. As used in this subparagraph, the
3 term ‘terrorist organization’ means

4 “(I) an organization designated
5 as a foreign terrorist organization
6 under section 219; or

7 “(II) with regard to a group that
8 is not an organization described in
9 subclause (I), a group of 2 or more
10 individuals, whether organized or not,
11 which engages in, or which has a sig-
12 nificant subgroup which engages in,
13 the activities described in subclause
14 (I), (II), or (III) of clause (iii).

15 “(vi) SPECIAL RULE FOR MATERIAL
16 SUPPORT. Clause (iii)(VI)(b) shall not be
17 construed to include the affording of mate-
18 rial support to an individual who com-
19 mitted or planned to commit a terrorist ac-
20 tivity, if the alien establishes by clear and
21 convincing evidence that such support was
22 afforded only after such individual perma-
23 nently and publicly renounced, rejected the
24 use of, and had ceased to engage in, ter-
25 rorist activity.”.

1 (b) ALIENS INELIGIBLE FOR ADMISSION DUE TO
2 ENDANGERMENT. Section 212(a)(3) of the Immigration
3 and Nationality Act (8 U.S.C. 1182(a)(3)) is amended by
4 adding at the end the following:

5 “(F) ENDANGERMENT. Any alien who the
6 Secretary of State, after consultation with the
7 Attorney General, or the Attorney General,
8 after consultation with the Secretary of State,
9 determines has been associated with a terrorist
10 organization and intends while in the United
11 States to engage solely, principally, or inciden-
12 tally in activities that could endanger the wel-
13 fare, safety, or security of the United States is
14 inadmissible.”.

15 (c) ALIENS DEPORTABLE DUE TO TERRORIST AC-
16 TIVITIES. Section 237(a)(4)(B) of the Immigration and
17 Nationality (8 U.S.C. 1227(a)(4)(B)) is amended to read
18 as follows:

19 “(B) TERRORIST ACTIVITIES. Any alien
20 is deportable who

21 “(i) has engaged, is engaged, or at
22 any time after admission engages in ter-
23 rorist activity (as defined in section
24 212(a)(3)(B)(iii));

1 “(ii) is a representative (as defined in
2 section 212(a)(3)(B)(iv)) of

3 “(I) a foreign terrorist organiza-
4 tion, as designated by the Secretary of
5 State under section 219; or

6 “(II) a political, social, or other
7 similar group whose public endorse-
8 ment of terrorist activity

9 “(a) is intended and likely to
10 incite or produce imminent law-
11 less action; and

12 “(b) has been determined by
13 the Secretary of State to under-
14 mine the efforts of the United
15 States to reduce or eliminate ter-
16 rorist activities; or

17 “(iii) has used the alien’s prominence
18 within a foreign state or the United
19 States

20 “(I) to endorse, in a manner that
21 is intended and likely to incite or
22 produce imminent lawless action and
23 that has been determined by the Sec-
24 retary of State to undermine the ef-
25 forts of the United States to reduce or

1 eliminate terrorist activities, terrorist
2 activity; or

3 “(II) to persuade others, in a
4 manner that is intended and likely to
5 incite or produce imminent lawless ac-
6 tion and that has been determined by
7 the Secretary of State to undermine
8 the efforts of the United States to re-
9 duce or eliminate terrorist activities,
10 to support terrorist activity or a ter-
11 rorist organization (as defined in sec-
12 tion 212(a)(3)(B)(v)).”.

13 (d) RETROACTIVE APPLICATION OF AMENDMENTS.

14 (1) IN GENERAL. The amendments made by
15 this section shall take effect on the date of the en-
16 actment of this Act and shall apply to

17 (A) actions taken by an alien before such
18 date, as well as actions taken on or after such
19 date; and

20 (B) all aliens, without regard to the date
21 of entry or attempted entry into the United
22 States

23 (i) in removal proceedings on or after
24 such date (except for proceedings in which

1 there has been a final administrative deci-
2 sion before such date); or

3 (ii) seeking admission to the United
4 States on or after such date.

5 (2) SPECIAL RULE FOR ALIENS IN EXCLUSION
6 OR DEPORTATION PROCEEDINGS. Notwithstanding
7 any other provision of law, the amendments made by
8 this section shall apply to all aliens in exclusion or
9 deportation proceedings on or after the date of the
10 enactment of this Act (except for proceedings in
11 which there has been a final administrative decision
12 before such date) as if such proceedings were re-
13 moval proceedings.

14 (3) SPECIAL RULE FOR SECTION 219 ORGANIZA-
15 TIONS.

16 (A) IN GENERAL. Notwithstanding para-
17 graphs (1) and (2), no alien shall be considered
18 inadmissible under section 212(a)(3) of the Im-
19 migration and Nationality Act (8 U.S.C.
20 1182(a)(3)), or deportable under section
21 237(a)(4)(B) of such Act (8 U.S.C.
22 1227(a)(4)(B)), by reason of the amendments
23 made by subsection (a), on the ground that the
24 alien engaged in a terrorist activity described in
25 subclause (IV)(b), (V)(c), or (VI)(c) of section

1 212(a)(3)(B)(iii) of such Act (as so amended)
2 with respect to a group at any time when the
3 group was not a foreign terrorist organization
4 designated by the Secretary of State under sec-
5 tion 219 of such Act (8 U.S.C. 1189).

6 (B) CONSTRUCTION. Subparagraph (A)
7 shall not be construed to prevent an alien from
8 being considered inadmissible or deportable for
9 having engaged in a terrorist activity

10 (i) described in subclause (IV)(b),
11 (V)(c), or (VI)(c) of section
12 212(a)(3)(B)(iii) of such Act (as so
13 amended) with respect to a foreign ter-
14 rorist organization at any time when such
15 organization was designated by the Sec-
16 retary of State under section 219 of such
17 Act; or

18 (ii) described in subclause (IV)(c),
19 (V)(d), or (VI)(d) of section
20 212(a)(3)(B)(iii) of such Act (as so
21 amended) with respect to any group de-
22 scribed in any of such subclauses.

1 **SEC. 202. CHANGES IN DESIGNATION OF FOREIGN TER-**
2 **RORIST ORGANIZATIONS.**

3 Section 219(a) of the Immigration and Nationality
4 Act (8 U.S.C. 1189(a)) is amended

5 (1) in paragraph (1)

6 (A) in subparagraph (B), by striking
7 “212(a)(3)(B);” and inserting “212(a)(3)(B),
8 engages in terrorism (as defined in section
9 140(d)(2) of the Foreign Relations Authoriza-
10 tion Act, Fiscal Years 1988 and 1989 (22
11 U.S.C. 2656f(d)(2)), or retains the capability
12 and intent to engage in terrorist activity or to
13 engage in terrorism (as so defined);” and

14 (B) in subparagraph (C), by inserting “or
15 terrorism” after “activity”;

16 (2) in paragraph (2)

17 (A) by amending subparagraph (A) to read
18 as follows:

19 “(A) NOTICE.

20 “(i) IN GENERAL. Seven days before
21 making a designation under this sub-
22 section, the Secretary shall, by classified
23 communication, notify the Speaker and mi-
24 nority leader of the House of Representa-
25 tives, the President pro tempore, majority
26 leader, and minority leader of the Senate,

1 the members of the relevant committees,
2 and the Secretary of the Treasury, in writ-
3 ing, of the intent to designate a foreign or-
4 ganization under this subsection, together
5 with the findings made under paragraph
6 (1) with respect to that organization, and
7 the factual basis therefor.

8 “(ii) PUBLICATION OF DESIGNA-
9 TION. The Secretary shall publish the
10 designation in the Federal Register seven
11 days after providing the notification under
12 clause (i).”;

13 (B) in subparagraph (B), by striking
14 “(A).” and inserting “(A)(ii).”; and

15 (C) in subparagraph (C), by striking
16 “paragraph (2),” and inserting “subparagraph
17 (A)(i).”;

18 (3) in paragraph (3)(B), by striking “sub-
19 section (c).” and inserting “subsection (b).”;

20 (4) in paragraph (4)(B), by inserting after the
21 first sentence the following: “The Secretary may also
22 redesignate such organization at the end of any 2-
23 year redesignation period (but not sooner than 60
24 days prior to the termination of such period) for an
25 additional 2-year period upon a finding that the rel-

1 evant circumstances described in paragraph (1) still
2 exist. Any redesignation shall be effective imme-
3 diately following the end of the prior 2-year designa-
4 tion or redesignation period unless a different effec-
5 tive date is provided in such redesignation.”;

6 (5) in paragraph (6)

7 (A) in subparagraph (A)

8 (i) in the matter preceding clause (i),
9 by inserting “or a redesignation made
10 under paragraph (4)(B)” after “paragraph
11 (1)”;

12 (ii) in clause (i)

13 (I) by inserting “or redesigna-
14 tion” after “designation” the first
15 place it appears; and

16 (II) by striking “of the designa-
17 tion;” and inserting a semicolon; and

18 (iii) in clause (ii), by striking “of the
19 designation.” and inserting a period;

20 (B) in subparagraph (B), by striking
21 “through (4)” and inserting “and (3)”;

22 (C) by adding at the end the following:

23 “(C) EFFECTIVE DATE. Any revocation
24 shall take effect on the date specified in the

1 revocation or upon publication in the Federal
2 Register if no effective date is specified.”;

3 (6) in paragraph (7), by inserting “, or the rev-
4 ocation of a redesignation under paragraph (6),”
5 after “(5) or (6)”;

6 (7) in paragraph (8)

7 (A) by striking “(1)(B),” and inserting
8 “(2)(B), or if a redesignation under this sub-
9 section has become effective under paragraph
10 (4)(B)”;

11 (B) by inserting “or an alien in a removal
12 proceeding” after “criminal action”; and

13 (C) by inserting “or redesignation” before
14 “as a defense”.

15 **SEC. 203. MANDATORY DETENTION OF SUSPECTED TER-**
16 **RORISTS; HABEAS CORPUS; JUDICIAL RE-**
17 **VIEW.**

18 (a) IN GENERAL. The Immigration and Nationality
19 Act (8 U.S.C. 1101 et seq.) is amended by inserting after
20 section 236 the following:

21 “MANDATORY DETENTION OF SUSPECTED TERRORISTS;

22 HABEAS CORPUS; JUDICIAL REVIEW

23 “SEC. 236A. (a) DETENTION OF TERRORIST
24 ALIENS.

1 “(1) CUSTODY. The Attorney General shall
2 take into custody any alien who is certified under
3 paragraph (3).

4 “(2) RELEASE. Except as provided in para-
5 graph (5), the Attorney General shall maintain cus-
6 tody of such an alien until the alien is removed from
7 the United States. Such custody shall be maintained
8 irrespective of any relief from removal for which the
9 alien may be eligible, or any relief from removal
10 granted the alien, until the Attorney General deter-
11 mines that the alien is no longer an alien who may
12 be certified under paragraph (3).

13 “(3) CERTIFICATION. The Attorney General
14 may certify an alien under this paragraph if the At-
15 torney General has reasonable grounds to believe
16 that the alien

17 “(A) is described in section
18 212(a)(3)(A)(i), 212(a)(3)(A)(iii),
19 212(a)(3)(B), 237(a)(4)(A)(i),
20 237(a)(4)(A)(iii), or 237(a)(4)(B); or

21 “(B) is engaged in any other activity that
22 endangers the national security of the United
23 States.

24 “(4) NONDELEGATION. The Attorney General
25 may delegate the authority provided under para-

1 graph (3) only to the Commissioner. The Commis-
2 sioner may not delegate such authority.

3 “(5) COMMENCEMENT OF PROCEEDINGS. The
4 Attorney General shall place an alien detained under
5 paragraph (1) in removal proceedings, or shall
6 charge the alien with a criminal offense, not later
7 than 7 days after the commencement of such deten-
8 tion. If the requirement of the preceding sentence is
9 not satisfied, the Attorney General shall release the
10 alien.

11 “(b) HABEAS CORPUS AND JUDICIAL REVIEW. Ju-
12 dicial review of any action or decision relating to this sec-
13 tion (including judicial review of the merits of a deter-
14 mination made under subsection (a)(3)) is available exclu-
15 sively in habeas corpus proceedings in the United States
16 District Court for the District of Columbia. Notwith-
17 standing any other provision of law, including section
18 2241 of title 28, United States Code, except as provided
19 in the preceding sentence, no court shall have jurisdiction
20 to review, by habeas corpus petition or otherwise, any such
21 action or decision.”.

22 (b) CLERICAL AMENDMENT. The table of contents
23 of the Immigration and Nationality Act is amended by in-
24 serting after the item relating to section 236 the following:

“Sec. 236A. Mandatory detention of suspected terrorists; habeas corpus; judicial
review.”.

1 (c) REPORTS. Not later than 6 months after the
2 date of the enactment of this Act, and every 6 months
3 thereafter, the Attorney General shall submit a report to
4 the Committee on the Judiciary of the House of Rep-
5 resentatives and the Committee on the Judiciary of the
6 Senate, with respect to the reporting period, on

7 (1) the number of aliens certified under section
8 236A(a)(3) of the Immigration and Nationality Act,
9 as added by subsection (a);

10 (2) the grounds for such certifications;

11 (3) the nationalities of the aliens so certified;

12 (4) the length of the detention for each alien so
13 certified; and

14 (5) the number of aliens so certified who

15 (A) were granted any form of relief from
16 removal;

17 (B) were removed;

18 (C) the Attorney General has determined
19 are no longer an alien who may be so certified;

20 or

21 (D) were released from detention.

22 **SEC. 204. MULTILATERAL COOPERATION AGAINST TERROR-**
23 **ISTS.**

24 Section 222(f) of the Immigration and Nationality
25 Act (8 U.S.C. 1202(f)) is amended

1 (1) by striking “The records” and inserting
2 “(1) Subject to paragraphs (2) and (3), the
3 records”;

4 (2) by striking “United States,” and all that
5 follows through the period at the end and inserting
6 “United States.”; and

7 (3) by adding at the end the following:

8 “(2) In the discretion of the Secretary of State, cer-
9 tified copies of such records may be made available to a
10 court which certifies that the information contained in
11 such records is needed by the court in the interest of the
12 ends of justice in a case pending before the court.

13 “(3)(A) Subject to the provisions of this paragraph,
14 the Secretary of State may provide copies of records of
15 the Department of State and of diplomatic and consular
16 offices of the United States (including the Department of
17 State’s automated visa lookout database) pertaining to the
18 issuance or refusal of visas or permits to enter the United
19 States, or information contained in such records, to for-
20 eign governments if the Secretary determines that it is
21 necessary and appropriate.

22 “(B) Such records and information may be provided
23 on a case-by-case basis for the purpose of preventing, in-
24 vestigating, or punishing acts of terrorism. General access
25 to records and information may be provided under an

1 agreement to limit the use of such records and information
2 to the purposes described in the preceding sentence.

3 “(C) The Secretary of State shall make any deter-
4 mination under this paragraph in consultation with any
5 Federal agency that compiled or provided such records or
6 information.

7 “(D) To the extent possible, such records and infor-
8 mation shall be made available to foreign governments on
9 a reciprocal basis.”.

10 **SEC. 205. CHANGES IN CONDITIONS FOR GRANTING ASY-**
11 **LUM AND ASYLUM PROCEDURES.**

12 (a) **ALIENS INELIGIBLE FOR ASYLUM DUE TO TER-**
13 **RORIST ACTIVITIES.**

14 (1) **IN GENERAL.** Section 208(b)(2)(A)(v) of
15 the Immigration and Nationality Act (8 U.S.C.
16 1158(b)(2)(A)(v)) is amended

17 (A) by striking “inadmissible under” and
18 inserting “described in”; and

19 (B) by striking “removable under” and in-
20 sserting “described in”.

21 (2) **RETROACTIVE APPLICATION OF AMEND-**
22 **MENTS.** The amendments made by paragraph (1)
23 shall take effect on the date of the enactment of this
24 Act and shall apply to

1 (A) actions taken by an alien before such
2 date, as well as actions taken on or after such
3 date; and

4 (B) all aliens, without regard to the date
5 of entry or attempted entry into the United
6 States, whose application for asylum is pending
7 on or after such date (except for applications
8 with respect to which there has been a final ad-
9 ministrative decision before such date).

10 (b) DISCLOSURE OF ASYLUM APPLICATION INFOR-
11 MATION.

12 (1) IN GENERAL. Section 208 of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1158) is amend-
14 ed by adding at the end the following:

15 “(e) LIMITATION ON CONFIDENTIALITY OF INFOR-
16 MATION.

17 “(1) IN GENERAL. The restrictions on infor-
18 mation disclosure in section 208.6 of title 8, Code of
19 Federal Regulations (as in effect on the date of the
20 enactment of the PATRIOT Act or pursuant to any
21 successor provision), shall not apply to a disclosure
22 to any person, if

23 “(A) the disclosure is made in the course
24 of an investigation of an alien to determine if

1 the alien is described in section 212(a)(3)(B)(i)
2 or 237(a)(4)(B); and

3 “(B) the Attorney General has reasonable
4 grounds to believe that the alien may be so de-
5 scribed.

6 “(2) EXCEPTION. The requirement of para-
7 graph (1)(B) shall not apply to an alien if the alien
8 alleges that the alien is eligible for asylum, in whole
9 or in part, because a foreign government believes
10 that the alien is described in section 212(a)(3)(B)(i)
11 or 237(a)(4)(B).

12 “(3) DISCLOSURES TO FOREIGN GOVERN-
13 MENTS. If the Attorney General desires to disclose
14 information to a foreign government under para-
15 graph (1), the Attorney General shall request the
16 Secretary of State to make the disclosure.”

17 (2) EFFECTIVE DATE. The amendment made
18 by paragraph (1) shall take effect on the date of the
19 enactment of this Act and shall apply to the disclo-
20 sure of information on or after such date.

21 **SEC. 206. PROTECTION OF NORTHERN BORDER.**

22 There are authorized to be appropriated

23 (1) such sums as may be necessary to triple the
24 number of Border Patrol personnel (from the num-

1 ber authorized under current law) in each State
2 along the northern border;

3 (2) such sums as may be necessary to triple the
4 number of Immigration and Naturalization Service
5 inspectors (from the number authorized under cur-
6 rent law) at ports of entry in each State along the
7 northern border; and

8 (3) an additional \$50,000,000 to the Immigra-
9 tion and Naturalization Service for purposes of mak-
10 ing improvements in technology for monitoring the
11 northern border and acquiring additional equipment
12 at the northern border.

13 **SEC. 207. REQUIRING SHARING BY THE FEDERAL BUREAU**
14 **OF INVESTIGATION OF CERTAIN CRIMINAL**
15 **RECORD EXTRACTS WITH OTHER FEDERAL**
16 **AGENCIES IN ORDER TO ENHANCE BORDER**
17 **SECURITY.**

18 (a) IN GENERAL. Section 105 of the Immigration
19 and Nationality Act (8 U.S.C. 1105), is amended

20 (1) in the section heading, by adding “AND
21 DATA EXCHANGE” at the end;

22 (2) by inserting “(a) LIAISON WITH INTERNAL
23 SECURITY OFFICERS. ” after “105.”;

24 (3) by striking “the internal security of” and
25 inserting “the internal and border security of”; and

1 (4) by adding at the end the following:

2 “(b) CRIMINAL HISTORY RECORD INFORMATION.

3 The Attorney General and the Director of the Federal Bu-
4 reau of Investigation shall provide the Secretary of State
5 and the Commissioner access to the criminal history
6 record information contained in the National Crime Infor-
7 mation Center’s Interstate Identification Index, Wanted
8 Persons File, and to any other files maintained by the Na-
9 tional Crime Information Center that may be mutually
10 agreed upon by the Attorney General and the official to
11 be provided access, for the purpose of determining whether
12 a visa applicant or applicant for admission has a criminal
13 history record indexed in any such file. Such access shall
14 be provided by means of extracts of the records for place-
15 ment in the Department of State’s automated visa lookout
16 database or other appropriate database, and shall be pro-
17 vided without any fee or charge. The Director of the Fed-
18 eral Bureau of Investigation shall provide periodic updates
19 of the extracts at intervals mutually agreed upon by the
20 Attorney General and the official provided access. Upon
21 receipt of such updated extracts, the receiving official shall
22 make corresponding updates to the official’s databases
23 and destroy previously provided extracts. Such access to
24 any extract shall not be construed to entitle the Secretary
25 of State to obtain the full content of the corresponding

1 automated criminal history record. To obtain the full con-
2 tent of a criminal history record, the Secretary of State
3 shall submit the applicant's fingerprints and any appro-
4 priate fingerprint processing fee authorized by law to the
5 Criminal Justice Information Services Division of the Fed-
6 eral Bureau of Investigation.

7 “(c) RECONSIDERATION. The provision of the ex-
8 tracts described in subsection (b) may be reconsidered by
9 the Attorney General and the receiving official upon the
10 development and deployment of a more cost-effective and
11 efficient means of sharing the information.

12 “(d) REGULATIONS. For purposes of administering
13 this section, the Secretary of State shall, prior to receiving
14 access to National Crime Information Center data, pro-
15 mulgate final regulations

16 “(1) to implement procedures for the taking of
17 fingerprints; and

18 “(2) to establish the conditions for the use of
19 the information received from the Federal Bureau of
20 Investigation, in order

21 “(A) to limit the dissemination of such
22 information;

23 “(B) to ensure that such information is
24 used solely to determine whether to issue a visa
25 to an individual;

1 “(C) to ensure the security, confidentiality,
2 and destruction of such information; and

3 “(D) to protect any privacy rights of indi-
4 viduals who are subjects of such information.”.

5 (b) CLERICAL AMENDMENT. The table of contents
6 of the Immigration and Nationality Act is amended by
7 amending the item relating to section 105 to read as fol-
8 lows:

 “Sec. 105. Liaison with internal security officers and data exchange.”.

9 (c) EFFECTIVE DATE AND IMPLEMENTATION. The
10 amendments made by this section shall take effect on the
11 date of the enactment of this Act and shall be fully imple-
12 mented not later than 18 months after such date.

13 (d) REPORTING REQUIREMENT. Not later than 2
14 years after the date of the enactment of this Act, the At-
15 torney General and the Secretary of State, jointly, shall
16 report to the Congress on the implementation of the
17 amendments made by this section.

18 (e) CONSTRUCTION. Nothing in this section, or in
19 any other law, shall be construed to limit the authority
20 of the Attorney General or the Director of the Federal
21 Bureau of Investigation to provide access to the criminal
22 history record information contained in the National
23 Crime Information Center’s Interstate Identification
24 Index, or to any other information maintained by such
25 center, to any Federal agency or officer authorized to en-

1 force or administer the immigration laws of the United
2 States, for the purpose of such enforcement or administra-
3 tion, upon terms that are consistent with sections 212
4 through 216 of the National Crime Prevention and Pri-
5 vacy Compact Act of 1998 (42 U.S.C. 14611 et seq.).

6 **Subtitle B—Preservation of Immigra-**
7 **tion Benefits for Victims of**
8 **Terrorism**

9 **SEC. 211. SPECIAL IMMIGRANT STATUS.**

10 (a) IN GENERAL. For purposes of the Immigration
11 and Nationality Act (8 U.S.C. 1101 et seq.), the Attorney
12 General may provide an alien described in subsection (b)
13 with the status of a special immigrant under section
14 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)), if the
15 alien

16 (1) files with the Attorney General a petition
17 under section 204 of such Act (8 U.S.C. 1154) for
18 classification under section 203(b)(4) of such Act (8
19 U.S.C. 1153(b)(4)); and

20 (2) is otherwise eligible to receive an immigrant
21 visa and is otherwise admissible to the United States
22 for permanent residence, except in determining such
23 admissibility, the grounds for inadmissibility speci-
24 fied in section 212(a)(4) of such Act (8 U.S.C.
25 1182(a)(4)) shall not apply.

1 (b) ALIENS DESCRIBED.

2 (1) PRINCIPAL ALIENS. An alien is described
3 in this subsection if

4 (A) the alien was the beneficiary of

5 (i) a petition that was filed with the
6 Attorney General on or before September
7 11, 2001

8 (I) under section 204 of the Im-
9 migration and Nationality Act (8
10 U.S.C. 1154) to classify the alien as
11 a family-sponsored immigrant under
12 section 203(a) of such Act (8 U.S.C.
13 1153(a)) or as an employment-based
14 immigrant under section 203(b) of
15 such Act (8 U.S.C. 1153(b)); or

16 (II) under section 214(d) (8
17 U.S.C. 1184(d)) of such Act to au-
18 thorize the issuance of a non-
19 immigrant visa to the alien under sec-
20 tion 101(a)(15)(K) of such Act (8
21 U.S.C. 1101(a)(15)(K)); or

22 (ii) an application for labor certifi-
23 cation under section 212(a)(5)(A) of such
24 Act (8 U.S.C. 1182(a)(5)(A)) that was

1 filed under regulations of the Secretary of
2 Labor on or before such date; and

3 (B) such petition or application was re-
4 voked or terminated (or otherwise rendered
5 null), either before or after its approval, due to
6 a specified terrorist activity that directly re-
7 sulted in

8 (i) the death or disability of the peti-
9 tioner, applicant, or alien beneficiary; or

10 (ii) loss of employment due to physical
11 damage to, or destruction of, the business
12 of the petitioner or applicant.

13 (2) SPOUSES AND CHILDREN.

14 (A) IN GENERAL. An alien is described in
15 this subsection if

16 (i) the alien was, on September 10,
17 2001, the spouse or child of a principal
18 alien described in paragraph (1); and

19 (ii) the alien

20 (I) is accompanying such prin-
21 cipal alien; or

22 (II) is following to join such prin-
23 cipal alien not later than September
24 11, 2003.

1 (B) CONSTRUCTION. For purposes of
2 construing the terms “accompanying” and “fol-
3 lowing to join” in subparagraph (A)(ii), any
4 death of a principal alien that is described in
5 paragraph (1)(B)(i) shall be disregarded.

6 (3) GRANDPARENTS OF ORPHANS. An alien is
7 described in this subsection if the alien is a grand-
8 parent of a child, both of whose parents died as a
9 direct result of a specified terrorist activity, if either
10 of such deceased parents was, on September 10,
11 2001, a citizen or national of the United States or
12 an alien lawfully admitted for permanent residence
13 in the United States.

14 (c) PRIORITY DATE. Immigrant visas made avail-
15 able under this section shall be issued to aliens in the
16 order in which a petition on behalf of each such alien is
17 filed with the Attorney General under subsection (a)(1),
18 except that if an alien was assigned a priority date with
19 respect to a petition described in subsection (b)(1)(A)(i),
20 the alien may maintain that priority date.

21 (d) NUMERICAL LIMITATIONS. For purposes of the
22 application of sections 201 through 203 of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1151 1153) in any fis-
24 cal year, aliens eligible to be provided status under this
25 section shall be treated as special immigrants described

1 in section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27))
2 who are not described in subparagraph (A), (B), (C), or
3 (K) of such section.

4 **SEC. 212. EXTENSION OF FILING OR REENTRY DEADLINES.**

5 (a) **AUTOMATIC EXTENSION OF NONIMMIGRANT STA-**
6 **TUS.**

7 (1) **IN GENERAL.** Notwithstanding section 214
8 of the Immigration and Nationality Act (8 U.S.C.
9 1184), in the case of an alien described in paragraph
10 (2) who was lawfully present in the United States as
11 a nonimmigrant on September 10, 2001, the alien
12 may remain lawfully in the United States in the
13 same nonimmigrant status until the later of

14 (A) the date such lawful nonimmigrant
15 status otherwise would have terminated if this
16 subsection had not been enacted; or

17 (B) 1 year after the death or onset of dis-
18 ability described in paragraph (2).

19 (2) **ALIENS DESCRIBED.**

20 (A) **PRINCIPAL ALIENS.** An alien is de-
21 scribed in this paragraph if the alien was dis-
22 abled as a direct result of a specified terrorist
23 activity.

1 (B) SPOUSES AND CHILDREN. An alien is
2 described in this paragraph if the alien was, on
3 September 10, 2001, the spouse or child of

4 (i) a principal alien described in sub-
5 paragraph (A); or

6 (ii) an alien who died as a direct re-
7 sult of a specified terrorist activity.

8 (3) AUTHORIZED EMPLOYMENT. During the
9 period in which a principal alien or alien spouse is
10 in lawful nonimmigrant status under paragraph (1),
11 the alien shall be provided an “employment author-
12 ized” endorsement or other appropriate document
13 signifying authorization of employment not later
14 than 30 days after the alien requests such authoriza-
15 tion.

16 (b) NEW DEADLINES FOR EXTENSION OR CHANGE
17 OF NONIMMIGRANT STATUS.

18 (1) FILING DELAYS. In the case of an alien
19 who was lawfully present in the United States as a
20 nonimmigrant on September 10, 2001, if the alien
21 was prevented from filing a timely application for an
22 extension or change of nonimmigrant status as a di-
23 rect result of a specified terrorist activity, the alien’s
24 application shall be considered timely filed if it is

1 filed not later than 60 days after it otherwise would
2 have been due.

3 (2) DEPARTURE DELAYS. In the case of an
4 alien who was lawfully present in the United States
5 as a nonimmigrant on September 10, 2001, if the
6 alien is unable timely to depart the United States as
7 a direct result of a specified terrorist activity, the
8 alien shall not be considered to have been unlawfully
9 present in the United States during the period be-
10 ginning on September 11, 2001, and ending on the
11 date of the alien's departure, if such departure oc-
12 curs on or before November 11, 2001.

13 (3) SPECIAL RULE FOR ALIENS UNABLE TO RE-
14 TURN FROM ABROAD.

15 (A) PRINCIPAL ALIENS. In the case of an
16 alien who was in a lawful nonimmigrant status
17 on September 10, 2001, but who was not
18 present in the United States on such date, if
19 the alien was prevented from returning to the
20 United States in order to file a timely applica-
21 tion for an extension of nonimmigrant status as
22 a direct result of a specified terrorist activity

23 (i) the alien's application shall be con-
24 sidered timely filed if it is filed not later

1 than 60 days after it otherwise would have
2 been due; and

3 (ii) the alien's lawful nonimmigrant
4 status shall be considered to continue until
5 the later of

6 (I) the date such status otherwise
7 would have terminated if this sub-
8 paragraph had not been enacted; or

9 (II) the date that is 60 days
10 after the date on which the applica-
11 tion described in clause (i) otherwise
12 would have been due.

13 (B) SPOUSES AND CHILDREN. In the case
14 of an alien who is the spouse or child of a prin-
15 cipal alien described in subparagraph (A), if the
16 spouse or child was in a lawful nonimmigrant
17 status on September 10, 2001, the spouse or
18 child may remain lawfully in the United States
19 in the same nonimmigrant status until the later
20 of

21 (i) the date such lawful nonimmigrant
22 status otherwise would have terminated if
23 this subparagraph had not been enacted;
24 or

1 (ii) the date that is 60 days after the
2 date on which the application described in
3 subparagraph (A) otherwise would have
4 been due.

5 (c) DIVERSITY IMMIGRANTS.

6 (1) WAIVER OF FISCAL YEAR LIMITATION.

7 Notwithstanding section 203(e)(2) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1153(e)(2)), an
9 immigrant visa number issued to an alien under sec-
10 tion 203(c) of such Act for fiscal year 2001 may be
11 used by the alien during the period beginning on Oc-
12 tober 1, 2001, and ending on April 1, 2002, if the
13 alien establishes that the alien was prevented from
14 using it during fiscal year 2001 as a direct result of
15 a specified terrorist activity.

16 (2) WORLDWIDE LEVEL. In the case of an
17 alien entering the United States as a lawful perma-
18 nent resident, or adjusting to that status, under
19 paragraph (1), the alien shall be counted as a diver-
20 sity immigrant for fiscal year 2001 for purposes of
21 section 201(e) of the Immigration and Nationality
22 Act (8 U.S.C. 1151(e)), unless the worldwide level
23 under such section for such year has been exceeded,
24 in which case the alien shall be counted as a diver-
25 sity immigrant for fiscal year 2002.

1 (3) TREATMENT OF FAMILY MEMBERS OF CER-
2 TAIN ALIENS. In the case of a principal alien
3 issued an immigrant visa number under section
4 203(c) of the Immigration and Nationality Act (8
5 U.S.C. 1153(c)) for fiscal year 2001, if such prin-
6 cipal alien died as a direct result of a specified ter-
7 rorist activity, the aliens who were, on September
8 10, 2001, the spouse and children of such principal
9 alien shall, if not otherwise entitled to an immigrant
10 status and the immediate issuance of a visa under
11 subsection (a), (b), or (c) of section 203 of such Act,
12 be entitled to the same status, and the same order
13 of consideration, that would have been provided to
14 such alien spouse or child under section 203(d) of
15 such Act if the principal alien were not deceased.

16 (d) EXTENSION OF EXPIRATION OF IMMIGRANT
17 VISAS. Notwithstanding the limitations under section
18 221(e) of the Immigration and Nationality Act (8 U.S.C.
19 1201(e)), in the case of any immigrant visa issued to an
20 alien that expires or expired before December 31, 2001,
21 if the alien was unable to effect entry to the United States
22 as a direct result of a specified terrorist activity, then the
23 period of validity of the visa is extended until December
24 31, 2001, unless a longer period of validity is otherwise
25 provided under this subtitle.

1 (e) GRANTS OF PAROLE EXTENDED. In the case of
2 any parole granted by the Attorney General under section
3 212(d)(5) of the Immigration and Nationality Act (8
4 U.S.C. 1182(d)(5)) that expires on a date on or after Sep-
5 tember 11, 2001, if the alien beneficiary of the parole was
6 unable to return to the United States prior to the expira-
7 tion date as a direct result of a specified terrorist activity,
8 the parole is deemed extended for an additional 90 days.

9 (f) VOLUNTARY DEPARTURE. Notwithstanding sec-
10 tion 240B of the Immigration and Nationality Act (8
11 U.S.C. 1229c), if a period for voluntary departure under
12 such section expired during the period beginning on Sep-
13 tember 11, 2001, and ending on October 11, 2001, such
14 voluntary departure period is deemed extended for an ad-
15 ditional 30 days.

16 **SEC. 213. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING**
17 **SPOUSES AND CHILDREN.**

18 (a) TREATMENT AS IMMEDIATE RELATIVES. Not-
19 withstanding the second sentence of section
20 201(b)(2)(A)(i) of the Immigration and Nationality Act
21 (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who
22 was the spouse of a citizen of the United States at the
23 time of the citizen's death and was not legally separated
24 from the citizen at the time of the citizen's death, if the
25 citizen died as a direct result of a specified terrorist activ-

1 ity, the alien (and each child of the alien) shall be consid-
2 ered, for purposes of section 201(b) of such Act, to remain
3 an immediate relative after the date of the citizen's death,
4 but only if the alien files a petition under section
5 204(a)(1)(A)(ii) of such Act within 2 years after such date
6 and only until the date the alien remarries.

7 (b) SPOUSES, CHILDREN, UNMARRIED SONS AND
8 DAUGHTERS OF LAWFUL PERMANENT RESIDENT
9 ALIENS.

10 (1) IN GENERAL. Any spouse, child, or unmar-
11 ried son or daughter of an alien described in para-
12 graph (3) who is included in a petition for classifica-
13 tion as a family-sponsored immigrant under section
14 203(a)(2) of the Immigration and Nationality Act (8
15 U.S.C. 1153(a)(2)) that was filed by such alien be-
16 fore September 11, 2001, shall be considered (if the
17 spouse, child, son, or daughter has not been admit-
18 ted or approved for lawful permanent residence by
19 such date) a valid petitioner for preference status
20 under such section with the same priority date as
21 that assigned prior to the death described in para-
22 graph (3)(A). No new petition shall be required to
23 be filed. Such spouse, child, son, or daughter may be
24 eligible for deferred action and work authorization.

1 (2) SELF-PETITIONS. Any spouse, child, or
2 unmarried son or daughter of an alien described in
3 paragraph (3) who is not a beneficiary of a petition
4 for classification as a family-sponsored immigrant
5 under section 203(a)(2) of the Immigration and Na-
6 tionality Act may file a petition for such classifica-
7 tion with the Attorney General, if the spouse, child,
8 son, or daughter was present in the United States
9 on September 11, 2001. Such spouse, child, son, or
10 daughter may be eligible for deferred action and
11 work authorization.

12 (3) ALIENS DESCRIBED. An alien is described
13 in this paragraph if the alien

14 (A) died as a direct result of a specified
15 terrorist activity; and

16 (B) on the day of such death, was lawfully
17 admitted for permanent residence in the United
18 States.

19 (c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY
20 SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-
21 BASED IMMIGRANTS.

22 (1) IN GENERAL. Any alien who was, on Sep-
23 tember 10, 2001, the spouse or child of an alien de-
24 scribed in paragraph (2), and who applied for ad-
25 justment of status prior to the death described in

1 paragraph (2)(A), may have such application adju-
2 dicated as if such death had not occurred.

3 (2) ALIENS DESCRIBED. An alien is described
4 in this paragraph if the alien

5 (A) died as a direct result of a specified
6 terrorist activity; and

7 (B) on the day before such death, was

8 (i) an alien lawfully admitted for per-
9 manent residence in the United States by
10 reason of having been allotted a visa under
11 section 203(b) of the Immigration and Na-
12 tionality Act (8 U.S.C. 1153(b)); or

13 (ii) an applicant for adjustment of
14 status to that of an alien described in
15 clause (i), and admissible to the United
16 States for permanent residence.

17 (d) WAIVER OF PUBLIC CHARGE GROUNDS. In de-
18 termining the admissibility of any alien accorded an immi-
19 gration benefit under this section, the grounds for inad-
20 missibility specified in section 212(a)(4) of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1182(a)(4)) shall not
22 apply.

1 **SEC. 214. "AGE-OUT" PROTECTION FOR CHILDREN.**

2 For purposes of the administration of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1101 et seq.), in the
4 case of an alien

5 (1) whose 21st birthday occurs in September
6 2001, and who is the beneficiary of a petition or ap-
7 plication filed under such Act on or before Sep-
8 tember 11, 2001, the alien shall be considered to be
9 a child for 90 days after the alien's 21st birthday
10 for purposes of adjudicating such petition or applica-
11 tion; and

12 (2) whose 21st birthday occurs after September
13 2001, and who is the beneficiary of a petition or ap-
14 plication filed under such Act on or before Sep-
15 tember 11, 2001, the alien shall be considered to be
16 a child for 45 days after the alien's 21st birthday
17 for purposes of adjudicating such petition or applica-
18 tion.

19 **SEC. 215. TEMPORARY ADMINISTRATIVE RELIEF.**

20 The Attorney General, for humanitarian purposes or
21 to ensure family unity, may provide temporary administra-
22 tive relief to any alien who

23 (1) was lawfully present in the United States on
24 September 10, 2001;

1 (2) was on such date the spouse, parent, or
2 child of an individual who died or was disabled as
3 a direct result of a specified terrorist activity; and
4 (3) is not otherwise entitled to relief under any
5 other provision of this subtitle.

6 **SEC. 216. EVIDENCE OF DEATH, DISABILITY, OR LOSS OF**
7 **EMPLOYMENT.**

8 (a) IN GENERAL. The Attorney General shall estab-
9 lish appropriate standards for evidence demonstrating, for
10 purposes of this subtitle, that any of the following oc-
11 curred as a direct result of a specified terrorist activity:

12 (1) Death.

13 (2) Disability.

14 (3) Loss of employment due to physical damage
15 to, or destruction of, a business.

16 (b) WAIVER OF REGULATIONS. The Attorney Gen-
17 eral shall carry out subsection (a) as expeditiously as pos-
18 sible. The Attorney General is not required to promulgate
19 regulations prior to implementing this subtitle.

20 **SEC. 217. NO BENEFITS TO TERRORISTS OR FAMILY MEM-**
21 **BERS OF TERRORISTS.**

22 Notwithstanding any other provision of this subtitle,
23 nothing in this subtitle shall be construed to provide any
24 benefit or relief to

1 (1) any individual culpable for a specified ter-
2 rorist activity; or

3 (2) any family member of any individual de-
4 scribed in paragraph (1).

5 **SEC. 218. DEFINITIONS.**

6 (a) APPLICATION OF IMMIGRATION AND NATION-
7 ALITY ACT PROVISIONS. Except as otherwise specifically
8 provided in this subtitle, the definitions used in the Immi-
9 gration and Nationality Act (excluding the definitions ap-
10 plicable exclusively to title III of such Act) shall apply in
11 the administration of this subtitle.

12 (b) SPECIFIED TERRORIST ACTIVITY. For purposes
13 of this subtitle, the term “specified terrorist activity”
14 means any terrorist activity conducted against the Govern-
15 ment or the people of the United States on September 11,
16 2001.

17 **TITLE III—CRIMINAL JUSTICE**
18 **Subtitle A—Substantive Criminal**
19 **Law**

20 **SEC. 301. STATUTE OF LIMITATION FOR PROSECUTING**
21 **TERRORISM OFFENSES.**

22 (a) IN GENERAL. Section 3286 of title 18, United
23 States Code, is amended to read as follows:

1 **“§ 3286. Terrorism offenses**

2 “(a) An indictment may be found or an information
3 instituted at any time without limitation for any Federal
4 terrorism offense or any of the following offenses:

5 “(1) A violation of, or an attempt or conspiracy
6 to violate, section 32 (relating to destruction of air-
7 craft or aircraft facilities), 37(a)(1) (relating to vio-
8 lence at international airports), 175 (relating to bio-
9 logical weapons), 229 (relating to chemical weap-
10 ons), 351(a) (d) (relating to congressional, cabinet,
11 and Supreme Court assassination and kidnaping),
12 792 (relating to harboring terrorists), 831 (relating
13 to nuclear materials), 844(f) or (i) when it relates
14 to bombing (relating to arson and bombing of cer-
15 tain property), 1114(1) (relating to protection of of-
16 ficers and employees of the United States), 1116, if
17 the offense involves murder (relating to murder or
18 manslaughter of foreign officials, official guests, or
19 internationally protected persons), 1203 (relating to
20 hostage taking), 1751(a) (d) (relating to Presi-
21 dential and Presidential staff assassination and kid-
22 naping), 2332(a)(1) (relating to certain homicides
23 and other violence against United States nationals
24 occurring outside of the United States), 2332a (re-
25 lating to use of weapons of mass destruction), 2332b

1 (relating to acts of terrorism transcending national
2 boundaries) of this title.

3 “(2) Section 236 (relating to sabotage of nu-
4 clear facilities or fuel) of the Atomic Energy Act of
5 1954 (42 U.S.C. 2284);

6 “(3) Section 601 (relating to disclosure of iden-
7 tities of covert agents) of the National Security Act
8 of 1947 (50 U.S.C. 421).

9 “(4) Section 46502 (relating to aircraft piracy)
10 of title 49.

11 “(b) An indictment may be found or an information
12 instituted within 15 years after the offense was committed
13 for any of the following offenses:

14 “(1) Section 175b (relating to biological weap-
15 ons), 842(m) or (n) (relating to plastic explosives),
16 930(c) if it involves murder (relating to possessing
17 a dangerous weapon in a Federal facility), 956 (re-
18 lating to conspiracy to injure property of a foreign
19 government), 1030(a)(1), 1030(a)(5)(A), or
20 1030(a)(7) (relating to protection of computers),
21 1362 (relating to destruction of communication
22 lines, stations, or systems), 1366 (relating to de-
23 struction of an energy facility), 1992 (relating to
24 trainwrecking), 2152 (relating to injury of fortifica-
25 tions, harbor defenses, or defensive sea areas), 2155

1 (relating to destruction of national defense mate-
2 rials, premises, or utilities), 2156 (relating to pro-
3 duction of defective national defense materials,
4 premises, or utilities), 2280 (relating to violence
5 against maritime navigation), 2281 (relating to vio-
6 lence against maritime fixed platforms), 2339A (re-
7 lating to providing material support to terrorists),
8 2339B (relating to providing material support to
9 terrorist organizations), or 2340A (relating to tor-
10 ture).

11 “(2) Any of the following provisions of title 49:
12 the second sentence of section 46504 (relating to as-
13 sult on a flight crew with a dangerous weapon),
14 section 46505(b)(3), (relating to explosive or incen-
15 diary devices, or endangerment of human life by
16 means of weapons, on aircraft), section 46506 if
17 homicide or attempted homicide is involved, or sec-
18 tion 60123(b) (relating to destruction of interstate
19 gas or hazardous liquid pipeline facility) of title
20 49.”.

21 (b) CLERICAL AMENDMENT. The table of sections
22 at the beginning of chapter 213 of title 18, United States
23 Code, is amended by amending the item relating to section
24 3286 to read as follows:

“3286. Terrorism offenses.”.

1 (c) APPLICATION. The amendments made by this
2 section shall apply to the prosecution of any offense com-
3 mitted before, on, or after the date of enactment of this
4 section.

5 **SEC. 302. ALTERNATIVE MAXIMUM PENALTIES FOR TER-**
6 **RORISM CRIMES.**

7 Section 3559 of title 18, United States Code, is
8 amended by adding after subsection (d) the following:

9 “(e) AUTHORIZED TERMS OF IMPRISONMENT FOR
10 TERRORISM CRIMES. A person convicted of any Federal
11 terrorism offense may be sentenced to imprisonment for
12 any term of years or for life, notwithstanding any max-
13 imum term of imprisonment specified in the law describing
14 the offense. The authorization of imprisonment under this
15 subsection is supplementary to, and does not limit, the
16 availability of any other penalty authorized by the law de-
17 scribing the offense, including the death penalty, and does
18 not limit the applicability of any mandatory minimum
19 term of imprisonment, including any mandatory life term,
20 provided by the law describing the offense.”.

21 **SEC. 303. PENALTIES FOR TERRORIST CONSPIRACIES.**

22 Chapter 113B of title 18, United States Code, is
23 amended

24 (1) by inserting after section 2332b the fol-
25 lowing:

1 **“§ 2332c. Attempts and conspiracies**

2 “(a) Except as provided in subsection (c), any person
3 who attempts or conspires to commit any Federal ter-
4 rorism offense shall be subject to the same penalties as
5 those prescribed for the offense, the commission of which
6 was the object of the attempt or conspiracy.

7 “(b) Except as provided in subsection (c), any person
8 who attempts or conspires to commit any offense described
9 in section 25(2) shall be subject to the same penalties as
10 those prescribed for the offense, the commission of which
11 was the object of the attempt or conspiracy.

12 “(c) A death penalty may not be imposed by oper-
13 ation of this section.”; and

14 (2) in the table of sections at the beginning of
15 the chapter, by inserting after the item relating to
16 section 2332b the following new item:

“2332c. Attempts and conspiracies.”.

17 **SEC. 304. TERRORISM CRIMES AS RICO PREDICATES.**

18 Section 1961(1) of title 18, United States Code, is
19 amended

20 (1) by striking “or (F)” and inserting “(F)”;
21 and

22 (2) by striking “financial gain;” and inserting
23 “financial gain, or (G) any act that is a Federal ter-
24 rorism offense or is indictable under any of the fol-
25 lowing provisions of law: section 32 (relating to de-

1 construction of aircraft or aircraft facilities), 37(a)(1)
2 (relating to violence at international airports), 175
3 (relating to biological weapons), 229 (relating to
4 chemical weapons), 351(a) (d) (relating to congress-
5 sional, cabinet, and Supreme Court assassination
6 and kidnaping), 831 (relating to nuclear materials),
7 842(m) or (n) (relating to plastic explosives), 844(f)
8 or (i) when it involves a bombing (relating to arson
9 and bombing of certain property), 930(e) when it in-
10 volves an attack on a Federal facility, 1114 when it
11 involves murder (relating to protection of officers
12 and employees of the United States), 1116 when it
13 involves murder (relating to murder or manslaughter
14 of foreign officials, official guests, or internationally
15 protected persons), 1203 (relating to hostage tak-
16 ing), 1362 (relating to destruction of communication
17 lines, stations, or systems), 1366 (relating to de-
18 struction of an energy facility), 1751(a) (d) (relat-
19 ing to Presidential and Presidential staff assassina-
20 tion and kidnaping), 1992 (relating to
21 trainwrecking), 2280 (relating to violence against
22 maritime navigation), 2281 (relating to violence
23 against maritime fixed platforms), 2332a (relating
24 to use of weapons of mass destruction), 2332b (re-
25 lating to acts of terrorism transcending national

1 boundaries), 2339A (relating to providing material
2 support to terrorists), 2339B (relating to providing
3 material support to terrorist organizations), or
4 2340A (relating to torture) of this title; section 236
5 (relating to sabotage of nuclear facilities or fuel) of
6 the Atomic Energy Act of 1954 (42 U.S.C. 2284);
7 or section 46502 (relating to aircraft piracy) or
8 60123(b) (relating to destruction of interstate gas or
9 hazardous liquid pipeline facility) of title 49.”.

10 **SEC. 305. BIOLOGICAL WEAPONS.**

11 Chapter 10 of title 18, United States Code, is
12 amended

13 (1) in section 175

14 (A) in subsection (b)

15 (i) by striking, “section, the” and in-
16 serting “section
17 “(1) the”;

18 (ii) by striking “does not include” and
19 inserting “includes”;

20 (iii) by inserting “other than” after
21 “system for”; and

22 (iv) by striking “purposes.” and in-
23 serting “purposes, and

24 “(2) the terms biological agent and toxin do not
25 encompass any biological agent or toxin that is in its

1 naturally-occurring environment, if the biological
2 agent or toxin has not been cultivated, collected, or
3 otherwise extracted from its natural source.”;

4 (B) by redesignating subsection (b) as sub-
5 section (c); and

6 (C) by inserting after subsection (a) the
7 following:

8 “(b) **ADDITIONAL OFFENSE.** Whoever knowingly
9 possesses any biological agent, toxin, or delivery system
10 of a type or in a quantity that, under the circumstances,
11 is not reasonably justified by a prophylactic, protective,
12 or other peaceful purpose, shall be fined under this title,
13 imprisoned not more than 10 years, or both.”;

14 (2) by inserting after section 175a the fol-
15 lowing:

16 **“§ 175b. Possession by restricted persons**

17 “(a) No restricted person described in subsection (b)
18 shall ship or transport in interstate or foreign commerce,
19 or possess in or affecting commerce, any biological agent
20 or toxin, or receive any biological agent or toxin that has
21 been shipped or transported in interstate or foreign com-
22 merce, if the biological agent or toxin is listed as a select
23 agent in subsection (j) of section 72.6 of title 42, Code
24 of Federal Regulations, pursuant to section 511(d)(1) of
25 the Antiterrorism and Effective Death Penalty Act of

1 1996 (Public Law 104 132), and is not exempted under
2 subsection (h) of such section 72.6, or Appendix A of part
3 72 of such title; except that the term select agent does
4 not include any such biological agent or toxin that is in
5 its naturally-occurring environment, if the biological agent
6 or toxin has not been cultivated, collected, or otherwise
7 extracted from its natural source.

8 “(b) As used in this section, the term ‘restricted per-
9 son’ means an individual who

10 “(1) is under indictment for a crime punishable
11 by imprisonment for a term exceeding 1 year;

12 “(2) has been convicted in any court of a crime
13 punishable by imprisonment for a term exceeding 1
14 year;

15 “(3) is a fugitive from justice;

16 “(4) is an unlawful user of any controlled sub-
17 stance (as defined in section 102 of the Controlled
18 Substances Act (21 U.S.C. 802));

19 “(5) is an alien illegally or unlawfully in the
20 United States;

21 “(6) has been adjudicated as a mental defective
22 or has been committed to any mental institution; or

23 “(7) is an alien (other than an alien lawfully
24 admitted for permanent residence) who is a national
25 of a country as to which the Secretary of State, pur-

1 suant to section 6(j) of the Export Administration
2 Act of 1979 (50 U.S.C. App. 2405(j)), section 620A
3 of chapter 1 of part M of the Foreign Assistance Act
4 of 1961 (22 U.S.C. 2371), or section 40(d) of chap-
5 ter 3 of the Arms Export Control Act (22 U.S.C.
6 2780(d)), has made a determination that remains in
7 effect that such country has repeatedly provided
8 support for acts of international terrorism.

9 “(c) As used in this section, the term ‘alien’ has the
10 same meaning as that term is given in section 1010(a)(3)
11 of the Immigration and Nationality Act (8 U.S.C.
12 1101(a)(3)), and the term ‘lawfully’ admitted for perma-
13 nent residence has the same meaning as that term is given
14 in section 101(a)(20) of the Immigration and Nationality
15 Act (8 U.S.C. 1101(a)(20)).

16 “(d) Whoever knowingly violates this section shall be
17 fined under this title or imprisoned not more than ten
18 years, or both, but the prohibition contained in this section
19 shall not apply with respect to any duly authorized govern-
20 mental activity under title V of the National Security Act
21 of 1947.”; and

22 (3) in the table of sections in the beginning of
23 such chapter, by inserting after the item relating to
24 section 175a the following:

“175b. Possession by restricted persons.”.

1 **SEC. 306. SUPPORT OF TERRORISM THROUGH EXPERT AD-**
2 **VICE OR ASSISTANCE.**

3 Section 2339A of title 18, United States Code, is
4 amended

5 (1) in subsection (a)

6 (A) by striking “a violation” and all that
7 follows through “49” and inserting “any Fed-
8 eral terrorism offense or any offense described
9 in section 25(2)”; and

10 (B) by striking “violation,” and inserting
11 “offense,”; and

12 (2) in subsection (b), by inserting “expert ad-
13 vice or assistance,” after “training,”.

14 **SEC. 307. PROHIBITION AGAINST HARBORING.**

15 Title 18, United States Code, is amended by adding
16 the following new section:

17 **“§ 791. Prohibition against harboring**

18 “Whoever harbors or conceals any person who he
19 knows has committed, or is about to commit, an offense
20 described in section 25(2) or this title shall be fined under
21 this title or imprisoned not more than ten years or both.
22 There is extraterritorial Federal jurisdiction over any vio-
23 lation of this section or any conspiracy or attempt to vio-
24 late this section. A violation of this section or of such a
25 conspiracy or attempt may be prosecuted in any Federal
26 judicial district in which the underlying offense was com-

1 mitted, or in any other Federal judicial district as pro-
2 vided by law.”.

3 **SEC. 308. POST-RELEASE SUPERVISION OF TERRORISTS.**

4 Section 3583 of title 18, United States Code, is
5 amended by adding at the end the following:

6 “(j) SUPERVISED RELEASE TERMS FOR TERRORISM
7 OFFENSES. Notwithstanding subsection (b), the author-
8 ized terms of supervised release for any Federal terrorism
9 offense are any term of years or life.”.

10 **SEC. 309. DEFINITION.**

11 (a) Chapter 1 of title 18, United States Code, is
12 amended

13 (1) by adding after section 24 a new section as
14 follows:

15 **“§ 25. Federal terrorism offense defined**

16 “As used in this title, the term ‘Federal terrorism
17 offense’ means an offense that is

18 “(1) is calculated to influence or affect the con-
19 duct of government by intimidation or coercion; or
20 to retaliate against government conduct; and

21 “(2) is a violation of, or an attempt or con-
22 spiracy to violate- section 32 (relating to destruction
23 of aircraft or aircraft facilities), 37 (relating to vio-
24 lence at international airports), 81 (relating to arson
25 within special maritime and territorial jurisdiction),

1 175, 175b (relating to biological weapons), 229 (re-
2 relating to chemical weapons), 351(a) (d) (relating to
3 congressional, cabinet, and Supreme Court assas-
4 sination and kidnaping), 792 (relating to harboring
5 terrorists), 831 (relating to nuclear materials),
6 842(m) or (n) (relating to plastic explosives), 844(f)
7 or (i) (relating to arson and bombing of certain
8 property), 930(c), 956 (relating to conspiracy to in-
9 jure property of a foreign government), 1030(a)(1),
10 1030(a)(5)(A), or 1030(a)(7) (relating to protection
11 of computers), 1114 (relating to protection of offi-
12 cers and employees of the United States), 1116 (re-
13 lating to murder or manslaughter of foreign officials,
14 official guests, or internationally protected persons),
15 1203 (relating to hostage taking), 1361 (relating to
16 injury of Government property or contracts), 1362
17 (relating to destruction of communication lines, sta-
18 tions, or systems), 1363 (relating to injury to build-
19 ings or property within special maritime and terri-
20 torial jurisdiction of the United States), 1366 (relat-
21 ing to destruction of an energy facility), 1751(a) (d)
22 (relating to Presidential and Presidential staff assas-
23 sination and kidnaping), 1992, 2152 (relating to in-
24 jury of fortifications, harbor defenses, or defensive
25 sea areas), 2155 (relating to destruction of national

1 defense materials, premises, or utilities), 2156 (re-
2 relating to production of defective national defense
3 materials, premises, or utilities), 2280 (relating to
4 violence against maritime navigation), 2281 (relating
5 to violence against maritime fixed platforms), 2332
6 (relating to certain homicides and other violence
7 against United States nationals occurring outside of
8 the United States), 2332a (relating to use of weap-
9 ons of mass destruction), 2332b (relating to acts of
10 terrorism transcending national boundaries), 2339A
11 (relating to providing material support to terrorists),
12 2339B (relating to providing material support to
13 terrorist organizations), or 2340A (relating to tor-
14 ture);

15 “(3) section 236 (relating to sabotage of nu-
16 clear facilities or fuel) of the Atomic Energy Act of
17 1954 (42 U.S.C. 2284);

18 “(4) section 601 (relating to disclosure of iden-
19 tities of covert agents) of the National Security Act
20 of 1947 (50 U.S.C. 421); or

21 “(5) any of the following provisions of title 49:
22 section 46502 (relating to aircraft piracy), the sec-
23 ond sentence of section 46504 (relating to assault on
24 a flight crew with a dangerous weapon), section
25 46505(b)(3), (relating to explosive or incendiary de-

1 vices, or endangerment of human life by means of
2 weapons, on aircraft), section 46506 if homicide or
3 attempted homicide is involved, or section 60123(b)
4 (relating to destruction of interstate gas or haz-
5 arduous liquid pipeline facility) of title 49.”; and

6 (2) in the table of sections in the beginning of
7 such chapter, by inserting after the item relating to
8 section 24 the following:

“25. Federal terrorism offense defined.”.

9 (b) Section 2332b(g)(5)(B) of title 18, United States
10 Code, is amended by striking “is a violation” and all that
11 follows through “title 49” and inserting “is a Federal ter-
12 rorism offense”.

13 (c) Section 2331 of title 18, United States Code, is
14 amended

15 (1) in paragraph (1)(B)

16 (A) by inserting “(or to have the effect)”
17 after “intended”; and

18 (B) in clause (iii), by striking “by assas-
19 sination or kidnapping” and inserting “(or any
20 function thereof) by mass destruction, assas-
21 sination, or kidnapping (or threat thereof)”;

22 (2) in paragraph (3), by striking “and”;

23 (3) in paragraph (4), by striking the period and
24 inserting “; and”; and

25 (4) by inserting the following paragraph (4):

1 “(5) the term ‘domestic terrorism’ means activi-
2 ties that

3 “(A) involve acts dangerous to human life
4 that are a violation of the criminal laws of the
5 United States or of any State; and

6 “(B) appear to be intended (or to have the
7 effect)

8 “(i) to intimidate or coerce a civilian
9 population;

10 “(ii) to influence the policy of a gov-
11 ernment by intimidation or coercion; or

12 “(iii) to affect the conduct of a gov-
13 ernment (or any function thereof) by mass
14 destruction, assassination, or kidnapping
15 (or threat thereof).”.

16 **SEC. 310. CIVIL DAMAGES.**

17 Section 2707(c) of title 18, United States Code, is
18 amended by striking “\$1,000” and inserting “\$10,000”.

19 **Subtitle B—Criminal Procedure**

20 **SEC. 351. SINGLE-JURISDICTION SEARCH WARRANTS FOR**
21 **TERRORISM.**

22 Rule 41(a) of the Federal Rules of Criminal Proce-
23 dure is amended by inserting after “executed” the fol-
24 lowing: “and (3) in an investigation of domestic terrorism
25 or international terrorism (as defined in section 2331 of

1 title 18, United States Code), by a Federal magistrate
2 judge in any district in which activities related to the ter-
3 rorism may have occurred, for a search of property or for
4 a person within or outside the district”.

5 **SEC. 353. DNA IDENTIFICATION OF TERRORISTS.**

6 Section 3(d)(1) of the DNA Analysis Backlog Elimini-
7 nation Act of 2000 (42 U.S.C. 14135a(d)(1)) is
8 amended

9 (1) by redesignating subparagraph (G) as sub-
10 paragraph (H); and

11 (2) by inserting after subparagraph (F) the a
12 new subparagraph as follows:

13 “(G) Any Federal terrorism offense (as de-
14 fined in section 25 of title 18, United States
15 Code).”.

16 **SEC. 354. GRAND JURY MATTERS.**

17 Rule 6(e)(3)(C) of the Federal Rules of Criminal Pro-
18 cedure is amended

19 (1) by adding at the end the following:

20 “(v) when permitted by a court at the
21 request of an attorney for the government,
22 upon a showing that the matters pertain to
23 international or domestic terrorism (as de-
24 fined in section 2331 of title 18, United
25 States Code) or national security, to any

1 Federal law enforcement, intelligence, na-
2 tional security, national defense, protective,
3 immigration personnel, or to the President
4 or Vice President of the United States, for
5 the performance of official duties.”;

6 (2) by striking “or” at the end of subdivision
7 (iii); and

8 (3) by striking the period at the end of subdivi-
9 sion (iv) and inserting “; or”.

10 **SEC. 355. EXTRATERRITORIALITY.**

11 Chapter 113B of title 18, United States Code, is
12 amended

13 (1) in the heading for section 2338, by striking
14 “**Exclusive**”;

15 (2) in section 2338, by inserting “There is
16 extraterritorial Federal jurisdiction over any Federal
17 terrorism offense and any offense under this chap-
18 ter, in addition to any extraterritorial jurisdiction
19 that may exist under the law defining the offense, if
20 the person committing the offense or the victim of
21 the offense is a national of the United States (as de-
22 fined in section 101 of the Immigration and Nation-
23 ality Act) or if the offense is directed at the security
24 or interests of the United States.” before “The dis-
25 trict courts”; and

1 (3) in the table of sections at the beginning of
2 such chapter, by striking “Exclusive” in the item re-
3 lating to section 2338.

4 **SEC. 356. JURISDICTION OVER CRIMES COMMITTED AT**
5 **UNITED STATES FACILITIES ABROAD.**

6 Section 7 of title 18, United States Code, is amended
7 by adding at the end the following:

8 “(9) With respect to offenses committed by or
9 against a United States national, as defined in sec-
10 tion 1203(c) of this title

11 “(A) the premises of United States diplo-
12 matic, consular, military, or other United
13 States Government missions or entities in for-
14 eign states, including the buildings, parts of
15 buildings, and the land appurtenant or ancillary
16 thereto, irrespective of ownership, used for pur-
17 poses of those missions or entities; and

18 “(B) residences in foreign states and the
19 land appurtenant or ancillary thereto, irrespec-
20 tive of ownership, used for purposes of those
21 missions or entities or used by United States
22 personnel assigned to those missions or entities,
23 except that this paragraph does not supercede
24 any treaty or international agreement in force

1 on the date of the enactment of this para-
2 graph.”.

3 **SEC. 357. SPECIAL AGENT AUTHORITIES.**

4 (a) GENERAL AUTHORITY OF SPECIAL AGENTS.

5 Section 37(a) of the State Department Basic Authorities
6 Act of 1956 (22 U.S.C. 2709(a)) is amended

7 (1) by striking paragraph (2) and inserting the
8 following:

9 “(2) in the course of performing the functions
10 set forth in paragraphs (1) and (3), obtain and exe-
11 cute search and arrest warrants, as well as obtain
12 and serve subpoenas and summonses, issued under
13 the authority of the United States;”;

14 (2) in paragraph (3)(F) by inserting “or Presi-
15 dent-elect” after “President”; and

16 (3) by striking paragraph (5) and inserting the
17 following:

18 “(5) in the course of performing the functions
19 set forth in paragraphs (1) and (3), make arrests
20 without warrant for any offense against the United
21 States committed in the presence of the special
22 agent, or for any felony cognizable under the laws
23 of the United States if the special agent has reason-
24 able grounds to believe that the person to be ar-
25 rested has committed or is committing such felony.”.

1 (b) CRIMES. Section 37 of such Act (22 U.S.C.
2 2709) is amended by inserting after subsection (c) the fol-
3 lowing new subsections:

4 “(d) INTERFERENCE WITH AGENTS. Whoever
5 knowingly and willfully obstructs, resists, or interferes
6 with a Federal law enforcement agent engaged in the per-
7 formance of the protective functions authorized by this
8 section shall be fined under title 18 or imprisoned not
9 more than one year, or both.

10 “(e) PERSONS UNDER PROTECTION OF SPECIAL
11 AGENTS. Whoever engages in any conduct

12 “(1) directed against an individual entitled to
13 protection under this section, and

14 “(2) which would constitute a violation of sec-
15 tion 112 or 878 of title 18, United States Code, if
16 such individual were a foreign official, an official
17 guest, or an internationally protected person, shall
18 be subject to the same penalties as are provided for
19 such conduct directed against an individual subject
20 to protection under such section of title 18.”.

21 **TITLE IV—FINANCIAL**
22 **INFRASTRUCTURE**

23 **SEC. 401. LAUNDERING THE PROCEEDS OF TERRORISM.**

24 Section 1956(c)(7)(D) of title 18, United States
25 Code, is amended by inserting “or 2339B” after “2339A”.

1 **SEC. 402. MATERIAL SUPPORT FOR TERRORISM.**

2 Section 2339A of title 18, United States Code, is
3 amended

4 (1) in subsection (a), by adding at the end the
5 following “A violation of this section may be pros-
6 ecuted in any Federal judicial district in which the
7 underlying offense was committed, or in any other
8 Federal judicial district as provided by law.”; and

9 (2) in subsection (b), by striking “or other fi-
10 nancial securities” and inserting “or monetary in-
11 struments or financial securities”.

12 **SEC. 403. ASSETS OF TERRORIST ORGANIZATIONS.**

13 Section 981(a)(1) of title 18, United States Code, is
14 amended by inserting after subparagraph (F) the fol-
15 lowing:

16 “(G) All assets, foreign or domestic

17 “(i) of any person, entity, or organization
18 engaged in planning or perpetrating any act of
19 domestic terrorism or international terrorism
20 (as defined in section 2331) against the United
21 States, citizens or residents of the United
22 States, or their property, and all assets, foreign
23 or domestic, affording any person a source of
24 influence over any such entity or organization;

25 “(ii) acquired or maintained by any person
26 for the purpose of supporting, planning, con-

1 ducting, or concealing an act of domestic ter-
2 rorism or international terrorism (as defined in
3 section 2331) against the United States, citi-
4 zens or residents of the United States, or their
5 property; or

6 “(iii) derived from, involved in, or used or
7 intended to be used to commit any act of do-
8 mestic terrorism or international terrorism (as
9 defined in section 2331) against the United
10 States, citizens or residents of the United
11 States, or their property.”.

12 **SEC. 404. TECHNICAL CLARIFICATION RELATING TO PROVI-**
13 **SION OF MATERIAL SUPPORT TO TER-**
14 **RORISM.**

15 No provision of title IX of Public Law 106 387 shall
16 be understood to limit or otherwise affect section 2339A
17 or 2339B of title 18, United States Code.

18 **SEC. 405. DISCLOSURE OF TAX INFORMATION IN TER-**
19 **RORISM AND NATIONAL SECURITY INVES-**
20 **TIGATIONS.**

21 (a) DISCLOSURE WITHOUT A REQUEST OF INFORMA-
22 TION RELATING TO TERRORIST ACTIVITIES, ETC. Para-
23 graph (3) of section 6103(i) of the Internal Revenue Code
24 of 1986 (relating to disclosure of return information to
25 apprise appropriate officials of criminal activities or emer-

1 gency circumstances) is amended by adding at the end the
2 following new subparagraph:

3 “(C) TERRORIST ACTIVITIES, ETC.

4 “(i) IN GENERAL. Except as pro-
5 vided in paragraph (6), the Secretary may
6 disclose in writing return information
7 (other than taxpayer return information)
8 that may be related to a terrorist incident,
9 threat, or activity to the extent necessary
10 to apprise the head of the appropriate Fed-
11 eral law enforcement agency responsible
12 for investigating or responding to such ter-
13 rorist incident, threat, or activity. The
14 head of the agency may disclose such re-
15 turn information to officers and employees
16 of such agency to the extent necessary to
17 investigate or respond to such terrorist in-
18 cident, threat, or activity.

19 “(ii) TAXPAYER IDENTITY. For pur-
20 poses of this subparagraph, a taxpayer’s
21 identity shall not be treated as taxpayer
22 return information.

23 “(iii) TERMINATION. No disclosure
24 may be made under this subparagraph
25 after December 31, 2003.”

1 (b) DISCLOSURE UPON REQUEST OF INFORMATION
2 RELATING TO TERRORIST ACTIVITIES, ETC. Subsection
3 (i) of section 6103 of such Code (relating to disclosure
4 to Federal officers or employees for administration of Fed-
5 eral laws not relating to tax administration) is amended
6 by redesignating paragraph (7) as paragraph (8) and by
7 inserting after paragraph (6) the following new paragraph:

8 “(7) DISCLOSURE UPON REQUEST OF INFORMA-
9 TION RELATING TO TERRORIST ACTIVITIES, ETC.

10 “(A) DISCLOSURE TO LAW ENFORCEMENT
11 AGENCIES.

12 “(i) IN GENERAL. Except as pro-
13 vided in paragraph (6), upon receipt by the
14 Secretary of a written request which meets
15 the requirements of clause (iii), the Sec-
16 retary may disclose return information
17 (other than taxpayer return information)
18 to officers and employees of any Federal
19 law enforcement agency who are personally
20 and directly engaged in the response to or
21 investigation of terrorist incidents, threats,
22 or activities.

23 “(ii) DISCLOSURE TO STATE AND
24 LOCAL LAW ENFORCEMENT AGENCIES.

25 The head of any Federal law enforcement

1 agency may disclose return information ob-
2 tained under clause (i) to officers and em-
3 ployees of any State or local law enforce-
4 ment agency but only if such agency is
5 part of a team with the Federal law en-
6 forcement agency in such response or in-
7 vestigation and such information is dis-
8 closed only to officers and employees who
9 are personally and directly engaged in such
10 response or investigation.

11 “(iii) REQUIREMENTS. A request
12 meets the requirements of this clause if

13 “(I) the request is made by the
14 head of any Federal law enforcement
15 agency (or his delegate) involved in
16 the response to or investigation of ter-
17 rorist incidents, threats, or activities,
18 and

19 “(II) the request sets forth the
20 specific reason or reasons why such
21 disclosure may be relevant to a ter-
22 rorist incident, threat, or activity.

23 “(iv) LIMITATION ON USE OF INFOR-
24 MATION. Information disclosed under this
25 subparagraph shall be solely for the use of

1 the officers and employees to whom such
2 information is disclosed in such response
3 or investigation.

4 “(B) DISCLOSURE TO INTELLIGENCE
5 AGENCIES.

6 “(i) IN GENERAL. Except as pro-
7 vided in paragraph (6), upon receipt by the
8 Secretary of a written request which meets
9 the requirements of clause (ii), the Sec-
10 retary may disclose return information
11 (other than taxpayer return information)
12 to those officers and employees of the De-
13 partment of Justice, the Department of
14 the Treasury, and other Federal intel-
15 ligence agencies who are personally and di-
16 rectly engaged in the collection or analysis
17 of intelligence and counterintelligence in-
18 formation or investigation concerning ter-
19 rorists and terrorist organizations and ac-
20 tivities. For purposes of the preceding sen-
21 tence, the information disclosed under the
22 preceding sentence shall be solely for the
23 use of such officers and employees in such
24 investigation, collection, or analysis.

1 “(ii) REQUIREMENTS. A request
2 meets the requirements of this subpara-
3 graph if the request

4 “(I) is made by an individual de-
5 scribed in clause (iii), and

6 “(II) sets forth the specific rea-
7 son or reasons why such disclosure
8 may be relevant to a terrorist inci-
9 dent, threat, or activity.

10 “(iii) REQUESTING INDIVIDUALS. An
11 individual described in this subparagraph
12 is an individual

13 “(I) who is an officer or em-
14 ployee of the Department of Justice
15 or the Department of the Treasury
16 who is appointed by the President
17 with the advice and consent of the
18 Senate or who is the Director of the
19 United States Secret Service, and

20 “(II) who is responsible for the
21 collection and analysis of intelligence
22 and counterintelligence information
23 concerning terrorists and terrorist or-
24 ganizations and activities.

1 “(iv) TAXPAYER IDENTITY. For pur-
2 poses of this subparagraph, a taxpayer’s
3 identity shall not be treated as taxpayer
4 return information.

5 “(C) DISCLOSURE UNDER EX PARTE OR-
6 DERS.

7 “(i) IN GENERAL. Except as pro-
8 vided in paragraph (6), any return or re-
9 turn information with respect to any speci-
10 fied taxable period or periods shall, pursu-
11 ant to and upon the grant of an ex parte
12 order by a Federal district court judge or
13 magistrate under clause (ii), be open (but
14 only to the extent necessary as provided in
15 such order) to inspection by, or disclosure
16 to, officers and employees of any Federal
17 law enforcement agency or Federal intel-
18 ligence agency who are personally and di-
19 rectly engaged in any investigation, re-
20 sponse to, or analysis of intelligence and
21 counterintelligence information concerning
22 any terrorist activity or threats. Return or
23 return information opened pursuant to the
24 preceding sentence shall be solely for the
25 use of such officers and employees in the

1 investigation, response, or analysis, and in
2 any judicial, administrative, or grand jury
3 proceedings, pertaining to any such ter-
4 rorist activity or threat.

5 “(ii) APPLICATION FOR ORDER. The
6 Attorney General, the Deputy Attorney
7 General, the Associate Attorney General,
8 any Assistant Attorney General, or any
9 United States attorney may authorize an
10 application to a Federal district court
11 judge or magistrate for the order referred
12 to in subparagraph (A). Upon such appli-
13 cation, such judge or magistrate may grant
14 such order if he determines on the basis of
15 the facts submitted by the applicant that

16 “(I) there is reasonable cause to
17 believe, based upon information be-
18 lieved to be reliable, that the taxpayer
19 whose return or return information is
20 to be disclosed may be connected to a
21 terrorist activity or threat,

22 “(II) there is reasonable cause to
23 believe that the return or return infor-
24 mation may be relevant to a matter

1 relating to such terrorist activity or
2 threat, and

3 “(III) the return or return infor-
4 mation is sought exclusively for use in
5 a Federal investigation, analysis, or
6 proceeding concerning terrorist activ-
7 ity, terrorist threats, or terrorist orga-
8 nizations.

9 “(D) TERMINATION. No disclosure may
10 be made under this paragraph after December
11 31, 2003.”.

12 (e) CONFORMING AMENDMENTS.

13 (1) Section 6103(a)(2) of such Code is amended
14 by inserting “any local law enforcement agency re-
15 ceiving information under subsection (i)(7)(A),”
16 after “State,”.

17 (2) The heading of section 6103(i)(3) of such
18 Code is amended by inserting “OR TERRORIST” after
19 “CRIMINAL”.

20 (3) Paragraph (4) of section 6103(i) of such
21 Code is amended

22 (A) in subparagraph (A) by inserting “or
23 (7)(C)” after “paragraph (1)”, and

24 (B) in subparagraph (B) by striking “or
25 (3)(A)” and inserting “(3)(A) or (C), or (7)”.

1 (4) Paragraph (6) of section 6103(i) of such
2 Code is amended

3 (A) by striking “(3)(A)” and inserting
4 “(3)(A) or (C), and

5 (B) by striking “or (7)” and inserting
6 “(7), or (8)”.

7 (5) Section 6103(p)(3) of such Code is
8 amended

9 (A) in subparagraph (A) by striking
10 “(7)(A)(ii)” and inserting “(8)(A)(ii)”, and

11 (B) in subparagraph (C) by striking
12 “(i)(3)(B)(i)” and inserting “(i)(3)(B)(i) or
13 (7)”.

14 (6) Section 6103(p)(4) of such Code is
15 amended

16 (A) in the matter preceding subparagraph
17 (A)

18 (i) by striking “or (5),” the first place
19 it appears and inserting “(5), or (7),”, and

20 (ii) by striking “(i)(3)(B)(i),” and in-
21 serting “(i)(3)(B)(i) or (C),”, and

22 (B) in subparagraph (F)(ii) by striking “or
23 (5),” the first place it appears and inserting
24 “(5) or (7),”.

1 (7) Section 6103(p)(6)(B)(i) of such Code is
2 amended by striking “(i)(7)(A)(ii)” and inserting
3 “(i)(8)(A)(ii)”.

4 (8) Section 7213(a)(2) of such Code is amended
5 by inserting “(3)(C), or (7),” after “(i)(3)(B)(i),”.

6 (e) EFFECTIVE DATE. The amendments made by
7 this section shall apply to disclosures made on or after
8 the date of the enactment of this Act.

9 **SEC. 406. EXTRATERRITORIAL JURISDICTION.**

10 Section 1029 of title 18, United States Code, is
11 amended by adding at the end the following:

12 “(h) Any person who, outside the jurisdiction of the
13 United States, engages in any act that, if committed with-
14 in the jurisdiction of the United States, would constitute
15 an offense under subsection (a) or (b) of this section, shall
16 be subject to the fines, penalties, imprisonment, and for-
17 feiture provided in this title if

18 “(1) the offense involves an access device
19 issued, owned, managed, or controlled by a financial
20 institution, account issuer, credit card system mem-
21 ber, or other entity within the jurisdiction of the
22 United States; and

23 “(2) the person transports, delivers, conveys,
24 transfers to or through, or otherwise stores, secrets,
25 or holds within the jurisdiction of the United States,

1 any article used to assist in the commission of the
2 offense or the proceeds of such offense or property
3 derived therefrom.”.

4 **TITLE V—EMERGENCY**
5 **AUTHORIZATIONS**

6 **SEC. 501. OFFICE OF JUSTICE PROGRAMS.**

7 (a) In connection with the airplane hijackings and
8 terrorist acts (including, without limitation, any related
9 search, rescue, relief, assistance, or other similar activi-
10 ties) that occurred on September 11, 2001, in the United
11 States, amounts transferred to the Crime Victims Fund
12 from the Executive Office of the President or funds appro-
13 priated to the President shall not be subject to any limita-
14 tion on obligations from amounts deposited or available
15 in the Fund.

16 (b) Section 112 of title I of section 101(b) of division
17 A of Public Law 105 277 and section 108(a) of Appendix
18 A of Public Law 106 113 (113 Stat. 1501A 20) are
19 amended

20 (1) after “that Office”, each place it occurs, by
21 inserting “(including, notwithstanding any contrary
22 provision of law (unless the same should expressly
23 refer to this section), any organization that admin-
24 isters any program established in title 1 of Public
25 Law 90 351)”;

1 (2) by inserting “functions, including any”
2 after “all”.

3 (c) Section 1404B(b) of the Victim Compensation
4 and Assistance Act is amended after “programs” by in-
5 serting “, to victim service organizations, to public agen-
6 cies (including Federal, State, or local governments), and
7 to non-governmental organizations that provide assistance
8 to victims of crime,”.

9 (d) Section 1 of Public Law 107-37 is amended

10 (1) by inserting “(containing identification of
11 all eligible payees of benefits under section 1201)”
12 before “by a”;

13 (2) by inserting “producing permanent and
14 total disability” after “suffered a catastrophic in-
15 jury”; and

16 (3) by striking “1201(a)” and inserting
17 “1201”.

18 **SEC. 502. ATTORNEY GENERAL’S AUTHORITY TO PAY RE-**
19 **WARDS.**

20 (a) IN GENERAL. Title 18, United States Code, is
21 amended by striking sections 3059 through 3059B and
22 inserting the following:

23 **“§ 3059. Rewards and appropriation therefor**

24 “(a) IN GENERAL. Subject to subsection (b), the
25 Attorney General may pay rewards in accordance with

1 procedures and regulations established or issued by the
2 Attorney General.

3 “(b) LIMITATIONS. The following limitations apply
4 with respect to awards under subsection (a):

5 “(1) No such reward, other than in connection
6 with a terrorism offense or as otherwise specifically
7 provided by law, shall exceed \$2,000,000.

8 “(2) No such reward of \$250,000 or more may
9 be made or offered without the personal approval of
10 either the Attorney General or the President.

11 “(3) The Attorney General shall give written
12 notice to the Chairmen and ranking minority mem-
13 bers of the Committees on Appropriations and the
14 Judiciary of the Senate and the House of Represent-
15 atives not later than 30 days after the approval of
16 a reward under paragraph (2);

17 “(4) Any executive agency or military depart-
18 ment (as defined, respectively, in sections 105 and
19 102 of title 5) may provide the Attorney General
20 with funds for the payment of rewards.

21 “(5) Neither the failure to make or authorize
22 such a reward nor the amount of any such reward
23 made or authorized shall be subject to judicial re-
24 view.

1 “(c) DEFINITION. In this section, the term ‘reward’
2 means a payment pursuant to public advertisements for
3 assistance to the Department of Justice.”.

4 (b) CONFORMING AMENDMENTS.

5 (1) Section 3075 of title 18, United States
6 Code, and that portion of section 3072 of title 18,
7 United States Code, that follows the first sentence,
8 are repealed.

9 ((2) Public Law 101 647 is amended

10 (A) in section 2565

11 (i) by striking all the matter after
12 “title,” in subsection (c)(1) and inserting
13 “the Attorney General may, in the Attor-
14 ney General’s discretion, pay a reward to
15 the declaring.”; and

16 (ii) by striking subsection (e); and

17 (C) by striking section 2569.

18 **SEC. 503. LIMITED AUTHORITY TO PAY OVERTIME.**

19 The matter under the headings “Immigration And
20 Naturalization Service: Salaries and Expenses, Enforce-
21 ment And Border Affairs and Immigration And Natu-
22 ralization Service: Salaries and Expenses, Citizenship And
23 Benefits, Immigration And Program Direction” in the De-
24 partment of Justice Appropriations Act, 2001 (as enacted
25 into law by Appendix B (H.R. 5548) of Public Law 106

1 553 (114 Stat. 2762A 58 to 2762A 59)) is amended by
2 striking the following each place it occurs: “*Provided, That*
3 none of the funds available to the Immigration and Natu-
4 ralization Service shall be available to pay any employee
5 overtime pay in an amount in excess of \$30,000 during
6 the calendar year beginning January 1, 2001:”.

7 **SEC. 504. DEPARTMENT OF STATE REWARD AUTHORITY.**

8 (a) CHANGES IN REWARD AUTHORITY. Section 36
9 of the State Department Basic Authorities Act of 1956
10 (22 U.S.C. 2708) is amended

11 (1) in subsection (b)

12 (A) by striking “or” at the end of para-
13 graph (4);

14 (B) by striking the period at the end of
15 paragraph (5) and inserting “, including by dis-
16 mantling an organization in whole or significant
17 part; or”; and

18 (C) by adding at the end the following new
19 paragraph:

20 “(6) the identification or location of an indi-
21 vidual who holds a leadership position in a terrorist
22 organization.”;

23 (2) in subsection (d), by striking paragraphs
24 (2) and (3) and redesignating paragraph (4) as
25 paragraph (2); and

1 (3) by amending subsection (e)(1) to read as
2 follows:

3 “(1) AMOUNT OF AWARD.

4 “(A) Except as provided in subparagraph
5 (B), no reward paid under this section may ex-
6 ceed \$10,000,000.

7 “(B) The Secretary of State may authorize the
8 payment of an award not to exceed \$25,000,000 if
9 the Secretary determines that payment of an award
10 exceeding the amount under subparagraph (A) is im-
11 portant to the national interest of the United
12 States.”.

13 (b) SENSE OF CONGRESS REGARDING REWARDS RE-
14 LATING TO THE SEPTEMBER 11, 2001 ATTACK. It is the
15 sense of the Congress that the Secretary of State should
16 use the authority of section 36 of the State Department
17 Basic Authorities Act of 1956, as amended by subsection
18 (a), to offer a reward of \$25,000,000 for Osama bin
19 Laden and other leaders of the September 11, 2001 attack
20 on the United States.

1 **TITLE VI—DAM SECURITY**

2 **SEC. 601. SECURITY OF RECLAMATION DAMS, FACILITIES,**
3 **AND RESOURCES.**

4 Section 2805(a) of the Reclamation Recreation Man-
5 agement Act of 1992 (16 U.S.C. 460l 33(a)) is amended
6 by adding at the end the following:

7 “(3) Any person who violates any such regulation
8 which is lawfully issued pursuant to this Act shall be fined
9 under title 18, United States Code, imprisoned not more
10 than 6 months, or both. Any person charged with a viola-
11 tion of such regulation may be tried and sentenced by any
12 United States magistrate judge designated for that pur-
13 pose by the court by which he was appointed, in the same
14 manner and subject to the same conditions and limitations
15 as provided for in section 3401 of title 18, United States
16 Code.

17 “(4) The Secretary may

18 “(A) authorize law enforcement personnel from
19 the Department of the Interior to act as law enforce-
20 ment officers to maintain law and order and protect
21 persons and property within a Reclamation project
22 or on Reclamation lands;

23 “(B) authorize law enforcement personnel of
24 any other Federal agency that has law enforcement
25 authority, with the exception of the Department of

1 Defense, or law enforcement personnel of any State
2 or local government, including Indian tribes, when
3 deemed economical and in the public interest, and
4 with the concurrence of that agency or that State or
5 local government, to act as law enforcement officers
6 within a Reclamation project or on Reclamation
7 lands with such enforcement powers as may be so
8 assigned them by the Secretary to carry out the reg-
9 ulations promulgated under paragraph (2);

10 “(C) cooperate with any State or local govern-
11 ment, including Indian tribes, in the enforcement of
12 the laws or ordinances of that State or subdivision;
13 and

14 “(D) provide reimbursement to a State or local
15 government, including Indian tribes, for expendi-
16 tures incurred in connection with activities under
17 subparagraph (B).

18 “(5) Officers or employees designated or authorized
19 by the Secretary under paragraph (4) are authorized to

20 “(A) carry firearms within a Reclamation
21 project or on Reclamation lands and make arrests
22 without warrants for any offense against the United
23 States committed in their presence, or for any felony
24 cognizable under the laws of the United States if
25 they have reasonable grounds to believe that the per-

1 son to be arrested has committed or is committing
2 such a felony, and if such arrests occur within a
3 Reclamation project or on Reclamation lands or the
4 person to be arrested is fleeing therefrom to avoid
5 arrest;

6 “(B) execute within a Reclamation project or
7 on Reclamation lands any warrant or other process
8 issued by a court or officer of competent jurisdiction
9 for the enforcement of the provisions of any Federal
10 law or regulation issued pursuant to law for an of-
11 fense committed within a Reclamation project or on
12 Reclamation lands; and

13 “(C) conduct investigations within a Reclama-
14 tion project or on Reclamation lands of offenses
15 against the United States committed within a Rec-
16 lamation project or on Reclamation lands in the ab-
17 sence of investigation thereof by any other Federal
18 law enforcement agency having investigative jurisdic-
19 tion over the offense committed or with the concur-
20 rence of such other agency.

21 “(6)(A) Except as otherwise provided in this para-
22 graph, a law enforcement officer of any State or local gov-
23 ernment, including Indian tribes, designated to act as a
24 law enforcement officer under paragraph (4) shall not be
25 deemed a Federal employee and shall not be subject to

1 the provisions of law relating to Federal employment, in-
2 cluding, but not limited to, those relating to hours of work,
3 rates of compensation, leave, unemployment compensa-
4 tion, and Federal benefits.

5 “(B) For purposes of chapter 171 of title 28, United
6 States Code, popularly known as the Federal Tort Claims
7 Act, a law enforcement officer of any State or local govern-
8 ment, including Indian tribes, shall, when acting as a des-
9 ignated law enforcement officer under paragraph (4) and
10 while under Federal supervision and control, and only
11 when carrying out Federal law enforcement responsibil-
12 ities, be considered a Federal employee.

13 “(C) For purposes of subchapter I of chapter 81 of
14 title 5, United States Code, relating to compensation to
15 Federal employees for work injuries, a law enforcement
16 officer of any State or local government, including Indian
17 tribes, shall, when acting as a designated law enforcement
18 officer under paragraph (4) and while under Federal su-
19 pervision and control, and only when carrying out Federal
20 law enforcement responsibilities, be deemed a civil service
21 employee of the United States within the meaning of the
22 term ‘employee’ as defined in section 8101 of title 5, and
23 the provisions of that subchapter shall apply. Benefits
24 under this subchapter shall be reduced by the amount of

1 any entitlement to State or local workers' compensation
2 benefits arising out of the same injury or death.

3 “(7) Nothing in paragraphs (3) through (9) shall be
4 construed or applied to limit or restrict the investigative
5 jurisdiction of any Federal law enforcement agency, or to
6 affect any existing right of a State or local government,
7 including Indian tribes, to exercise civil and criminal juris-
8 diction within a Reclamation project or on Reclamation
9 lands.

10 “(8) For the purposes of this subsection, the term
11 ‘law enforcement personnel’ means employees of a Fed-
12 eral, State, or local government agency, including an In-
13 dian tribal agency, who have successfully completed law
14 enforcement training and are authorized to carry firearms,
15 make arrests, and execute services of process to enforce
16 criminal laws of their employing jurisdiction.

17 “(9) The law enforcement authorities provided for in
18 this subsection may be exercised only pursuant to rules
19 and regulations promulgated by the Secretary and ap-
20 proved by the Attorney General.”.

21 **TITLE VII—MISCELLANEOUS**

22 **SEC. 701. EMPLOYMENT OF TRANSLATORS BY THE FED-** 23 **ERAL BUREAU OF INVESTIGATION.**

24 (a) **AUTHORITY.** The Director of the Federal Bu-
25 reau of Investigation is authorized to expedite the employ-

1 ment of personnel as translators to support
2 counterterrorism investigations and operations without re-
3 gard to applicable Federal personnel requirements and
4 limitations.

5 (b) SECURITY REQUIREMENTS. The Director of the
6 Federal Bureau of Investigation shall establish such secu-
7 rity requirements as are necessary for the personnel em-
8 ployed as translators.

9 (c) REPORT. The Attorney General shall report to
10 the Committees on the Judiciary of the House of Rep-
11 resentatives and the Senate on

12 (1) the number of translators employed by the
13 FBI and other components of the Department of
14 Justice;

15 (2) any legal or practical impediments to using
16 translators employed by other Federal State, or local
17 agencies, on a full, part-time, or shared basis; and

18 (3) the needs of the FBI for specific translation
19 services in certain languages, and recommendations
20 for meeting those needs.

21 **SEC. 702. REVIEW OF THE DEPARTMENT OF JUSTICE.**

22 (a) APPOINTMENT OF DEPUTY INSPECTOR GENERAL
23 FOR CIVIL RIGHTS, CIVIL LIBERTIES, AND THE FEDERAL
24 BUREAU OF INVESTIGATION. The Inspector General of
25 the Department of Justice shall appoint a Deputy Inspec-

1 tor General for Civil Rights, Civil Liberties, and the Fed-
2 eral Bureau of Investigation (hereinafter in this section
3 referred to as the “Deputy”).

4 (b) CIVIL RIGHTS AND CIVIL LIBERTIES REVIEW.

5 The Deputy shall

6 (1) review information alleging abuses of civil
7 rights, civil liberties, and racial and ethnic profiling
8 by government employees and officials including em-
9 ployees and officials of the Department of Justice;

10 (2) make public through the Internet, radio, tel-
11 evision, and newspaper advertisements information
12 on the responsibilities and functions of, and how to
13 contact, the Deputy; and

14 (3) submit to the Committee on the Judiciary
15 of the House of Representatives and the Committee
16 on the Judiciary of the Senate on a semi-annual
17 basis a report on the implementation of this sub-
18 section and detailing any abuses described in para-
19 graph (1), including a description of the use of
20 funds appropriations used to carry out this sub-
21 section.

22 (c) INSPECTOR GENERAL OVERSIGHT PLAN FOR THE
23 FEDERAL BUREAU OF INVESTIGATION. Not later than
24 30 days after the date of the enactment of this Act, the
25 Inspector General of the Department of Justice shall sub-

1 mit to the Congress a plan for oversight of the Federal
2 Bureau of Investigation. The Inspector General shall con-
3 sider the following activities for inclusion in such plan:

4 (1) FINANCIAL SYSTEMS. Auditing the finan-
5 cial systems, information technology systems, and
6 computer security systems of the Federal Bureau of
7 Investigation.

8 (2) PROGRAMS AND PROCESSES. Auditing and
9 evaluating programs and processes of the Federal
10 Bureau of Investigation to identify systemic weak-
11 nesses or implementation failures and to recommend
12 corrective action.

13 (3) INTERNAL AFFAIRS OFFICES. Reviewing
14 the activities of internal affairs offices of the Federal
15 Bureau of Investigation, including the Inspections
16 Division and the Office of Professional Responsi-
17 bility.

18 (4) PERSONNEL. Investigating allegations of
19 serious misconduct by personnel of the Federal Bu-
20 reau of Investigation.

21 (5) OTHER PROGRAMS AND OPERATIONS. Re-
22 viewing matters relating to any other program or
23 and operation of the Federal Bureau of Investiga-
24 tion that the Inspector General determines requires
25 review.

1 (6) RESOURCES. Identifying resources needed
2 by the Inspector General to implement such plan.

3 (d) REVIEW OF INVESTIGATIVE TOOLS. Not later
4 than August 31, 2003, the Deputy shall review the imple-
5 mentation, use, and operation (including the impact on
6 civil rights and liberties) of the law enforcement and intel-
7 ligence authorities contained in title I of this Act and pro-
8 vide a report to the President and Congress.

Surgeon general warning: Bipartisanship can cause a severe case of indigestion.

<<MDB_950.PDF>>

Dinh, Viet

From: Dinh, Viet
Sent: Monday, October 1, 2001 12:08 PM
To: Burton, Dawn; Newstead, Jennifer
Cc: O'Brien, Pat; 'Brett_M._Kavanaugh@who.eop.gov';
'Courtney_S._Elwood@who.eop.gov'
Subject: RE: Immigration provisions in Admin bill...

We have not seen language from House. They are proposing a new 236A with seven days. (b) (5)

[REDACTED]

-----Original Message-----

From: Burton, Dawn
Sent: Monday, October 01, 2001 11:22 AM
To: Dinh, Viet; Newstead, Jennifer
Cc: O'Brien, Pat
Subject: Immigration provisions in Admin bill...

I am trying to find out the most recent state-of-play with the hill on Title II of the Admin bill.

I understand that OLP has had some conversations with House staff, and possibly Senate, on section 202 and 203. In particular (b) (5)

[REDACTED]

[REDACTED]

thanks, dawn.

Dinh, Viet

From: Dinh, Viet
Sent: Monday, October 1, 2001 12:05 PM
To: Elwood, John; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: McDade in the House?

As I understand it, there is no McDade fix in the House. (b) (5)
(b) (5) and Leahy proposed that it be included in the Senate bill.

-----Original Message-----

From: John Elwood
Sent: Monday, October 01, 2001 10:06 AM
To: Brett_M._Kavanaugh@who.eop.gov; Dinh, Viet
Subject: McDade in the House?

Date: 10/01/2001 10:15 am -0400 (Monday)
From: John Elwood
To: Brett_M._Kavanaugh@who.eop.gov; Viet Dinh
Subject: McDade in the House?

What's the status of the McDade fix in the House? (b) (5)

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Monday, October 1, 2001 9:25 AM
To: Dinh, Viet; Courtney_S._Elwood@who.eop.gov;
Alberto_R._Gonzales@who.eop.gov; Timothy_E._Flanigan@who.eop.gov;
Nancy_P._Dorn@who.eop.gov; Heather_Wingate@who.eop.gov;
Elizabeth_N._Camp@who.eop.gov; Kristen_Silverberg@who.eop.gov;
Robert_Marsh@who.eop.gov; Daniel_J._Keniry@who.eop.gov
Subject: Anti-Terrorism: Sensenbrenner/Conyers agreement

Not sure if this is public yet, but Jay Apperson on House Judiciary staff (Repub.) reports that Conyers agreed last night to co-sponsor Sensenbrenner's bill. (b) (5) We should see the bill this evening.

Jays says the contents will be as was last reported to us. (b) (5)

(b) (5)

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Friday, September 28, 2001 6:04 PM
To: Bryant, Dan
Cc: Thorsen, Carl; Newstead, Jennifer; O'Brien, Patrick; Dinh, Viet
Subject: RE: 5018
Attachments: pic26155.pcx

(b) (5)

(Embedded
image moved "Bryant, Dan" <Dan.Bryant@usdoj.gov>
to file: 09/28/2001 05:34:14 PM
pic26155.pcx)

Record Type: Record

To: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested), "Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested)

cc: See the distribution list at the bottom of this message Subject: RE: 5018

I just got off the phone with Steve Pinkos (HJC), and he said, sheepishly, that sections 2 and 3 of H.R.
5018 are NOT off the table yet. (b) (5)

(b) (5)

-----Original Message-----

From: Dinh, Viet
Sent: Friday, September 28, 2001 11:13 AM
To: 'jay.apperson@mail.house.gov'; 'will.moschella@mail.house.gov'
Cc: Bryant, Dan; Thorsen, Carl; O'Brien, Patrick; Newstead, Jennifer; Elwood,
John; Downing, Richard; 'Brett_M._Kavanaugh@who.eop.gov'; Dinh, Viet;
Stansell-Gamm, Martha; Painter, Christopher
Subject: 5018

007104-003153

Dear Will and Jay,

Consistent with my voice mail to Will this morning, please find enclosed our objection to inclusion of section 2 and 3 of H.R. 5018 into the package. Aside from the merits, as outlined in the memo, inclusion would engender significant opposition from law-enforcement and victims rights groups (as 5018 earlier experienced) and I fear may jeopardize smooth passage of the package. Thanks, and I will get you our reaction on the Frank amendment ASAP.

best,

Viet

<< File: ATA - HR 5018 amendments explanation.wpd >>

Message Copied To: _____

"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"O'Brien, Patrick" <Patrick.O'Brien2@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Elwood, John" <John.Elwood@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Downing, Richard" <Richard.Downing@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Brett M. Kavanaugh/WHO/EOP@EOP
"Stansell-Gamm, Martha" <Martha.Stansell-Gamm@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Painter, Christopher" <Christopher.Painter@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

Dinh, Viet

From: Dinh, Viet
Sent: Friday, September 28, 2001 5:49 PM
To: Richmond, Susan; Bryant, Dan; Thorsen, Carl
Cc: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: LEGISLATION

Thanks, (b) (5)

(b) (5)

-----Original Message-----

From: Richmond, Susan
Sent: Friday, September 28, 2001 5:42 PM
To: Dinh, Viet; Bryant, Dan; Thorsen, Carl
Subject: FW: LEGISLATION
Importance: High

FYI

-----Original Message-----

From: David_W._James@who.eop.gov [mailto:David_W._James@who.eop.gov]
Sent: Friday, September 28, 2001 12:34 PM
To: Israelite, David; Dryden, Susan; Richmond, Susan
Subject: LEGISLATION

Per our morning conference call, those in the WH Counsel's office and the WH Press Office would very much like it if (b) (5)

(b) (5)

I wasn't sure who to send this too, so I'm hoping that one of you can make use of this information.
Thanks, -d.j.

007104-003155

Dinh, Viet

From: Dinh, Viet
Sent: Friday, September 28, 2001 5:41 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: forward me that e-mail

I already did, but here goes a gain.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, September 28, 2001 5:35 PM
To: Dinh, Viet
Subject: forward me that e-mail

007104-003156

Dinh, Viet

From: Dinh, Viet
Sent: Friday, September 28, 2001 4:44 PM
To: Bryant, Dan; Elwood, John; Levey, Stuart; Thorsen, Carl; Newstead, Jennifer; O'Brien, Patrick; 'Courtney_S._Elwood@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: LIMITED CIRCULATION: Current House Positions

As I understand it, here's where we stand in House Judiciary:



Karp, David J

From: Karp, David J
Sent: Friday, September 28, 2001 12:37 PM
To: Dinh, Viet; 'Courtney_S._Elwood@who.eop.gov'
Cc: Newstead, Jennifer; Elwood, John; 'Brett_M._Kavanaugh@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: New Death Penalties

In the spirit of constructive dialogue, I am writing to suggest (b) (5)

(b) (5)

There are two types of cases to consider:

(b) (5)



-----Original Message-----

From: Dinh, Viet

Sent: Friday, September 28, 2001 9:14 AM

To: 'Courtney_S._Elwood@who.eop.gov'

Cc: Karp, David J; Newstead, Jennifer; Elwood, John;

'Brett_M._Kavanaugh@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'

Subject: RE: New Death Penalties

Yes.

-----Original Message-----

From: Courtney_S._Elwood@who.eop.gov

[mailto:Courtney_S._Elwood@who.eop.gov]

Sent: Friday, September 28, 2001 9:12 AM

To: Dinh, Viet

Cc: Karp, David J; Newstead, Jennifer; Elwood, John;

Brett_M._Kavanaugh@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov

Subject: RE: New Death Penalties

Is that something DOJ is willing to accept?

(Embedded

image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>

to file: 09/28/2001 08:57:28 AM

pic24258.pcx)

Record Type: Record

007104-003159

To: See the distribution list at the bottom of this message

cc:

Subject: RE: New Death Penalties

I agree with you, John. Please note that, (b) (5)

(b) (5)

-----Original Message-----

From: John Elwood

Sent: Friday, September 28, 2001 8:45 AM

To: Brett_M._Kavanaugh@who.eop.gov; Courtney_S._Elwood@who.eop.gov;
Karp, David J; Newstead, Jennifer; Dinh, Viet

Subject: New Death Penalties

Date: 09/28/2001 08:54 am -0400 (Friday) From: John Elwood To: Brett_M._Kavanaugh@who.eop.gov;
Courtney_s._elwood@who.eop.gov;

David Karp; Jennifer Newstead; Viet Dinh Subject: New Death Penalties

All:

Yesterday I received via someone in OLA questions from Sampak Garg of the House Judiciary
Committee staff. One of Garg's questions was "are there any new death penalties, in any sense of the
word." (b) (5)

(b) (5)

(b) (5)

Message Sent To: _____

"Karp, David J" <David.J.Karp@usdoj.gov> (Receipt Notification
Requested)

"Karp, David J" <David.J.Karp@usdoj.gov> (Receipt Notification
Requested)

"Newstead, Jenniter" <Jenniter.Newstead@usdoj.gov> (Receipt Notification Requested)

"Elwood, John" <John.Elwood@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

Brett M. Kavanaugh/WHO/EOP@EOP

Courtney S. Elwood/WHO/EOP@EOP

Schauder, Andrew

From: Schauder, Andrew
Sent: Thursday, September 27, 2001 6:17 PM
To: Newstead, Jennifer; Ciongoli, Adam;
'Bradford_A._Berenson@who.eop.gov%inetgw';
'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan;
'Heather_Wingate@who.eop.gov'; Ullman, Kristen A; Long, Linda E; Benedi,
Lizette D; Rabjohns, Lori; Day, Lori Sharpe;
'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick
O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw';
'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet;
'Ziad_S._Ojakli@who.eop.gov%inetgw'; Carroll, James W (OLP)
Subject: judicial media review
Attachments: Judicial Media Review 9-27-01.wpd

[Please see attached review](#)

Media Review - Judicial Nominations

Thursday, September 27, 2001

General Judicial Articles

"Bush Taps Columbus Lawyer for U.S. Bench"

Janet Conley, *American Lawyer Media*, September 25, 2001 [1](#)

Op/Eds

NONE

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

[General Judicial Articles](#)

Bush Taps Columbus Lawyer for U.S. Bench

By Janet Conley

American Lawyer Media

Tuesday, September 25, 2001

President George W. Bush has nominated former State Sen. Clay D. Land to serve as a U.S. District judge for the Middle District of Georgia.

Land says a White House aide informed him Friday afternoon that his nomination had been sent to the Senate. If approved, he will replace Judge J. Robert Elliott, who retired in December. Land, 41, is a 1985 graduate of the University of Georgia's law school and has had a civil litigation practice with Buchanan & Land in Columbus since 1992. He also has a long history of public service including chairmanship of the Georgia Indigent Defense Council and a stint as a Columbus city councilor.

Between 1995 and 2000, he was a Republican senator from Columbus and served on the Senate Judiciary Committee.

One bill he successfully defeated last year, and his argument in opposition to it, has an uncanny resonance today. The legislation, designed to discourage racial profiling, would have prevented officers from stopping drivers unless they had "articulable facts" not based on race or ethnicity, that the driver violated the law.

Land, at the time, argued that if law enforcement learned of a possible Middle East terrorist plot against the United States, that information could not be sent over a police radio under the bill. (Daily Report, April 4, 2000)

After three terms in the Legislature, Land decided not to run again, saying he wanted to spend more time with his three young children.

In a frank farewell speech to the Senate, excerpted in the Atlanta Journal-Constitution, he said, "I will not miss decisions made solely for political reasons instead of what is the right thing to do," citing the Legislature's refusal at that time to change the state flag and its unwillingness to hold adults responsible for their children obtaining handguns.

Now, says Land of his judicial nomination, "I think there's a relief in that the position is not partisan. I think that is reassuring."

Dinh, Viet

From: Dinh, Viet
Sent: Monday, September 24, 2001 6:35 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Miller, Brian D.
Subject: RE: FOIA letter

Darn it, I was hoping to sneak it out without having to discuss it with you!! just kiddding. Let's chat first thing tomorrow--(b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, September 24, 2001 3:53 PM
To: Miller, Brian D.; Dinh, Viet
Subject: FOIA letter

This goes without saying, but we need to make sure we discuss the FOIA letter, including my proposed revision, before anything final is sent out.
Thanks.

007104-003165

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Monday, September 24, 2001 1:19 PM
To: Miller, Brian D.; Dinh, Viet
Subject: FOIA letter
Attachments: foialetter.draft2.doc

suggested edits on the attached draft are designed to (b) (5)
(b) (5) let me know your thoughts(See attached file: foialetter.draft2.doc)

Dinh, Viet

From: Dinh, Viet
Sent: Sunday, September 23, 2001 2:45 PM
To: Dinh, Viet; Newstead, Jennifer; 'Timothy_E._Flanigan@who.eop.gov';
'Alberto_R._Gonzales@who.eop.gov'; 'Noel_J._Francisco@who.eop.gov';
'Rachel_L._Brand@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov';
'Helgard_C._Walker@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
Koebele, Steve; Ullman, Kristen A; Carroll III, James; Coniglio, Peter J; Suit, Neal
Subject: RE: Letter to ABA
Attachments: trimmier 2.wpd

-----Original Message-----

From: Dinh, Viet
Sent: Sunday, September 23, 2001 2:45 PM
To: Newstead, Jennifer; Dinh, Viet; 'Timothy E. Flanigan@who.eop.gov'; 'Alberto R. Gonzales@who.eop.gov';
'Noel J. Francisco@who.eop.gov'; 'Rachel L. Brand@who.eop.gov'; 'Courtney S. Elwood@who.eop.gov';
'Helgard C. Walker@who.eop.gov'; 'Brett M. Kavanaugh@who.eop.gov'; Koebele, Steve; Ullman, Kristen A;
Carroll III, James; Coniglio, Peter J; Suit, Neal
Subject: Letter to ABA

Please see attached a draft letter to the ABA on Paul Cassell. Comments and suggestions greatly appreciated.

Schauder, Andrew

From: Schauder, Andrew
Sent: Thursday, September 20, 2001 7:09 PM
To: Newstead, Jennifer; Ciongoli, Adam;
'Bradford_A._Berenson@who.eop.gov%inetgw';
'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan;
'Heather_Wingate@who.eop.gov'; Ullman, Kristen A; Long, Linda E; Benedi,
Lizette D; Rabjohns, Lori; Day, Lori Sharpe;
'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick
O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw';
'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet;
'Ziad_S._Ojakli@who.eop.gov%inetgw'; Carroll, James W (OLP)
Subject: judicial media review
Attachments: Judicial Media Review 9-20-01.wpd

[Please see attached review](#)

Media Review - Judicial Nominations

Thursday, September 20, 2001

General Judicial Articles

"New Federal Judge Officially Gets His Robes," [1](#)
Joseph Morton, *Omaha World-Herald*, September 19, 2001

"Grassley Urges Action on Nominees," [2](#)
The Associated Press, September 20, 2001

"Bush's Dilemma; Will Fighting Abroad Mean Losing at Home," [2](#)
The National Review, September 19, 2001

Op/Eds

NONE

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

[General Judicial Articles](#)

New Federal Judge Officially Gets His Robes

By [Joseph Morton](#)
Omaha World-Herald
Wednesday, September 19, 2001

Judges, attorneys and lawmakers Tuesday celebrated the newest member of the 8th U.S. Circuit Court of Appeals.

Several hundred people attended a formal investiture ceremony for William Riley, an Omaha attorney. Riley, 54, was privately sworn into office a month ago and has been working since then.

Tuesday's ceremony at the Roman L. Hruska Federal Courthouse in Omaha was a formal recognition of Riley's appointment and a chance for friends to indulge in some good-natured ribbing and for everyone to reflect on the importance of the court system.

Riley's nomination to the bench sailed through the U.S. Senate with bipartisan support from Democratic Sen. Ben Nelson and Republican Sen. Chuck Hagel. Both attended Tuesday's

ceremony, as did many federal and state judges, prominent attorneys and local politicians.

Last week's terrorist attacks in New York and Washington were on everyone's mind.

Federal appeals Judge Donald Lay was supposed to publicly administer the oath of office to Riley on Tuesday, but he has been stranded in Europe since the attacks. Judge Roger Wollman of Sioux Falls, S.D., chief judge of the 8th Circuit, did the honors.

Riley, a Lincoln native, was working in Omaha before his nomination to the federal bench.

Grassley Urges Action on Nominees

By Joseph Morton

The Associated Press

Thursday, September 20, 2001

Sen. Charles Grassley, R-Iowa, has urged prompt action by the Senate to confirm nominees for U.S. marshals, U.S. attorneys and federal judges.

Grassley said filling these jobs are another key component to defeat terrorism. "Last week's attacks have burdened our law enforcement and judicial resources," he said in a statement Tuesday. "We need to have everyone on the job and fully equipped to enhance our security, to investigate and to bring to justice those responsible for the heinous attacks last week."

Four Iowans are awaiting confirmation to federal posts. They are:

- Charles Larson Sr., of Cedar Rapids, U.S. Attorney for the Northern District of Iowa;
- Steve Colloton, of Des Moines, U.S. Attorney for the Southern District of Iowa;
- James Gritzner, of West Des Moines, U.S. District Court, Southern District of Iowa;
- U.S. District Judge Michael Melloy, of Cedar Rapids, Eighth Circuit Court of Appeals.

Bush's Dilemma; Will Fighting Abroad Mean Losing at Home?

By Byron York

The National Review

Wednesday, September 19, 2001

Want to see how last week's terrorist attacks are affecting everything in Washington? Just look at the Bush administration's ongoing struggle to place judges on the federal bench.

According to the Justice Department, there are 108 vacancies on the federal courts. There are 53

Bush judicial nominations pending before the Senate. And four judges have actually been confirmed. Republicans had hoped perhaps naively that slow-moving Senate Judiciary Committee chairman Patrick Leahy might allow a significant number of nominations to go through this fall. But now, with members of Congress focused on issues like antiterrorism, airline bailouts, and economic stimulus and anxious to finish their work and head home there's little chance that will happen.

The rush to adjourn might deprive Republicans of a key weapon in the battle over judges. During the Clinton years, when Senate Democrats were in the minority, they were adept at holding up appropriations bills while demanding that Republicans approve the president's judicial nominations. It

usually worked. This fall, minority Republicans had been planning to do the same thing as Congress worked its way through the 13 spending bills that must be passed to keep government departments running. But now, with all the other issues to consider, there is talk that, rather than debate each

bill separately, Congress might combine all or most of them into an omnibus spending measure. That would mean greatly reduced bargaining power for Republicans. "If that happens, we lose leverage," says one aide. "It's really bad."

Further complicating matters is the White House's understandable focus on the terrorist crisis. The counsel's office, which handles judicial nominations, has new legal issues war powers, assassinations, etc. to consider as the president decides what actions to take against world terrorist networks. That will inevitably mean less emphasis on judges.

It's an enormous change from just two weeks ago. On September 6, at a meeting between Bush and congressional leaders, Republicans urged the president to take a get-tough stance with Leahy on the issue of judges. "If this continues to get worse, the White House is going to have to use the bully

pulpit to protect their nominees," Republican Sen. Jeff Sessions told Roll Call, the Capitol Hill newspaper. That was then. Now, the bully pulpit is reserved for the war on terrorism, and judges will have to wait.

The situation underscores a new dilemma for Bush. Devoting every ounce of his administration's energy to the antiterrorism campaign might be the right thing to do, but it might also mean losing control of important parts of his domestic agenda. Even as his popularity rises to new heights, Bush might find himself with less influence on critical issues like judges. When the president said, the day after the attacks, that there would be no "business as usual," he was right more so than anyone could have known.

Schauder, Andrew

From: Schauder, Andrew
Sent: Monday, September 17, 2001 5:52 PM
To: Newstead, Jennifer; Ciongoli, Adam;
'Bradford_A._Berenson@who.eop.gov%inetgw';
'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan;
'Heather_Wingate@who.eop.gov'; Ullman, Kristen A; Long, Linda E; Benedi,
Lizette D; Rabjohns, Lori; Day, Lori Sharpe;
'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick
O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw';
'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet;
'Ziad_S._Ojakli@who.eop.gov%inetgw'; Carroll, James W (OLP)
Subject: judicial media review
Attachments: Judicial Media Review 9-17-01.wpd

[Please see attached review](#)

Media Review - Judicial Nominations

Monday, September 17, 2001

General Judicial Articles

"Key Agency Nominees Will Receive Rapid Senate Action; Agreement Does Not Include Judicial Candidates,"

Paul Kane, *Roll Call*, September 17, 2001

Op/Eds

NONE

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

General Judicial Articles

Key Agency Nominees Will Receive Rapid Senate Action; Agreement Does Not Include Judicial Candidates

By Paul Kane

Roll Call

Monday, September 17, 2001

EXCERPT

Nickles said he has told Daschle that because of his assurances on nominations, there will be more Republican help on moving appropriations. That represents an about-face from the mood a week ago, when Senate Republicans were plotting to block spending bills to force votes on President Bush's agency and judicial nominees.

"There's more of a feeling of trying to help one another," Nickles said.

But that feeling is not expected to extend to judicial nominees, who serve lifetime appointments to the federal bench.

Judiciary Chairman Patrick Leahy (D-Vt.), who maintains that he is moving judicial nominees faster than Republicans did when they were in power, said he will continue at his current pace. And he said Senators who have specific nominees they really want to see get moved should speak directly to him.

"If Senators have a real problem, come and see me. ... I am moving nominees in good faith," Leahy said.

Republican Policy Committee Chairman Larry Craig (R-Idaho) agreed that the goodwill on agency nominations is "different" from lifetime positions on the federal bench, but predicted that judicial fights will not reach anywhere near the level of partisanship that had been building over the past few months.

Regardless of the pace that judicial nominations take, some Justice Department nominees have moved very quickly in recent days for positions that will be involved in the massive terrorist investigation. After Judiciary approved 12 nominees for U.S. attorney spots across the nation Thursday, the full Senate confirmed them the next day.

Schauder, Andrew

From: Schauder, Andrew
Sent: Thursday, September 13, 2001 6:07 PM
To: Newstead, Jennifer; Ciongoli, Adam;
'Bradford_A._Berenson@who.eop.gov%inetgw';
'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan;
'Heather_Wingate@who.eop.gov'; 'James Carroll'; Ullman, Kristen A; Long, Linda
E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe;
'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick
O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Googlein@who.eop.gov%inetgw';
'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet;
'Ziad_S._Ojakli@who.eop.gov%inetgw'
Subject: Judicial media review
Attachments: Judicial Media Review 9-13-01.wpd

[Today's media review is attached.](#)

Media Review - Judicial Nominations

Thursday, September 13, 2001

General Judicial Articles

"Bush Chooses 2 Federal Judges; Allard won't Block Colorado Picks," [1](#)
Bill McAllister, *The Denver Post*, September 11, 2001

"Bush Nominates Altoona Jurist for Appeals Court," [3](#)
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Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

General Judicial Articles

Bush Chooses 2 Federal Judges; Allard won't Block Colorado Picks

By [Bill McAllister](#)
The Denver Post
[Tuesday, September 11, 2001](#)

President Bush selected two Colorado Republicans on Monday from a bipartisan slate of nine judicial nominees for vacant seats on the U.S. District Court in Denver.

The appointments of Chief Bankruptcy Court Judge Marcia S. Krieger of Denver and state District Judge Robert E. Blackburn of Las Animas to the federal bench are among the most prized nominations a president can make. If confirmed by the Senate, the two will receive

lifetime appointments to the federal judiciary. Federal district judges are paid \$ 145,100 a year.

Bush's selections should end a three-year standoff between the White House and Sen. Wayne Allard, R-Loveland, over who should sit on the federal bench in Colorado.

Allard, who blocked President Bill Clinton's Democratic judicial nominees for Colorado, expressed relief with the White House action. 'President Bush could not have selected two more qualified individuals to serve on the federal bench,' Allard said.

He and Sen. Ben Nighthorse Campbell, R-Ignacio, called for quick confirmation of the nominees. 'The people of Colorado deserve to have these vacancies filled,' Allard said.

The selections also rebuffed a last-minute effort by Rep. Mark Udall, D-Boulder, to win one of the seats for Colorado Deputy Attorney General Christine Arguello. She had been one of three Democratic lawyers that Clinton failed to get confirmed to the federal bench in Colorado. Krieger, 47, would replace Daniel B. Sparr, who recently moved to senior judge status. A 1979 graduate of the University of Colorado School of Law, she has been a federal bankruptcy judge in Denver since 1994 and the chief bankruptcy judge since last year.

Krieger, who was on a list of five potential judges that Allard recommended to Clinton in 1999, is a Denver native and graduate of Lewis and Clark College. The nomination of Blackburn, 51, fills a position that has been vacant since 1998, when District Judge Zita L. Weinshienk moved to senior judge status. Blackburn was named to Colorado's 16th Judicial District Court bench in 1988 by Gov. Roy Romer, a Democrat.

A native of Lakewood, he, too, is a graduate of the University of Colorado law school, receiving his law degree in 1974. Blackburn received his undergraduate degree from Western State College and has served as Bent County attorney and municipal judge for the town of Kim. His current job has him holding court in the counties of Crowley, Otero and Bent.

'The White House seems to have given a preference to those who have existing judicial experience,' noted Phillip Figaf Englewood, one of the nine lawyers whose names were given to the White House by Allard and Campbell as potential judges.

The senators gave the White House the list in May, saying they were giving Bush nine names because there is a possibility that a third judgeship may become vacant. If U.S. District Judge Richard P. Matsch, until recently the chief judge of the Colorado district, elects to move to senior judge status, Bush could name his successor.

Bush Nominates Altoona Jurist for Appeals Court

By [Torsten Ove](#)
The Pittsburgh Post Gazette
Tuesday, September 11, 2001

President Bush yesterday nominated Chief U.S. District Judge D. Brooks Smith to the 3rd U.S. Circuit Court of Appeals.

Smith, 49, of Altoona, was entertaining a group of Russian judges yesterday and couldn't be reached, but he said through a secretary that it wouldn't be appropriate for him to comment until his nomination is confirmed by the U.S. Senate.

That confirmation could take several weeks. The nomination was anticipated for some time and greeted with praise for Smith by his colleagues in U.S. District Court and others who have worked with him.

"I was chief judge when Smith was appointed to this court [in 1988] and I've been impressed with his work ever since," said Senior U.S. District Judge Maurice B. Cohill Jr. "I think he will be a wonderful addition to the circuit court. He's a calm, deliberate guy, very intelligent."

Smith's good friend, state Sen. Robert Jubelirer, R-Altoona, said Bush could not have made a better choice.

"This is wonderful for the entire system," said Jubelirer. "Everyone can be proud that Bush has nominated one of the most outstanding judges in the country. He was the second-youngest federal judge when he was appointed by President Reagan in 1988. He'll be one of the youngest [appellate] judges in the country at 49. I've known him since he was 15, and I could have predicted this back then."

Judge William Standish offered his congratulations to Smith and said he hopes he does well in the new job.

Smith became chief judge of the district court in January, replacing Donald Ziegler, and sits in Pittsburgh and Johnstown.

He started his law career in Altoona with the firm Jubelirer, Carothers, Krier & Halpern, and later became a managing partner there. During his years in private practice, he also served as an assistant district attorney in Blair County and a special assistant attorney general of Pennsylvania. In the early 1980s, he helped lead a grand jury investigation into organized crime in Blair County.

After serving as district attorney from 1983 to 1984, he was appointed judge in Common Pleas Court in 1984 and was elected to a full term the next year. In 1987, he was appointed administrative judge of the court. Cohill said the nomination is good news for Smith and the 3rd Circuit, but not for the federal bench in Pittsburgh.

U.S. District Court here has been handling its caseload with three vacancies in the 10 full-time judgeships it is supposed to have. The problem appears likely to get worse if new judges aren't appointed soon.

In addition to Smith's likely departure, Ziegler will go on senior status next month and Standish has said he'll take senior status in March -- leaving six vacancies.

Bush Nominates 3 Arizona Judges for Federal Spots

By Sergio Bustos

Gannett News Service

Tuesday, September 11, 2001

The White House on Monday nominated three Arizonans to serve as federal judges, including Arizona Supreme Court Justice Frederick J. Martone and Pima County Superior Court Judge Cindy K. Jorgenson.

The other nominee was David C. Bury, 58, a partner in the Tucson law firm of Bury, Moeller, O'Meara & Gage. The three were among 10 nominations announced Monday.

Martone, 57, a former Maricopa County Superior Court judge, was appointed to the state Supreme Court in 1992 by former Republican Gov. Fife Symington. He graduated from the University of Notre Dame law school.

Jorgenson, 48, a University of Arizona College of Law graduate, has been a Superior Court judge in Pima County since 1996. Prior to her appointment, she worked as a deputy attorney for Pima County and as an assistant U.S. attorney in Tucson.

Bury, also a University of Arizona College of Law graduate, has been an attorney in private practice for 34 years.

The Senate must confirm all three, a process that could take several months. This year, the Senate has confirmed only four federal judges even though 108 vacancies exist nationwide.

Arizona's two Republican senators, Jon Kyl and John McCain, urged Congress to approve the nominations as soon as possible.

"Arizona needs these judges quickly," the senators said in a joint statement. "The courts are understaffed and overburdened."

The shortage of judges is especially acute in Southwest border states, where a crackdown on illegal immigration and drug smuggling has caused the criminal caseload in federal courts to skyrocket in recent years.

The two senators said they also recommended to Bush the following people as federal court nominees in Arizona: Neil Wake, David Campbell, both of Phoenix; and Judge Bernardo Velasco, Judge Chris Browning, Lina Rodriguez, and Chuck Sabalos, all of Tucson.

Op/Eds

A Case of the Judgeless Benches

By Lloyd Cutler and Mickey Edwards
The Washington Times
Wednesday, September 12, 2001

Long before the president's first list of nominees to the federal courts arrived in the Senate, Senate Republicans and Democrats and liberal and conservative organizations were already at their battle stations. And it appears they will remain there for the foreseeable future.

What used to be a fairly straightforward process - the nomination and confirmation of federal judges - has become more contested, acrimonious and time-consuming in recent years. According to research by the Constitution Project, the length of time from vacancy to confirmation has increased in every administration since President Ford's. It took the 105th Congress (1997-98) an average of 201 days to act on Clinton nominees. Consider that in 1922, when President Harding nominated George Sutherland, the Senate confirmed him within hours. In 1953, the Senate confirmed Earl Warren as chief justice without even questioning him. The reasons for the change are not that complex. The number of federal judges has increased. The federal courts have been called upon to decide controversial social issues in such areas as school prayer, abortion and affirmative action. This has, in turn, brought about increasing political pressure from interest groups that have proliferated dramatically in the last 20 years.

Two recent developments have further roiled partisan waters swirling around nominations. The first is the feeling of Democrats that Senate Republicans kept President Clinton's court nominees bottled up in committee, sometimes for years, for ideological reasons. Republicans reply that Mr. Clinton was slow in getting nominations to the Senate. Both are right. It is also true that when a Republican holds the White House and the Democrats hold the Senate majority, the Democrats hold up judicial confirmations in presidential election years.

If Democratic senators hold to the principle of "an eye for an eye" and the Republicans hold to an absolute and exclusive presidential right to choose federal judges, the result will be an accelerating cycle of stalemate and polarization. In this scenario, the courts themselves cannot avoid being painted with accusations of partisanship. That would corrode popular belief in impartial justice and hence respect for the law.

Options are open to both sides to defuse the situation. First, they could agree upon a few principles based upon the recommendations of the Constitution Project:

One, candidates for judgeships should be committed to deciding cases based upon law and the facts of the case and should renounce ideological commitments.

Two, candidates should be nominated and confirmed based upon experience, qualifications,

temperament, character and general views of the law and the judicial role.

Three, the president and the Senate must not ask for, and the candidate not offer or consent to give, any pre-commitments about unresolved cases or issues that may come before them as judges.

Four, all parties to the nomination and confirmation process should conduct themselves only in ways that reinforce the principle of judicial independence.

Five, diversity on the federal bench is consistent with judicial independence and should be a goal of the appointment process.

Six, the country is entitled to a viable and efficient federal court system. Candidates, therefore, should move through nomination, Senate hearings and floor vote expeditiously and fairly.

For the good of the country and the integrity of the courts, the president should seek the meaningful counsel of all parties before deciding on nominees. This he can certainly do without relinquishing his exclusive constitutional authority to nominate judicial candidates. For their part, Democrats should participate in such consultations with the sole condition that the nominee satisfy the broad judicial criteria enumerated above.

Finally, we would call upon various interest groups not to decide in advance that they will oppose or support all nominees that come from the White House. We should not demand pro-life or pro-choice judges but independent judges. We should not demand judges that are friendly to labor or business, but judges who are manifestly unbiased in either direction. We should not demand pro-environment or pro-development judges, but those who will look at the facts of the case and decide in favor of the law, the Constitution and thus all the people of the United States.

Above all, we should seek agreement on nominees who can win confirmation under the existing political conditions. Unwavering dedication to the principle of judicial independence should be the legacy of the Bush administration and the 107th Congress. The public interest demands no less.

Lloyd N. Cutler was White House counsel in the Carter and Clinton administrations. He co-chairs the Constitution Project's Courts Initiative. Mickey Edwards is a former Republican representative in the House from Oklahoma who teaches at Harvard University's John F. Kennedy School of Government.

Bush Taps 2 Judges

The Denver Post
Tuesday, September 11, 2001

The White House nominated two distinguished Colorado judges to the U.S. District Court

yesterday, and both will receive the full support of U.S. Sens. Wayne Allard and Ben Nighthorse Campbell.

President Bush's nominations, as predicted in these pages Aug. 12, recommend U.S. Chief Bankruptcy Judge Marsha Krieger and 16th Judicial District Judge Robert Blackburn for the bench. We are delighted by the White House decision. Both judges have extensive experience, solid knowledge of the law and a reputation for fairness. They are widely respected by other judges and by lawyers who have appeared before them.

Both should prove extremely helpful to the federal court in Colorado, which hasn't added a judge since 1984 despite increasingly complex and mushrooming caseloads.

We commend Republicans Allard and Campbell, as well as the White House, for pushing to fill these vacancies quickly. We also congratulate the senators for zeroing in on such highly qualified candidates.

Krieger, daughter of retired Colorado Court of Appeals Judge Don Smith, has served on the Bankruptcy Court since 1994 and was unanimously chosen by the federal judges to become chief bankruptcy judge in January 2000.

Blackburn has been one of two district judges serving Bent, Crowley and Otero counties since 1988, having previously served simultaneously as a deputy district attorney, Bent County attorney, and municipal judge and attorney for the town of Kim.

Both judges are graduates of the University of Colorado School of Law.

The next step calls for the Senate Judiciary Committee to send 'blue slips' to Colorado's senators. Allard and Campbell then will return the blue slips, signaling their approval of Krieger and Blackburn.

Next, the Judiciary Committee will independently investigate the candidates and vote on whether to approve them. The nominations then would be sent to the Senate floor, and approval there would result in 'judicial commissions' by the president.

The Senate process often drags on for months and months. We urge the committee and the full Senate to exercise all reasonable speed with the Krieger and Blackburn nominations. The long-overworked federal court of Colorado needs qualified new judges, and it needs them now.

Bradford_A._Berenson@who.eop.gov

From: Bradford_A._Berenson@who.eop.gov
Sent: Monday, September 10, 2001 10:21 AM
To: Rachel_L._Brand@who.eop.gov
Cc: Newstead, Jennifer; Dinh, Viet; Noel_J._Francisco@who.eop.gov; Bradford_A._Berenson@who.eop.gov; Rachel_L._Brand@who.eop.gov; Courtney_S._Elwood@who.eop.gov; Helgard_C._Walker@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov; /DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
Subject: Re: Tymkovich ABA rating
Attachments: pic16933.pcx

(b) (5)

Rachel L. Brand 09/10/2001 10:11:57 AM
(Embedded image moved to file: pic16933.pcx)

Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message bcc:
Subject: Re: Tymkovich ABA rating (Document link: Bradford A. Berenson)

(b) (5)

Noel J. Francisco
09/10/2001 10:10:09 AM

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message bcc:
Subject: Re: Tymkovich ABA rating (Document link: Rachel L. Brand)

(b) (5)

Bradford A. Berenson
09/10/2001 10:08:56 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Tymkovich ABA rating

Q/NQ. (b) (5)

(b) (5)

Message Sent To: _____

viet.dinh@usdoj.gov @ inet
jennifer.newstead@usdoj.gov @ inet
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP

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viet.dinh@usdoj.gov @ inet
jennifer.newstead@usdoj.gov @ inet
timothy e. flanigan/who/eop@eop
alberto r. gonzales/who/eop@eop
rachel l. brand/who/eop@eop
courtney s. elwood/who/eop@eop
helgard c. walker/who/eop@eop
brett m. kavanaugh/who/eop@eop

brett.m.kavanaugh/who/eop@eop
h.christopher.bartolomucci/who/eop@eop

Message Copied To: _____

bradford.a.berenson/who/eop@eop
viet.dinh@usdoj.gov @ inet
jennifer.newstead@usdoj.gov @ inet
rachel.l.brand/who/eop@eop
courtney.s.elwood/who/eop@eop
helgard.c.walker/who/eop@eop
brett.m.kavanaugh/who/eop@eop
h.christopher.bartolomucci/who/eop@eop

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, September 4, 2001 5:12 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Letter to ABA on Cassell

I agree--good call.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, September 04, 2001 5:09 PM
To: Ciongoli, Adam
Cc: Bryant, Dan; Israelite, David; Ayres, David; Newstead, Jennifer;
Tucker, Mindy; Dinh, Viet; Bradford_A._Berenson@who.eop.gov
Subject: RE: Letter to ABA on Cassell

(b) (5)

(Embedded
image moved "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov>
to file: 09/04/2001 04:41:48 PM
PIC22116.PCX)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: RE: Letter to ABA on Cassell

(b) (5)

-----Original Message-----

From: Dinh, Viet

Sent: Tuesday, September 04, 2001 4:34 PM

To: 'Bradford_A_Berenson@who.eop.gov'; Ayres, David; Tucker, Mindy; Newstead, Jennifer; Israelite, David; Ciongoli, Adam; Bryant, Dan; 'Brett_M_Kavanaugh@who.eop.gov'

Subject: Letter to ABA on Cassell

Dear all,

At Paul Cassell's suggestion, I'd like to send and release publicly the enclosed letter to Roscoe Trimmier. Please give me your thoughts. Thanks.

Viet

<< File: trimmier.wpd >>

Message Sent

To: _____

"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Ayres, David" <David.T.Ayres@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Israelite, David" <David.Israelite@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

Bradford A. Berenson/WHO/EOP@EOP

Brett M. Kavanaugh/WHO/EOP@EOP

Schauder, Andrew

From: Schauder, Andrew
Sent: Thursday, August 30, 2001 12:42 PM
To: Newstead, Jennifer; Ciongoli, Adam;
'Bradford_A._Berenson@who.eop.gov%inetgw';
'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan;
'Heather_Wingate@who.eop.gov'; 'James Carroll'; Ullman, Kristen A; Long, Linda
E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe;
'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick
O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw';
'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet;
'Ziad_S._Ojakli@who.eop.gov%inetgw'
Subject: Judicial Media Review
Attachments: Judicial Media Review 8-30-01.wpd

[Please see attached](#)

Media Review - Judicial Nominations

Thursday, August 30, 2001

General Judicial Articles

- "Wooten Denies Leaking File; Senate Panel Considers Charge Against
Judicial Nominee," [1](#)
Amy Goldstein, *The Washington Post*, August 28, 2001
- "Judicial Nominee Denies Leaking From FBI Files," [3](#)
Stephen Dinan, *The Washington Times*, August 28, 2001
- "Nominee Denies Leaking Files For Anita Hill Book," [5](#)
David Savage, *The Los Angeles Times*, August 28, 2001
- "Cincinnati Appeals Court Has Highest Number Of Open Judgeships," [6](#)
John Nolan, *The Associated Press*, August 28, 2001
- "Jockeying For Federal Bench Could Get Ugly," [9](#)
Robert Ruth, *The Columbus Dispatch*, August 29, 2001

Op/Eds

NONE

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

York Times

June 26, 2001 **oad to Federal ts Bumpier in Senate**
Neil Lewis New York Times
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate
Neil Lewis 1

NONE

General Judicial Articles

Wooten Denies Leaking File; Senate Panel Considers Charge Against Judicial Nominee

By Amy Goldstein

The Washington Post

Tuesday, August 28, 2001

Terry L. Wooten, a former Senate Judiciary Committee aide who has been nominated by President Bush as a federal judge, yesterday disputed a writer's claim that he divulged private FBI files for a controversial book about the confirmation hearings of Supreme Court Justice Clarence Thomas.

Testifying at his own confirmation hearing before the committee, Wooten insisted that the allegations that he improperly shared confidential material to a writer seeking to discredit Anita Hill are "absolutely, 100 percent untrue."

"There is not one scintilla or one iota of truth to that allegation," said Wooten, now a federal magistrate in South Carolina.

Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) questioned Wooten about the claim made to the committee and to journalists in recent days by David Brock, the author of a 1993 book, "The Real Anita Hill," which assailed the law professor who accused Thomas of sexual harassment.

For years a highly conservative writer, Brock has abandoned his former views and many one-time colleagues on the ideological right. He has said his book on the Thomas hearings contained information that he knew at the time to be false.

On Friday, Brock sent the Judiciary Committee an affidavit that could prove damaging to

York Times

June 26, 2001 **oad to Federal ts Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

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Wooten, who worked as an aide to Sen. Strom Thurmond (R-S.C.) and was the committee's GOP chief counsel during Thomas's confirmation.

The unsolicited, five-paragraph affidavit says Wooten handed Brock confidential information about a woman named Angela Wright, who also accused Thomas of making crude sexual remarks but did not testify at his confirmation hearing. Brock said in the statement that he "published the verbatim sections of Ms. Wright's raw FBI file that Mr. Wooten had given me in my book."

Under questioning by Leahy, Wooten, who was nominated two months ago to a U.S. district judgeship in South Carolina, replied that as chief counsel he had access to FBI files and other confidential materials. But he said he did not routinely read files, relying instead on briefings from two committee investigators.

Wooten recalled receiving a telephone call from Brock, and "as a courtesy to him . . . I had a very brief conversation with him" after Thomas had been confirmed. Asked by Leahy whether he was the source of information from FBI files on Wright quoted in Brock's book, Wooten responded: "Absolutely not."

After the exchange, Leahy, one of only three committee members who attended the uncommon hearing during Congress's August break, indicated that he believed Wooten would be confirmed. A committee Democratic spokesman said Leahy would confer with the committee's ranking Republican, Sen. Orrin G. Hatch (Utah), when lawmakers return to Washington next week before deciding to explore the issue further.

Yesterday, Brock declined to respond publicly to Wooten's denial that he had shared information, but reiterated his account. "I was told to meet with Wooten at the suggestion of President [George H.W.] Bush's White House and Justice Department officials to receive the FBI material on Angela Wright," Brock said. "That's what I did."

The Alliance for Justice, a liberal group that has been critical of the conservatism of the current president's judicial nominees, called yesterday for an investigation. "The fact [Brock] would willingly submit an affidavit, exposing himself to scrutiny, should warrant the committee's full attention and thorough investigation," said Nan Aron, the alliance's president.

York Times

June 26, 2001 **oad to Federal ts Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

Judicial Nominee Denies Leaking From FBI Files

By Stephen Dinan

The Washington Times

Tuesday, August 28, 2001

Terry L. Wooten, President Bush's nominee to the federal district court in South Carolina, denied during his confirmation hearing yesterday that he had leaked confidential information, including FBI files, while he was an attorney for Senate Republicans.

David Brock, a disaffected conservative journalist, says Judge Wooten was his source for FBI documents cited in his book "The Real Anita Hill," which he wrote after the 1991 Senate hearings to confirm Clarence Thomas as a U.S. Supreme Court justice.

But Judge Wooten, now a federal magistrate in South Carolina who was chief counsel to Republicans on the Senate Judiciary Committee during the Thomas hearings, said yesterday he wasn't the source.

"That allegation is absolutely, 100 percent untrue," he said in response to a question from Judiciary Committee Chairman Patrick J. Leahy, Vermont Democrat, who showed him copies of pages from Mr. Brock's book citing FBI files.

Mr. Brock, whose charges were first reported in the Los Angeles Times, said in an affidavit he swore out last week and filed with the committee that Judge Wooten had handed him copies of several pages of a confidential file -- "no one but Mr. Wooten provided me with the FBI material," he says.

The file was on Angela Wright, one of Justice Thomas' employees when he was at the Equal Employment Opportunity Commission, who said he made inappropriate sexual comments to her.

Judge Wooten said usually he didn't see FBI files and, if he had, he wouldn't have talked about them. He said he did talk with Mr. Brock for the book and he didn't remember if Miss Wright's name came up during the brief conversation, but he said he didn't divulge any confidential

York Times

June 26, 2001 **oad to Federal ts Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

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committee information.

Mr. Brock said yesterday he hadn't heard Judge Wooten's remarks to the committee and wouldn't comment on them anyway.

The committee held the unusual August confirmation hearings for both Judge Wooten, 47, and Sharon Prost, 50, whom the president nominated to the U.S. Court of Appeals for the Federal Circuit. That court hears, for example, appeals from federal claims court, patent cases, the Court of Veterans Appeals, and appeals of certain decisions by Agriculture and Commerce secretaries.

Recess hearings are rare, Mr. Leahy noted, but this is the second one he has held this summer, which he said shows Democrats are trying to move along the president's nominations.

Republicans have charged that Democrats are playing games with nominations, but Mr. Leahy said the committee has moved faster to confirm appeals court judges this year than in 1989, 1993 and 1997 -- the first years of the last three presidential terms. He also said the administration's decision not to seek American Bar Association review of candidates before nomination has delayed the process for some.

Only three senators -- Mr. Leahy, Sen. Mike DeWine, Ohio Republican, and Sen. Strom Thurmond, South Carolina Republican -- were present for the hearing.

Both Mr. Leahy and Mr. DeWine said they expect Judge Wooten and Mrs. Prost will be confirmed.

Like Judge Wooten, Mrs. Prost also has worked as counsel for the Republicans on the Senate Judiciary Committee, and Mr. DeWine and Mr. Leahy praised her work.

Nominee Denies Leaking Files For Anita Hill Book

By David Savage
The Los Angeles Times
Tuesday, August 28, 2001

York Times

June 26, 2001 **oad to Federal ts Bumpier in Senate**
Neil Lewis **New York Times**
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

Judge Terry L. Wooten, a former Senate staffer who has been nominated to become a U.S. district judge, denied under oath Monday that he had leaked confidential FBI files nearly a decade ago for a book that would discredit Anita Faye Hill, the woman who accused Justice Clarence Thomas of sexual harassment.

"That allegation is absolutely, 100% untrue," Wooten told the Senate Judiciary Committee. "I don't even remember seeing those files. I would not discuss that material with anyone" outside the committee, he said. Wooten is a federal magistrate in Florence, S.C. At the recommendation of Sen. Strom Thurmond (R-S.C.), President Bush nominated Wooten to be a U.S. district judge there.

But late last week, author David Brock said Wooten gave him the FBI files that he quoted in his 1993 book, "The Real Anita Hill."

In 1991, Wooten was the chief Republican counsel for the Senate Judiciary Committee, and he played a key role in the battle over Thomas' nomination to the Supreme Court.

After Thomas was narrowly confirmed, conservatives were angry about Hill's accusations and were anxious to discredit her and Angela Wright, who also accused Thomas of making lewd and uncouth comments to her.

Brock said he was commissioned to write a book that would disparage both women.

"During the course of my research, I met with Mr. Terry Wooten in a Capitol Hill office," Brock said in a sworn statement sent to Sens. Patrick J. Leahy (D-Vt.) and Orrin G. Hatch (R-Utah). "Mr. Wooten handed me copies of several pages of Ms. Wright's raw FBI file."

Leahy, the committee's chairman, asked Wooten whether he had spoken with Brock.

The judge replied that he had agreed to meet with him to discuss the book. "It was a very brief conversation," Wooten said. "I can't remember the details of the conversation."

When Leahy pressed him again on whether he had disclosed any confidential information, Wooten replied, "Absolutely not."

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The dispute is unlikely to derail Wooten's confirmation, the senators said afterward, although they may ask the judge to answer further questions in writing.

Leahy had scheduled the confirmation hearings for Wooten and another former committee staff member, Sharon Prost, during the August recess because their confirmations were seen as a near certainty.

Prost, a longtime aide to Hatch, is scheduled to become a judge on the U.S. Court of Appeals for the Federal Circuit, which handles appeals in patent cases.

Brock sent his statement to the committee late Friday, but the senators and their staffs said they did not see it until Monday.

As a result, they did not have time to consider whether it deserves further inquiry.

"Sen. Leahy will consult with Sen. Hatch when Congress returns next week to decide on how to proceed," said David Carle, a spokesman for Leahy.

The liberal Alliance for Justice said the committee should postpone action on Wooten's nomination.

The judge has "been accused of a serious ethical impropriety. . . . The committee's bipartisan investigative staff must fully look into these charges before deciding whether to confirm Judge Wooten," the group said.

Cincinnati Appeals Court Has Highest Number Of Open Judgeships

By John Nolan
The Associated Press
Tuesday, August 28, 2001

The court that hears federal appeals cases for Ohio and three other states has more vacant judgeships than any of the 12 other U.S. appellate courts.

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Vacancies on the 6th U.S. Circuit Court of Appeals reached seven in mid-August when Judge Richard Suhrheinrich, 65, took senior status, under which a judge can opt to take a reduced caseload but still receive full salary.

The court that serves Ohio, Tennessee, Kentucky and Michigan now has only nine of its authorized 16 judgeships filled. Its longest-standing vacancy dates to 1995. Chief Judge Boyce Martin Jr. and his predecessor, Judge Gilbert Merritt, have written Congress over the years pleading for action.

"I've done it again and again and again. But they don't pay any attention to it," Martin said of Congress. "I do my job the best I can with the resources available to me."

Martin concedes the average person isn't likely to care about vacant judgeships. But the 6th Circuit, and other courts like it around the nation, quietly play key roles in affecting lives - sometimes with life or death consequences.

The courts rule on death penalty cases, and whether executions should go forward. They decide labor disputes and contract fights, review criminal convictions and environmental enforcement cases, and often rule on whether federal agencies have abused their powers and infringed on citizens' rights.

The appellate courts operate just one level below the U.S. Supreme Court. In many cases, their decisions are the courts' last word, because the U.S. Supreme Court accepts only a small percentage of the thousands of issues it is asked to review.

For now, Martin's court borrows federal district judges from its states for its three-judge panels hearing cases. The court also hears some arguments by telephone, decides some other cases on written - rather than oral - arguments, and uses staff lawyers to mediate some cases to get them off the docket.

Nationally, three-judge appellate panels average about 983 cases in a year. But that number has increased to 1,475 at the 6th Circuit because of its vacancies, said Dick Carelli, spokesman for the administrative office of the federal courts in Washington.

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Presidents nominate candidates for federal judgeships, subject to Senate confirmation.

Two nominations to the 6th Circuit are pending. Ohio Supreme Court Justice Deborah Cook and former Ohio solicitor general Jeffrey Sutton were nominated by President Bush in May.

The Senate Judiciary Committee examined a judicial nominee for federal district court in South Carolina last week. But partisan battles still are bottling up most nominations.

Before leaving for the August recess, Senate Republicans forced the Senate to return all 164 unconfirmed executive and judicial nominees to the White House because of a fight with Democrats over other nominations. The Bush administration is expected to send all the nominations back to Congress in September.

The partisan process slowed as Bill Clinton's presidency neared its end, with Republicans hoping Bush would win the office to allow the GOP to control the nominating process. Democrats now barely control the Senate, giving them some clout to reach agreements with the Bush administration.

Two Clinton nominations from Michigan stalled during Clinton's term: state appeals judge Helene White and Detroit lawyer Kathleen McCree Lewis. Those nominations expired when Clinton left office.

Sens. Carl Levin and Deborah Stabenow, both Michigan Democrats, want the White and Lewis nominations resolved before GOP nominees are advanced, said Levin's spokeswoman, Kathleen Long.

That is only fair, because White's nomination lagged for 4 1/2 years without a confirmation hearing, Long said.

The policy-making Judicial Conference of the United States has categorized four of the 6th Circuit's openings as "judicial emergencies" because they are lengthy vacancies. The court's longest-standing vacancy was created when Judge Damon Keith took senior status on May 1, 1995.

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And Judge Eugene Siler Jr., who turns 65 in October, plans to take senior status Jan. 1. Siler said he plans to continue working full time at least through 2002 to allow time for other judges to be confirmed.

The largest regional appeals court - the San Francisco-based 9th Circuit - has 27 authorized judgeships and three vacancies. It serves nine Western states, plus Guam. No other appellate court has more than four vacancies, and the Chicago-based 7th Circuit has none.

Annual salary for an appellate judge, a lifetime appointment, is \$153,900.

Typically, the 6th Circuit's judges rule three to six months after hearing lawyers' arguments. Generally, about 15 months pass between the time a notice of appeal is filed with the court and the case is resolved.

J. Guthrie True, a lawyer from Frankfort, Ky., said it seems the 6th Circuit has taken longer in recent years to decide cases, though he could not provide specifics.

Delayed rulings can cost clients, particularly if they have been required to post bond during an appeal, he said.

"Many times, clients wonder," True said. "It looks like, to me, the 6th Circuit is doing everything they can to deal with the situation.

"You can only do so much when you're facing that kind of a shortage," he said.

Martin, 66, said the court still has the resources to do its job - but not without stretching.

"People would like decisions more quickly," Martin said.

But, he added, "We've got a steady flow of appeals, vacancies unfulfilled, and we're scrambling to hear the cases we have assigned."

Jockeying For Federal Bench Could Get Ugly

York Times

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Neil Lewis **New York Times**

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By Robert Ruth
The Columbus Dispatch
Wednesday, August 29, 2001

The jockeying to replace U.S. District Judge George C. Smith is expected to intensify in the coming weeks, pitting some of central Ohio's Republican heavyweights against one another.

Unlike campaigns for elected offices -- with their yard signs, speeches and occasional public mudslinging -- the battle for a federal judgeship involves behind-the-scenes meetings and phone calls.

Although less visible, the process is not necessarily subtle or civil.

"Absolutely, it can be bloody," lawyer Larry James said. "You haven't seen politics like the lobbying that goes on for a federal judgeship." James, a partner in the Columbus firm of Crabbe Brown & James who lost his bid for a federal judgeship in 1991, said business leaders, law firms, politicians and party contributors all work to promote their candidates.

The battle for Smith's seat could rekindle a feud between Franklin County Prosecutor Ron O'Brien and former Columbus Mayor Greg Lashutka.

O'Brien and Columbus lawyer Catherine Adams, Lashutka's wife, are among the leading candidates for the judgeship. Smith, 66, will step down Jan. 1 as a full-time judge and go on semiretired, senior status with a reduced caseload.

The relationship between O'Brien and Lashutka wasn't always strained.

Throughout most of the 1970s and '80s, they were friends and political allies. As Columbus city attorney, Lashutka appointed O'Brien city prosecutor in 1978. Lashutka enthusiastically supported O'Brien's run for city attorney in 1985 after Lashutka decided not to seek re-election.

But the relationship began souring after Lashutka became mayor in 1992, and the feud boiled over four years later during two incidents.

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In January 1996, Lashutka publicly opposed O'Brien's bid for the GOP nomination for county prosecutor. Instead, Lashutka backed then-Judge Michael L. Close of the Franklin County Appeals Court. O'Brien won the nomination and went on to win the general election.

The chasm widened in October of that year during Lashutka's nasty fight to remove James G. Jackson as Columbus police chief. Lashutka and his safety director, Thomas W. Rice, reassigned Jackson to his home and barred him from all city buildings.

As city attorney, O'Brien issued a legal opinion that barring Jackson from his office was tantamount to an indefinite suspension, something only the city Civil Service Commission had the authority to impose. Lashutka and Rice backed off; they temporarily assigned Jackson to an office at Fire Division headquarters.

The dispute flared again during the 1999 battle over the Republican endorsement for the Ohio House seat formerly held by E.J. Thomas. O'Brien backed Jim Hughes, an assistant county prosecutor, while Lashutka supported David Robinson, his former City Hall spokesman and policy expert. Hughes won the endorsement and the November general election.

Michael Colley, chairman of the county Republican Party, would not comment on the O'Brien-Lashutka animosity.

"My job is only to pass along the names of those who have expressed interest in being a judge of the U.S. District Court," Colley said. "I'm not ranking them or rating them."

Colley's counterpart in the county Democratic Party sympathized.

"One of the biggest challenges as a party chairman is keeping everybody together," Denny L. White said. "I'm glad I don't have those headaches."

O'Brien wouldn't comment on the matter, and Adams downplayed any rift between her husband and the prosecutor.

"Ron and my husband used to work very closely together," she said.

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Adams predicted that U.S. Sens. Mike DeWine and George V. Voinovich, both Ohio Republicans, would not take politics into consideration in recommending a replacement for Smith.

Although O'Brien and Adams, a partner in the Columbus office of Squire Sanders & Dempsey, are seen as two leading candidates for Smith's job, other county Republicans have expressed interest, too.

Colley mentioned Judges David W. Fais, Patrick M. McGrath and Michael H. Watson of Common Pleas Court; Close, who is in private practice; and William A. Klatt, chief counsel for Gov. Bob Taft. Watson could have a leg up because he once served as chief counsel to Voinovich when Voinovich was governor.

Others also rumored to be interested include Judge Lisa Sadler of the Common Pleas Court, Domestic Court Judge James W. Mason and lawyers David Alexander and Juan Jose Perez.

In addition, Judge Gregory L. Frost of Licking County Common Pleas Court has applied for the job.

Other candidates also might surface, including some who might not live in the 30-county area in central and southeastern Ohio served by the Columbus federal court.

In 1991, for example, President George Bush nominated then-Hamilton County Commissioner Sandra S. Beckwith to fill a vacancy on the Columbus bench. And President Clinton in 1995 tapped Susan J. Dlott, a Cincinnati lawyer and wife of Stanley M. Chesley, a major Democratic contributor, to fill a similar opening in Columbus. Both judges later moved to the Cincinnati federal courthouse when vacancies opened there.

In fact, two Cincinnati-area lawyers have been mentioned as candidates: assistant U.S. Attorney Ralph B. Kohnen and Kim Wilson Burke.

U.S. district judges, who are appointed to lifetime terms, make \$145,100 a year.

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The president nominates candidates for these jobs, but U.S. senators from a candidate's home state usually have considerable influence over the process. The Senate must confirm all federal judges and U.S. attorneys.

So it came as no surprise when DeWine and Voinovich recommended Assistant U.S. Attorney Gregory G. Lockhart of Dayton earlier this year to be the next U.S. attorney for central and southern Ohio.

Lockhart, who last week was named acting U.S. attorney while his nomination is being considered, is a longtime friend and ally of DeWine's. As Greene County prosecutor in 1978, DeWine hired Lockhart as an assistant prosecutor.

Likewise, Judge Thomas M. Rose of the Greene County Common Pleas Court, another former DeWine employee in the prosecutor's office, was recommended earlier this month to replace U.S. District Judge Herman J. Weber of Cincinnati, who is planning to take senior status.

Whichever Republican gets the nod for Smith's seat, the nominee will have to be confirmed by the Democratic-controlled Senate. But DeWine's backing is expected to smooth the way.

As a member of the Judiciary Committee, DeWine accumulated IOUs from Democrats while Republicans controlled the Senate during Clinton's tenure.

DeWine helped win confirmation for such Clinton appointees as Dlott, U.S. District Judges Algenon L. Marbley and Edmund A. Sargus Jr., and Judge R. Guy Cole of the 6th U.S. Circuit Court of Appeals.

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Newstead, Jennifer

From: Newstead, Jennifer
Sent: Tuesday, August 28, 2001 8:26 PM
To: Adam Ciongoli; Bradford_A._Berenson@who.eop.gov%inetgw;
Brett_M._Kavanaugh@who.eop.gov%inetgw; Dan Bryant;
Heather_Wingate@who.eop.gov; James Carroll; Jennifer Newstead; Kristen
Ullman; Linda Long; Lizette Benedi; Lori Rabjohns; Lori SharpeDay;
Matthew_E._Smith@who.eop.gov%inetgw; Mindy Tucker; Neal Suit; Patrick
O'Brien; Peter Coniglio; Sheila Joy; Tim_Goeglein@who.eop.gov%inetgw;
Timothy_E._Flanigan@who.eop.gov%inetgw; Viet Dinh;
Ziad_S._Ojakli@who.eop.gov%inetgw
Cc: O'Brien, Patrick
Subject: Judicial Media Review for Monday, 8/27
Attachments: Judicial Media Review 8-27-01.wpd

[Yesterday's judicial media review is attached.](#)

Media Review - Judicial Nominations

Monday, August 27, 2001

General Judicial Articles

"Judicial Nominee Denies Leak,"

Jim Abrams, *The Associated Press*, August 27, 2001

[1](#)

"Anita Hill Says Judge Leaked FBI Files,"

David Savage, *The Los Angeles*, August 25, 2001

[3](#)

Op/Eds

"The FBI Can't Be Trusted To Vet Judges; When A Spy Agency Knows Personal

[5](#)
Secrets, It Has The Potential To Influence Judicial Decisions"
Stephen Yagman, *The Los Angeles Times*, August 27, 2001

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

General Judicial Articles

Judicial Nominee Denies Leak

Jim Abrams

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The Associated Press

Monday, August 27, 2001

A former Senate Judiciary Committee lawyer nominated to be a federal judge denied under oath Monday that he leaked confidential material for a book on the Clarence Thomas hearings in 1991.

"That allegation is absolutely 100 percent untrue," Terry Wooten said at a confirmation hearing before the committee. Wooten, currently a U.S. magistrate judge in South Carolina, has been picked by the Bush administration for U.S. District Court in the state.

David Brock, the book's author, said Monday in an affidavit sent to the committee that he received several pages of "raw FBI files" from Wooten that he used for an article and a book aimed at discrediting Anita Hill and another woman, Angela Wright, who accused Thomas of sexual harassment. Hill's charges nearly derailed Thomas' nomination to the Supreme Court.

During Thomas' hearings, Wooten worked for Sen. Strom Thurmond, R-S.C., as the committee's chief Republican counsel.

Wooten told the current committee chairman, Sen. Patrick Leahy, D-Vt., that as chief counsel he did not normally read confidential files, and if briefed on their contents, "I would absolutely not discuss those files with anybody" outside the committee.

Wooten said he had a brief conversation with Brock after Thomas was confirmed to the high court, but "no confidential information was released or made available to him."

In his statement, Brock said that in researching his book he had numerous conversations with members of the former Bush White House staff on how to obtain FBI files. "Their goal, and mine, was to use the FBI material to discredit Ms. Wright," Brock said.

He said Wooten handed him the FBI material in a Capitol Hill office, and "with Mr. Wooten's agreement, I removed the FBI material from his office and took it to my house in northwest Washington, where I was writing the book." Wooten's allegations were first carried in the Saturday edition of the Los Angeles Times.

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Leahy, speaking to reporters after the hearing, said he would look into whether Wooten gave confidential material to Brock. He did not expect trouble with Wooten's confirmation.

“Mr. Wooten is under oath, and he understands very well the importance of being accurate,” Leahy said. “I can't believe that he would lie before the committee.”

A Republican on the committee, Sen. Mike DeWine of Ohio, also did not anticipate any delays “unless additional facts come out.”

A liberal group, Alliance for Justice, urged the committee to hold up the nomination pending a full investigation of the accusations of “serious ethical impropriety.”

Brock, once a fiercely partisan conservative writer, has in recent years disavowed his connections to the conservative movement and voiced regret for participating in right-wing efforts to defame opponents.

Also testifying before the highly unusual August recess hearing was Sharon Prost. She is the chief GOP counsel for the committee and a top aide to Sen. Orrin Hatch of Utah, the ranking Republican on the panel.

The Bush administration has nominated Prost to serve on the U.S. Court of Appeals for the Federal Circuit.

Leahy said he scheduled Monday's hearing, and one last week, to show his determination to move forward on judicial nominations despite a Senate controversy over the nominating process.

Before leaving for the August recess, Senate Republicans forced the Senate to return all 164 unconfirmed executive and judicial nominees back to the White House to protest Democratic plans to force the renomination of two contentious candidates, Sheila Gall to be head of the Consumer Product Safety Commission and Otto Reich to head the State Department's Western Hemisphere division.

The White House is expected to send back all the nominations when Congress reconvenes next

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week.

Anita Hill Says Judge Leaked FBI Files

David Savage

The Los Angeles

Saturday, August 25, 2001

David Brock, the formerly conservative writer turned scourge of the conservative movement, said Friday that a protege of Sen. Strom Thurmond (R-S.C.) who has been nominated as a U.S. district judge gave him confidential FBI files nearly 10 years ago for his book on the Clarence Thomas .versus Anita Faye Hill controversy.

Brock filed a sworn statement with the Senate Judiciary Committee late Friday.

On Monday, the panel is scheduled to hold a confirmation hearing for Judge Terry L. Wooten, now a federal magistrate in Florence, S.C. His nomination by President Bush was not controversial.

But Brock's charge threatens to reopen a bruising episode for the committee. In 1991, Wooten was the committee's chief Republican counsel, and he helped coordinate the defense of Clarence Thomas' nomination to the Supreme Court. In September of that year, when Hill sent the committee a statement accusing her former boss of having harassed her with crude sexual comments, Wooten chose to withhold the information from the Republican senators. They were then surprised--and in some instances, furious--when the accusations were revealed on the eve of a Senate vote for Thomas.

Wooten said in later published accounts that his withholding of Hill's statement was "an effort to control the damage."

But, of course, the Thomas confirmation hearings played out as a national TV drama, and the hard feelings remained after Thomas won a narrow confirmation.

In October 1991, Brock said he was commissioned to write a book to discredit Hill and Angela

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Wright, who also accused Thomas of making crude comments.

Brock now has said that White House aides sent him to Wooten to obtain FBI files that contained derogatory comments about Wright.

"Mr. Wooten handed me copies of several pages of Ms. Wright's raw FBI files," Brock said in his sworn statement. "This material included FBI interviews of Ms. Wright's former employers and former co-workers. With Mr. Wooten's agreement, I removed the FBI material from his office."

The FBI material appeared in a March 1992 article in the American Spectator, a conservative magazine funded by reclusive billionaire Richard Mellon Scaife. Brock's book, "The Real Anita Hill," was published a year later.

At several points in the book, Brock quotes from "an FBI file" that referred to Wright as "vengeful, angry and immature."

"There's no way I could have gotten this if Wooten hadn't given me the files," Brock said Friday.

Wooten did not return calls to his office Friday, but in conversations with two senior administration officials, he denied Brock's charge. The officials said Wooten conceded that he met with Brock to discuss his book but insisted he did not give him FBI files. Wooten said he had not even seen or known of an FBI file on Wright, according to the officials, who spoke only on condition of anonymity.

"Based on all of our information and investigation, there is absolutely no basis for any allegation that Judge Wooten provided Brock with FBI materials related to Ms. Wright," said Mindy Tucker, a Justice Department spokeswoman.

"I think it would be unfortunate if the desire for book sales promulgated a charge involving a man's integrity, such as this might," she said of Brock's sworn statement.

Brock had a falling out with conservatives in 1996 after his book on then-First Lady Hillary Rodham Clinton turned out to be more laudatory than critical.

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More recently, Brock has disavowed most of his earlier work, including the book on Hill. "I was a witting cog in the Republican sleaze machine," he wrote in the August issue of Talk magazine.

This fall, he is set to publish "Blinded by the Right," a book that he says will set the record straight by telling the truth about his past dealings.

Some former friends say that since Brock has admitted publishing dubious stories in the past, he cannot be trusted now. But because of his earlier access to conservative inner circles, he could pose a danger for some nominees.

In May, the Judiciary Committee postponed a vote on Theodore B. Olson, Bush's nominee to be U.S. solicitor general, because Brock alleged Olson was involved in the "Arkansas Project," a Scaife-funded effort to dig up dirt on former President Clinton.

In the end, the committee could not resolve the issue, and Olson won a narrow Senate approval.

Op/Eds

The FBI Can't Be Trusted To Vet Judges; When A Spy Agency Knows Personal Secrets, It Has The Potential To Influence Judicial Decisions

Stephen Yagman
The Los Angeles Times
Monday, August 27, 2001

Stephen Yagman, a Venice Beach federal civil rights lawyer, was, special prosecutor for the state of Idaho in the Ruby Ridge prosecution, of an FBI sniper

Serious people of all political stripes should question whether it is appropriate for the FBI to continue to be the agency that vets our federal judges.

In the past 10 years, the FBI has brought itself into disrepute and disgrace, yet its false pride continues unabated.

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Neil Lewis New York Times
June 26, 2001

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One need not go back to the days of yesteryear to question the bureau's competency and integrity.

Back then, J. Edgar Hoover's FBI not only Red-baited, it denied that the mob existed and refused to investigate federal civil rights violations--all the while righteously blowing its own horn. For years, the most glaring example of bureau misconduct was the famed Rosenberg espionage trial, where, in an attempt to influence the outcome and ensure the death penalty, Hoover had illegal conversations with the judge overseeing the case.

The FBI today continues to be an incredibly effective propaganda machine, having mastered the techniques it learned from its erstwhile paper tiger enemy--the Soviet Union.

Some recent examples:

* Ruby Ridge. f7 On Aug. 22, 1992, FBI agents surrounded a broken-down cabin in northern Idaho and killed an unarmed woman holding a 10-month-old baby by shooting the woman in the head.

No legal consequences befell the sniper who fired the fatal shot, nor were his superiors punished for writing clearly unconstitutional rules of engagement that made the fatal shot possible.

* Waco, Texas. f7 On April 19, 1993, the FBI stormed the Branch Davidian compound. When it was done, more than 80 men, women and small children were dead.

Though then-Atty. Gen. Janet Reno took full responsibility for what the FBI did, it later became clear that Reno had been duped by the agency into believing the actions it proposed taking had little risk.

* Wen Ho Lee. In 1998, the FBI caused the jailing--mostly in shackled solitary confinement--of Taiwan-born American scientist Wen Ho Lee.

When Lee finally got his freedom after nine months, the federal judge chastised the FBI, among other government agencies, for misleading him.

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* Robert Philip Hanssen. In 2000, it was learned that long-time FBI counterintelligence agent Robert Philip Hanssen was a Russian spy whom the bureau itself had been unable to identify or catch and whose spying had resulted in a number of assassinations.

Once Hanssen was caught and charged, the FBI made sure a quick plea bargain was worked out so that the fiasco would go away quickly and quietly.

* Timothy McVeigh. The FBI, unconstitutionally and in violation of a federal judge's order, concealed evidence from Oklahoma City mass murderer Timothy McVeigh that should have been available to his defense team.

Throughout all this, the FBI has been the agency responsible--using both retired and active agents--for investigating and vetting federal judicial nominees.

In that vetting, the FBI interrogates not only the nominees, but also their families, friends, neighbors and business associates. It gets their tax returns. It learns the most intimate details of nominees' lives and puts all this information into its files.

The peccadilloes or idiosyncrasies of those headed for judicial office--such as the homosexuality of G. Harrold Carswell, the federal appeals judge from Florida whom President Nixon nominated to the U.S. Supreme Court--can be held confidentially, or not.

Once a nominee is confirmed and seated on the bench, just knowing that the FBI possessed such information could influence his or her decisions.

There is no legitimate reason to, and many good reasons not to, let the FBI continue to investigate federal judicial nominees.

It is too difficult to know how the agency might use the confidential information it gets. Its powers are too great, its mentality and institutional history too blemished and its competence and credibility too low.

Any confidence in its integrity is clearly unwarranted.

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There is good reason to establish an independent, joint executive-legislative branch office to vet federal judicial nominees.

This would ensure that when FBI agents make their frequent appearances before federal judges to obtain arrest, search and eavesdropping warrants and to give testimony in criminal trials, these judges won't feel an inclination or an obligation to do whatever the FBI tells them to do.

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Newstead, Jennifer

From: Newstead, Jennifer
Sent: Tuesday, August 28, 2001 8:16 PM
To: O'Brien, Patrick; Adam Ciongoli; Bradford_A._Berenson@who.eop.gov%inetgw; Brett_M._Kavanaugh@who.eop.gov%inetgw; Dan Bryant; Heather_Wingate@who.eop.gov; James Carroll; Jennifer Newstead; Kristen Ullman; Linda Long; Lizette Benedi; Lori Rabjohns; Lori SharpeDay; Matthew_E._Smith@who.eop.gov%inetgw; Mindy Tucker; Neal Suit; Patrick O'Brien; Peter Coniglio; Sheila Joy; Tim_Goeglein@who.eop.gov%inetgw; Timothy_E._Flanigan@who.eop.gov%inetgw; Viet Dinh; Ziad_S._Ojakli@who.eop.gov%inetgw
Subject: Revised 1st Year Stats
Attachments: 1st Legislative Year Stats.wpd

All -- we have discovered some minor discrepancies in our data; a revised draft is attached. Please disregard the version circulated earlier today.

Sorry for any inconvenience --

Jennifer

**ARTICLE III JUDICIAL NOMINATIONS CONFIRMED DURING 1st LEGISLATIVE
YEAR OF PRESIDENTIAL TERM**

Clinton II - 105th Congress, 1st Session: Jan. 7, 1997 - Nov. 13, 1997 (date of adjournment)

NOMINATIONS SUBMITTED BETWEEN 1/20/97 - 11/13/97

TOTAL = 56

District = 45

Circuit = 11

CONFIRMED BETWEEN 1/20/97 - 11/13/97

TOTAL = 24

District = 21

Circuit = 3

24 TOTAL CONFIRMED DURING 1st LEGISLATIVE YEAR*

Clinton I - 103rd Congress, 1st Session: Jan. 5, 1993 - Nov. 26, 1993 (date of adjournment)

NOMINATIONS SUBMITTED BETWEEN 1/20/93 - 11/26/93

TOTAL = 48

District = 42

Circuit = 5

Supreme = 1 _____

CONFIRMED BETWEEN 1/20/93 - 11/26/93

TOTAL = 28

District = 24

Circuit = 3

Supreme = 1

28 TOTAL CONFIRMED DURING 1st LEGISLATIVE YEAR

Bush - 101st Congress, 1st Session: Jan. 3, 1989 - Nov. 22, 1989 (date of adjournment)

NOMINATIONS SUBMITTED BETWEEN 1/20/89 - 11/22/89

TOTAL = 23

District = 15

Circuit = 8

CONFIRMED BETWEEN 1/20/89 - 11/22/89

TOTAL = 15

District = 10

* There were 12 additional Article III nominees (4 District and 8 Circuit) confirmed by the Senate during the 1st Session of the 105th Congress. However, these were nominations made by Clinton during his first term and then resubmitted on Jan. 7, 1997.

Circuit = 5

15 TOTAL CONFIRMED DURING 1st LEGISLATIVE YEAR

Reagan II - 99th Congress, 1st Session: Jan. 3, 1985 - Dec. 20, 1985 (date of adjournment)

NOMINATIONS SUBMITTED BETWEEN 1/20/85 - 12/20/85

TOTAL = 87

District = 64

Circuit = 22

Trade = 1

CONFIRMED BETWEEN 1/20/85 - 12/20/85

TOTAL = 85

District = 62

Circuit = 22

Trade = 1

85 TOTAL CONFIRMED DURING 1st LEGISLATIVE YEAR

Reagan I - 97th Congress, 1st Session: Jan. 5, 1981 - Dec. 16, 1981 (date of adjournment)

NOMINATIONS SUBMITTED BETWEEN 1/20/81 - 12/16/81

TOTAL = 44

District = 34

Circuit = 9

Supreme = 1

CONFIRMED BETWEEN 1/20/81 - 12/16/81

TOTAL = 41

District = 32

Circuit = 8

Supreme = 1

41 TOTAL CONFIRMED DURING 1st LEGISLATIVE YEAR

Newstead, Jennifer

From: Newstead, Jennifer
Sent: Tuesday, August 28, 2001 12:26 PM
To: Adam Ciongoli; Bradford_A._Berenson@who.eop.gov%inetgw;
Brett_M._Kavanaugh@who.eop.gov%inetgw; Dan Bryant;
Heather_Wingate@who.eop.gov; James Carroll; Jennifer Newstead; Kristen
Ullman; Linda Long; Lizette Benedi; Lori Rabjohns; Lori SharpeDay;
Matthew_E._Smith@who.eop.gov%inetgw; Mindy Tucker; Neal Suit; Patrick
O'Brien; Peter Coniglio; Sheila Joy; Tim_Goeglein@who.eop.gov%inetgw;
Timothy_E._Flanigan@who.eop.gov%inetgw; Viet Dinh;
Ziad_S._Ojakli@who.eop.gov%inetgw
Subject: FW: 1st Legislative Year Stats.wpd
Attachments: 1st Legislative Year Stats.wpd

All --

Attached is a revised version of the first-year nominations / confirmations statistics which were circulated at yesterday's meeting.

Jennifer

Dinh, Viet

From: Dinh, Viet
Sent: Monday, August 27, 2001 8:52 AM
To: Tucker, Mindy; Dryden, Susan; 'Bradford_A._Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Newstead, Jennifer; 'Bradford_A._Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: David Savage on Terry Wootten

Thanks Mindy. (b) (5)

Please call if anybody has any last-minute stuff.

-----Original Message-----

From: Tucker, Mindy
Sent: Friday, August 24, 2001 4:53 PM
To: Dinh, Viet; Dryden, Susan; 'Bradford A. Berenson@who.eop.gov'; 'Brett M. Kavanaugh@who.eop.gov'
Cc: Newstead, Jennifer; 'Bradford A. Berenson@who.eop.gov'; 'Brett M. Kavanaugh@who.eop.gov'
Subject: RE: David Savage on Terry Wootten

I just talked to Savage and he is writing for tomorrow. (b) (5)

(b) (5)

-----Original Message-----

From: Dinh, Viet
Sent: Thursday, August 23, 2001 4:16 PM
To: Dryden, Susan; Tucker, Mindy; 'Bradford A. Berenson@who.eop.gov'; 'Brett M. Kavanaugh@who.eop.gov'
Cc: Newstead, Jennifer; 'Bradford A. Berenson@who.eop.gov'; 'Brett M. Kavanaugh@who.eop.gov'
Subject: David Savage on Terry Wootten

Dear Mindy and Susan,

David Brock is at it again. In anticipation of Judge Wooten's confirmation hearing on Monday, Brock told David Savage of the LA Times that Terry Wooten provided to Brock the "FBI file" on Angela Wright (a witness in the Clarence Thomas matter but who did not testify at the hearings). Wooten categorically and completely denies the allegation. He met Brock only once, a brief meeting on general matters after the hearings in which he did not provide any confidential information and certainly no documents. Wooten did not know if there was an FBI document on Wright, and did not even see one.

(b) (5)

(b) (5)

007104-003217

(b) (5)

I will refer Savage to you if he calls again.

best,

Viet

Newstead, Jennifer

From: Newstead, Jennifer
Sent: Thursday, August 23, 2001 6:59 PM
To: Adam Ciongoli; Bradford_A._Berenson@who.eop.gov%inetgw;
Brett_M._Kavanaugh@who.eop.gov%inetgw; Dan Bryant;
Heather_Wingate@who.eop.gov; James Carroll; Jennifer Newstead; Kristen
Ullman; Linda Long; Lizette Benedi; Lori Rabjohns; Lori SharpeDay;
Matthew_E._Smith@who.eop.gov%inetgw; Mindy Tucker; Neal Suit; Patrick
O'Brien; Peter Coniglio; Sheila Joy; Tim_Goeglein@who.eop.gov%inetgw;
Timothy_E._Flanigan@who.eop.gov%inetgw; Viet Dinh;
Ziad_S._Ojakli@who.eop.gov%inetgw
Cc: Schauder, Andrew
Subject: Judicial media review
Attachments: Judicial Media Review 8-23-01.wpd

[Today's media review is attached.](#)

Media Review - Judicial Nominations

Thursday, August 23, 2001

General Judicial Articles

"At Senate Hearing, Two Nominees, One Senator, Many Empty Chairs," [1](#)
Brook Donald, *The Associated Press*, August 22, 2001

Op/Eds

"Avoiding A Political Deadend On Judges," [3](#)
Lloyd Cutler and Mickey Edwards, *Scripps Howard News Service*,
August 22, 2001

Transcripts/Members of Congress

"Ari Fleischer Holds White House Briefing" [5](#)
FDCH Political Transcripts, August 22, 2001

Interest Groups/Press Releases

NONE

General Judicial Articles

At Senate Hearing, Two Nominees, One Senator, Many Empty Chairs

By Brook Donald
The Associated Press

York Times

June 26, 2001 **Road to Federal Bench Gets Bumpier in Senate**
Neil Lewis New York Times
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis [1](#)

Wednesday, August 22, 2001

The Democratic chairman of the Senate Judiciary Committee held a one-man hearing Wednesday on two of President Bush's judicial nominees. The session during Congress' August vacation came amid Republicans complaints that Democrats are delaying action on President Bush's appointments.

"I want to get the process moving," said Sen. Patrick Leahy, D-Vt. "I'm trying to go the extra mile by coming back for hearings today." He looked at the empty chairs next to him and said: "I hope that at least some of the Republicans who complained why don't we have more hearings will also get on an airplane and join us."

The rare midvacation hearing did not impress Republicans.

"While we welcome any efforts to finally move the process along, we're far behind where we should be at this point in President Bush's term," said Matt Latimer, spokesman for one GOP committee member, Arizona's Jon Kyl.

Under consideration Wednesday were Reggie Walton, a District of Columbia judge nominated for the federal bench, and Richard Nedelkoff, Bush's pick to be director of the Bureau of Justice Assistance at the Justice Department.

Only four of Bush's 44 judicial nominees have been confirmed.

"A lot of us are trying to restore dignity and regularity to the nominations process. ... We're trying to make the process move smoothly," Leahy said.

The White House said it would work with Leahy to move the nominations along.

"There really is a national interest in filling the vacancies that are in the judiciary, and the administration is hopeful that the Senate will take that interest seriously," Bush's spokesman Ari Fleischer said.

Just before the August recess all of president's 164 unconfirmed nominees were sent back to the

York Times

June 26, 2001 **Road to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

White House by Senate Democrats because of a political tiff over two contentious nominees.

The move was procedural and senators in both parties expect Bush to renominate all of his candidates.

Senators not present Wednesday can submit questions to Walton and Nedelkoff until Aug. 31. Following the Senate's return after Labor Day, the committee will decide if the nominations will be sent to the full Senate for a vote.

Leahy has scheduled a hearing Aug. 27 to consider two more nominees.

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June 26, 2001 **Road to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

Op/Eds

Avoiding A Political Deadend On Judges

By Lloyd Cutler and Mickey Edwards

Scripps Howard News Service

Wednesday, August 22, 2001

Long before the President's first list of nominees to the federal courts arrived in the Senate, Senate Republicans and Democrats, and liberal and conservative organizations, were already at their battle stations. And it appears they remain there for the foreseeable future.

What used to be a fairly straightforward process - the nomination and confirmation of federal judges - has become more contested, acrimonious and time-consuming in recent years. According to research by the Constitution Project, the length of time from vacancy to confirmation has increased in every administration since President Ford's. It took the 105th Congress (1997-98) an average of 201 days to act on Clinton nominees. Consider that in 1922, when President Harding nominated George Sutherland, the Senate confirmed him within hours. In 1953, the Senate confirmed Earl Warren as Chief Justice without even questioning him.

The reasons for the change are not that complex. The number of federal judges has increased. The federal courts have been called upon to decide controversial social issues in such areas as school prayer, abortion, and affirmative action. This has, in turn, brought about increasing political pressure from interest groups that have proliferated dramatically in the last 20 years.

Two recent developments have further roiled partisan waters swirling around nominations. The first is the feeling of Democrats that Senate Republicans kept Clinton's court nominees bottled up in committee, sometimes for years, for ideological reasons. Republicans reply that Clinton was slow in getting nominations to the Senate. Both are right. It is also true that when a Republican holds the White House and the Democrats hold the Senate majority, the Democrats hold up judicial confirmations in presidential election years.

If Democratic senators hold to the principle of "an eye for an eye" and the Republicans hold to

York Times

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Neil Lewis **New York Times**

June 26, 2001

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Neil Lewis

an absolute and exclusive presidential right to choose federal judges, the result will be an accelerating cycle of stalemate and polarization. In this scenario, the courts themselves cannot avoid being painted with accusations of partisanship. That would corrode popular belief in impartial justice and hence respect for the law.

Options are open to both sides to defuse the situation. First, they could agree upon a few principles based upon the recommendations of the Constitution Project:

One, candidates for judgeships should be committed to deciding cases based upon law and the facts of the case and should renounce ideological commitments.

Two, candidates should be nominated and confirmed based upon experience, qualifications, temperament, character and general views of the law and the judicial role.

Three, the president and the Senate must not ask for, and the candidate not offer or consent to give, any pre-commitments about unresolved cases or issues that may come before them as judges.

Four, all parties to the nomination and confirmation process should conduct themselves only in ways that reinforce the principle of judicial independence.

Fifth, diversity on the federal bench is consistent with judicial independence and should be a goal of the appointment process.

Sixth, the country is entitled to a viable and efficient federal court system. Candidates therefore should move through nomination, Senate hearings and floor vote expeditiously and fairly.

For the good of the country and the integrity of the courts, the president should seek the meaningful counsel of all parties before deciding on nominees. This he can certainly do without relinquishing his exclusive constitutional authority to nominate judicial candidates. For their part, Democrats should participate in such consultations with the sole condition that the nominee satisfy the broad judicial criteria enumerated above.

Finally, we would call upon various interest groups not to decide in advance that they will

York Times

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Neil Lewis **New York Times**

June 26, 2001

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Neil Lewis

oppose or support all nominees that come from the White House. We should not demand pro-life or pro-choice judges but independent judges. We should not demand judges who are friendly to labor or business, but judges who are manifestly unbiased in either direction. We should not demand pro-environment or pro-development judges, but those who will look at the facts of the case, and decide in favor of the law, the Constitution and thus all the people of the United States.

Above all, we should seek agreement on nominees who can win confirmation under the existing political conditions. Unwavering dedication to the principle of judicial independence should be the legacy of the Bush administration and the 107th Congress. The public interest demands no less.

York Times

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Neil Lewis **New York Times**

June 26, 2001

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Neil Lewis

Transcripts/Members of Congress

Ari Fleischer Holds White House Briefing

By Lloyd Cutler and Mickey Edwards

FDCH Political Transcripts

Wednesday, August 22, 2001

QUESTION: Senator Leahy today held a hearing attended only by himself, I think, on...

FLEISCHER: Then I'm sure there were no debates.

QUESTION: ... one of the president's judicial nominees. What does the White House feel about the pace of the Judicial Committee hearings on the president's nominees? And why did the president not request a holdover before the August break occurred, which would have then made it unnecessary for Senator Leahy to hold this hearing today?

FLEISCHER: Well, as far as the pace of the nominees go, this administration, even with a shortened transition, is way ahead of the pace of previous presidents in their first years -- President Clinton, President Bush or President Reagan -- in making nominations, including that to the federal courts.

The administration is going to work very hard and diligently with Senator Leahy to move forward on Senate confirmation of those nominees.

You know, that's really not a partisan issue, that's an issue about how to serve people who have a legitimate claim and need to go to court and don't want to wait in line for courtrooms to open up because there are no judges sitting in judgment. And that's why, whether you're a Democrat or you're a Republican, there really is a national interest in filling the vacancies that are in the judiciary, and the administration is hopeful that the Senate will take that interest seriously and will serve the public.

QUESTION: I mean you're comfortable with the pace, then, that the Senate has maintained?

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Neil Lewis **New York Times**

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FLEISCHER: I think we'll know more by the end of the year. In fairness, many of the nominations the administration made came in late July, and so the Senate's just taking a look at those now, and the Senate has every right for advice and consent, they're going to exercise their prerogatives.

I think it will be an interesting question to take a look at come October and November when Congress is ready to recess for the year. At that point, there'll be a serious burden on the Congress and on the United States Senate particularly to have taken action and passed the nominees so that the judiciary is not clogged and so there aren't vacancies when people expect to have their fair day in court.

York Times

June 26, 2001 **Road to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

Newstead, Jennifer

From: Newstead, Jennifer
Sent: Monday, August 20, 2001 8:03 PM
To: Adam Ciongoli; Bradford_A._Berenson@who.eop.gov%inetgw;
Brett_M._Kavanaugh@who.eop.gov%inetgw; Dan Bryant;
Heather_Wingate@who.eop.gov; James Carroll; Jennifer Newstead; Kristen
Ullman; Linda Long; Lizette Benedi; Lori Rabjohns; Lori SharpeDay;
Matthew_E._Smith@who.eop.gov%inetgw; Mindy Tucker; Neal Suit; Patrick
O'Brien; Peter Coniglio; Sheila Joy; Tim_Goeglein@who.eop.gov%inetgw;
Timothy_E._Flanigan@who.eop.gov%inetgw; Viet Dinh;
Ziad_S._Ojakli@who.eop.gov%inetgw
Subject: Today's judicial media review is attached.
Attachments: Judicial Media Review 8-20-01.wpd

Media Review - Judicial Nominations

Monday, August 20, 2001

General Judicial Articles

"Clashes Expected Over Bush Nominees," [1](#)
Jesse Holland, *Associated Press*, August 17, 2001

Op/Eds

"Segregation Of Power; Gloves Are Off In Judicial Nomination War," [3](#)
The Columbus Dispatch, August 19, 2001

"Misleading Impression," [6](#)
Sheldon Goldman, *The Courier-Journal*, August 17, 2001

"Government By Court Order," [6](#)
Dana D. Kelley, *The Arkansas Democrat-Gazette*, August 17, 2001

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

"Business As Usual" [9](#)
The New Republic, August 20, 2001

General Judicial Articles

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Neil Lewis New York Times
June 26, 2001

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Neil Lewis 1

Clashes Expected Over Bush Nominees

By Jesse Holland

Associated Press

Friday, August 17, 2001

All of President Bush's 164 unconfirmed nominees for executive and judicial positions must return to "Go" when the Senate reconvenes in September because of a political tiff over two of them.

Rather than let the Senate tell Bush to submit new candidates to head the Consumer Product Safety Commission and the State Department's Western Hemisphere affairs bureau, Republicans forced Democrats to send back all nominations awaiting approval.

The move was strictly procedural and senators in both parties expect Bush to renominate all of his candidates. However, it foreshadows more confirmation battles when Congress reconvenes after Labor Day. Republicans made it clear they will try to portray Democrats as obstructionists if they don't allow votes by the full Senate on some of Bush's more controversial choices.

"To isolate it down to one or two this early in the session, we believe, is a problem," said Senate Minority Leader Trent Lott. "We realize it is a ministerial process now. They will all be sent down and all will be bundled up and sent back, but it does highlight our concern about the way these two nominees are being treated."

The events unfolded when the Senate Commerce Committee rejected Mary Sheila Gall's nomination to head the consumer agency on a 12-11, party-line vote. Looking to peel off a Democrat or two in the full Senate, Republicans demanded she get a vote there, despite the committee's action. Not likely, responded Tom Daschle, D-S.D., who as majority leader controls the Senate agenda

Then just before recessing, Senate Democratic Whip Harry Reid of Nevada told GOP leaders his party wanted to return to the White House the nominations of Gall and Otto Reich for the State Department's top position for Western Hemisphere affairs.

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Neil Lewis **New York Times**

June 26, 2001

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Senior Democrats say Reich, who has yet to get a hearing, is too divisive for his position. His supporters claim he is being targeted for his strident antipathy toward Cuban leader Fidel Castro. From 1983 to 1986, Reich headed a State Department office that was accused of running a prohibited covert propaganda campaign against Nicaragua's then communist-backed government.

Lott rejected Reid's ploy, saying Democrats would have to return all of Bush's nominations.

Beyond the contentious confirmation of Attorney General John Ashcroft and the rejection of Gall, Bush's choices for administration jobs have won Senate approval with little or no controversy.

Senators have confirmed 227 of Bush's nonjudicial appointees with only 57 nominations not acted upon, according to the Brookings Institution's Presidential Appointee Initiative, a nonpartisan research organization.

During similar time spans, the Senate confirmed 270 of President Reagan's 304 nominees in 1981, and 199 of President Clinton's 228 nominees in 1993, Brookings data shows.

Only four of Bush's judicial nominees have won confirmation - two to fill Appeals Court vacancies and two district judges. And several judicial nominees have drawn fire from several Democratic-dominated constituency groups because of their conservative credentials.

While the Senate's Foreign Relations committee weighs Reich's nomination, its Judiciary committee will tackle Bush's choices of Jeff Sutton, Michael McConnell and Miguel Estrada for Appeals Court vacancies.

"The ones they've done so far have been non-controversial," said Sheldon Goldman, a University of Massachusetts professor and author of the book, "Picking Federal Judges: Lower Court Selection From Roosevelt Through Reagan."

"Now we'll have to see what they do with Estrada, Sutton, with the whole slew of them like McConnell," Goldman said.

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Neil Lewis **New York Times**

June 26, 2001

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Disability groups have organized against Sutton, who argued and won a case in which the Supreme Court ruled that state government employees cannot sue for discrimination under the Americans With Disabilities Act.

Groups like Americans United for Separation of Church and State oppose McConnell, who is recognized as a critic of abortion rights and church-state separation. Estrada is a partner in the Washington firm that represented Bush before the Supreme Court during his Florida recount fight with Al Gore.

Op/Eds

Segregation Of Power; Gloves Are Off In Judicial Nomination War

The Columbus Dispatch
Sunday, August 19, 2001

The recent bald declaration by Sen. Charles Schumer, D-N.Y., that President Bush's nominees for federal judiciary posts would be subjected to outright ideological screening by the Democrat-controlled Senate ripped away the last shred of pretense about what has been going on for 20 years: Both parties use the confirmation process to block each other's nominees in the hope of creating a judiciary that reflects their concept of the proper role of the courts.

This fight has gotten more vicious and shrill for several reasons.

In the past 50 years, the power of state and federal courts has grown immensely, seriously altering the relative power of each of the three branches of government.

While the Founders intended that policy-making would be vested in the Congress and state legislatures elected by the people, courts increasingly have horned in on the legislative function, issuing rulings that make policy, rather than simply interpreting or judging the constitutionality of laws passed by legislatures. The U.S. Supreme Court's 1973 finding that there is a constitutional privacy right to abortion, for example, instantly overturned the legislatively enacted abortion bans then in place in most of the states. Federal courts also have taken over urban school districts in the name of ending segregation.

York Times

June 26, 2001 **Road to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

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Neil Lewis

This change in the relationship of courts and legislatures has come about because there have been in the United States, for at least the past half century, two very different conceptions of government's role. The traditional viewpoint, based on the Founders' recognition of government's tendency to despotism, sees a system of checks and balances designed to limit the power of government.

Besides dividing power between different branches and levels of government, the Founders also vested policymaking power in a two- chamber legislature, in order to make the process slow and deliberate.

As a result, changes in the exercise of government power would be evolutionary rather than revolutionary, an impediment to demagogues and a buffer against the surges of sometimes irrational or liberty-threatening public opinion. The sheer ponderosity of the governing machinery would make it difficult for government to crush freedom quickly or easily.

But political activists chafe at the slow grinding of the democratic machinery, whose inertia not only protects liberty but also can be exploited to preserve and prolong unfair privilege and injustice.

The Founders' sound idea that states should retain rights and powers as a counterbalance to the federal government was dragged into disrepute when Southern states used this autonomy to first defend slavery and then government-sanctioned racial discrimination in the Jim Crow era.

Well-intentioned people determined to overcome such legislatively sanctioned impediments to racial equality sought a remedy in the expansion of federal power, including that of federal courts, to overcome state resistance.

Thus, in the name of a good cause, courts became a way to make an end run around the slow-moving or recalcitrant legislatures.

Today, many political activists prefer court briefs to ballots when seeking political change. They know that a ruling by one or a handful of unelected, unaccountable federal judges can can overrule or bypass Congress, 50 state legislatures and the nation's voters.

York Times

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Neil Lewis **New York Times**

June 26, 2001

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In a trice, the Founders' carefully crafted checks against concentration of power in a few hands are rendered null and void.

While this may seem acceptable when that power clearly is used for a good cause, such as freeing citizens from racial discrimination, it is far less acceptable when the issues are less clear-cut and the electorate is deeply divided, for example, with issues such as abortion, capital punishment and education. It is precisely these most troubling issues that should be ground slowly through the democratic process rather than being "settled" by judicial fiat.

The struggle for the soul of the federal courts pits those who believe democratic processes cannot be trusted to do the "right" thing against those who believe that allowing unelected, unaccountable judges to make public policy is an invitation to despotism and a subversion of democracy.

The place where these mutually exclusive views collide is the U.S. Senate. In the past, when there was less division over the role of the courts, it was Senate practice to confirm a president's judicial nominees without much fuss, providing the candidates were qualified and competent.

But Schumer's declaration of ideological warfare shows that that era is over. The problem is, his declaration also could be a recipe for disaster. If each party refuses to confirm the other's judicial nominees, the result could be paralysis of the federal courts, with devastating effects on millions of people affected by the decisions made -- or delayed -- in those courts.

At present, about 100 federal judgeships are unfilled; that's about one in eight. If the Senate cannot agree on the candidates needed to fill them, the shortage will grow worse.

The Dispatch long has argued that presidents are entitled to nominate people who share their governing philosophy, provided the nominees meet necessary standards of character and competence. The underlying assumption is that the voters who elected the president did so with the understanding and expectation that he would nominate like-minded people to federal posts.

Agreement on such an approach may be the only way a Senate divided so deeply by judicial philosophy can ever hope to keep the federal bench fully staffed so that the wheels of justice

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Neil Lewis **New York Times**

June 26, 2001

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keep turning.

If each party refuses to confirm the other's judicial nominees, the result could be paralysis of the federal courts, with devastating effects on millions of people.

Misleading Impression

By Sheldon Goldman
The Courier-Journal
Friday, August 17, 2001

In the otherwise excellent and balanced news story appearing on Aug. 12 about the federal judicial nomination of David Bunning, I am quoted in a way that gives a misleading impression. As I told your reporter, I have no personal knowledge of David Bunning or his qualifications for office. I was merely responding in only a very general way to the questions posed to me. Bunning may well be among the most qualified persons available for the judgeship. My comments published in your story should not be taken to mean that I believe him either qualified or not qualified for office.

Sheldon Goldman

Professor of Political Science, University of Massachusetts at Amherst

Government By Court Order

By Dana D. Kelley
The Arkansas Democrat-Gazette
Friday, August 17, 2001

Sue has become Lady Liberty's first name. It's the new American Way for governing. Forget the old saying, "It takes an act of Congress." The adage for the new millennium is "It takes a Supreme Court ruling."

If America seems to be more polar today on many social issues, it's because our law is often

York Times

June 26, 2001 **oad to Federal ts Bumpier in Senate**
Neil Lewis **New York Times**
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

being made not by our elected representatives, but by unelected court justices. The former builds consensus, the latter resentment.

Back in the fall presidential election, Democratic candidate Al Gore warned women and pro-abortion supporters that a vote for Republican candidate George W. Bush was a vote to overturn Roe vs. Wade. As powerful as the leader of the world's sole superpower may be, however, not even he can single-handedly accomplish that feat. (It's noteworthy that Gore didn't propose actually putting the abortion question to a true popular vote.)

The implication, rather, was that the election of Bush was also the election, by privilege of political appointment, of conservative and presumably anti-abortion Supreme Court justices. It was thus tacitly acknowledged, with remarkably little protest, that the judiciary was more connected with abortion lawmaking than the legislative branch.

This problem--government by court order rather than by consent of the governed--is getting worse, not better. Currently, the U.S. Senate has confirmed only three of President Bush's 44 nominations for federal court judgeships, and some senators are openly promising an ideological fight for bench seats. New York's Charles Schumer said Democrats will deny nominees of "a particular ideological cast" so as not to "reorient the direction of the federal judiciary."

So now it appears that the job of senators is not to make the laws, but to make sure we get the right sort of judges to make the laws. Schumer and his colleagues understand all too well that it's a lot easier to get re-elected if the courts tackle all the really divisive issues.

The direction he refers to is increasingly activist, and nothing thwarts democracy like judicial activism. Even if the entire population of a town unanimously supported putting a Nativity scene on its courthouse lawn, the Supreme Court would order otherwise--not to protect any local citizens in the minority opinion, but to avoid the figurative "oppression" of any minority anywhere.

Activists call that liberty. A better name is tyranny. Rather than require petitioners whose cause is beyond the scope of the explicit constitutional language to utilize the amendment process, activist justices have literally taken the law into their own hands. Not since the grand age of monarchs have the opinions of so few outweighed the wishes of so many. Overwhelming

York Times

June 26, 2001 **Road to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

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majorities of Americans (1) support the death penalty, (2) oppose unregulated abortion on demand and (3) support public school prayer, and yet the Supreme Court has ruled contrary to public sentiment on each point. Worse yet, it's done so by playing "Twister" with legal precedents and history. That's what frustrates fair-minded folks so much.

Capital punishment is mentioned in the Constitution, and yet the court once ruled it unconstitutional. (Even today its constitutionality is micromanaged by the court.) Abortion, conversely, cannot be found in the document, but like the emperor's clothes, so many serious and important people pretend it's there that the simplistic lay-person is shouted down for even querying. And wherever the line separating church and state may fall today, there's no denying that at the time the Bill of Rights was drafted, nobody, including the authors, saw prayer in public school as a breach.

It's little wonder that there is a contentious attitude today toward lawyers and lawsuits. The nation's judiciary, originally intended to be the final arbiter when all else failed, has become the venue of first resort. Why undertake lobbying hundreds of legislators to pass a new law when convincing a handful of justices will get the existing law struck down? If the will of the people is wilted by the decree of the court, well, then, the people are wrong. Special-interest activists may have started us on the slippery slope to government by court order, but sly American spectators catch on quickly. One can ably argue that trial lawyers are in fact a special-interest group, but it's no longer just the lawyers who keep sharp eyes open for jackpot tort opportunities.

USA Today ran a story this week describing Wal-Mart's volume of lawsuits: The retailer was sued a staggering 4,851 times last year, about once every two hours.

Slip and fall in your house and you're just clumsy; do it in a Wal-Mart store and you're a victim of "neglect," which in the modern legal vernacular means you get to spin the judicial wheel of fortune.

There was also a small article in the Jonesboro Sun about a \$ 2 million judgment against a student and a small college after the student, who was driving the plaintiff to a concert, had an automobile accident in which the plaintiff was seriously injured. Certainly, neither the college nor the driver had any intention of causing a car wreck. Fate is fickle. The plaintiff could easily have been driving and, being human, had the accident. Would he want to be sued under reverse

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circumstances?

We've all seen more than enough instances in which even self-inflicted human error is converted into a multimillion-dollar liability via the courts. Think McDonald's hot coffee. Or a Coke machine falling over on vandals trying to steal money from it. The lure of "big money," once only a cheesy game show phrase, has now achieved esquire status. If you're human, basically, you're potentially guilty--and liable. And you don't have to just worry about Big Brother watching. The sue-happy predator could be as close as the person riding next to you in your car.

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Business As Usual

The New Republic

Monday, August 20, 2001

"Justice delayed is justice denied," Attorney General John Ashcroft told the American Bar Association's annual convention this week. The motivation for this pronouncement was Ashcroft's pique that the Senate "has moved slowly" in its consideration of President Bush's judicial nominees, resulting in a spate of vacancies that constitute "judicial emergencies." There are a few problems with Ashcroft's complaint. First, it's not true that the Senate has moved slowly: In less than eight months, it has approved about as many federal appeals court judges as it did in both Poppy's and Bill Clinton's entire first year in office, according to the Senate Judiciary Committee. But the greater problem with Ashcroft's indignation is its staggering hypocrisy: for almost no one in America bears greater responsibility for the current "judicial emergencies" than he does. When President Clinton nominated Ronnie White to become a district court judge in 1997, then-Senator Ashcroft blocked his nomination for two years before leading the campaign to kill it on the Senate floor. A year earlier, he placed a "hold" on Margaret Morrow's nomination to a California federal district court and opposed the confirmations of Merrick B. Garland, Frederica Massiah-Jackson, and Clarence Sundram. (Massiah-Jackson and Sundram, like White, never made it to the bench.) As one Ashcroft aide bragged to the St. Louis Post-Dispatch in 1997, "We're making business as usual impossible." Before Ashcroft chastises the Senate, he might want to consider his own record. Responsibility delayed is responsibility denied.

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Subject: Judicial Media Review
Attachments: Judicial Media Review 8-16-01.wpd

[Please see attached.](#)

Media Review - Judicial Nominations

Thursday, August 16, 2001

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Major Garrett, *CNN*, August 14, 2001

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People For The American Way, August 2001
<http://www.pfaw.org/issues/democracy/federalist.pdf>

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Making the Grade: How the ABA Rates Judicial Nominee

By Jonathan Groner
Fulton County Daily Report
Tuesday, August 14, 2001

For the past several months, and as recently as last week, the American Bar Association has been caught in heavy political gunplay for its role in grading would-be federal judges.

Conservatives say the group exhibits a liberal bias, while Democrats who control the Senate and pass ultimate judgment on nominees say they can't do their job without the ABA's input.

But for all the noise over the ABA's role in shaping the federal bench, very little attention is paid to how the group's mysterious Standing Committee on the Federal Judiciary actually conducts its reviews of candidates.

The 15-member committee almost always is made up of law firm partners, working alone as they conduct at least 40 interviews of lawyers, judges and community leaders, sometimes even including Supreme Court justices. Each of their projects takes dozens of hours-time that the lawyers otherwise could devote to clients.

The products of these efforts are detailed reports on nominees, often stretching as long as 50 pages. The highly sensitive documents are distributed through the mail to avoid computer or e-mail security breaches. They are not released even to the Senate or the White House, which are informed only of the bottom line-that any given judicial candidate has been rated "well-qualified," "qualified" or "unqualified" for the job.

And at the end of the process, all of the copies of the reports are destroyed, save one.

Conservatives long have accused the ABA, which has taken liberal stands on other issues, of viewing its judicial task force's work through a liberal lens, resulting in bias in the judiciary panel's evaluations. Earlier this year, the Bush administration stripped the committee of a special status as adviser to the White House it had enjoyed for 50 years.

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The ABA always has denied the allegations. Several people who have been involved in the ratings process, from members of the ABA committee to judicial candidates under review, say they never saw evidence that politics played a role.

"They did a very thorough job, focusing particularly on the question of judicial temperament," says one judicial nominee who went through the process within the last three years. "We had a sit-down (with the ABA committee's circuit representative). It was decent and cordial. None of the questions was political in any way."

Despite the administration's decision to treat the ABA no differently from any other interest group, the committee's assessments of prospective judges still matter a good deal. Senate Judiciary Chairman Patrick Leahy, D-Vt., has said that he will continue to rely on the ratings of the blue-ribbon committee.

And the committee has plenty of work to do. President George W. Bush quickly has cranked out 48 nominations for the federal trial and appeals courts, 44 of which are pending before the Senate Judiciary Committee.

The new chairman of the ABA committee, Roscoe Trimmier Jr. of Boston's Ropes & Gray, says his group has had to scramble to keep from falling behind in its investigations. Trimmier was appointed chairman of the panel at last week's ABA convention in Chicago, replacing Patricia Hynes of New York's Milberg Weiss Bershad Hynes & Lerach, whose one-year term ended.

Trimmier says the rating process places an extremely heavy burden on the committee members.

"It's incredibly time-consuming," he says. "Now that we are getting batches of nominees, we'll have to call upon former members to help out." Trimmier says he's aware of fewer than 20 former panelists nationwide who might be available to fill in.

Covert Activity

Though the process is much the same as it has been for decades, there is one key difference this year. Because the committee's long-standing relationship with the White House has been

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severed, the committee no longer receives advance word of projected nominees. As a result, it is no longer able to vet them for possibly disqualifying problems and warn the White House before the nomination is made.

Judicial candidates, of course, still undergo background checks conducted by the FBI before their names are submitted.

Normally, the ABA investigations are parceled out among committee members according to the federal circuits. Each of the committee's 14 members, other than the chairman, represents one of the 11 numbered circuits, the D.C. Circuit, and the Federal Circuit. Two committee members cover the sprawling 9th Circuit. All members are limited to no more than two three-year terms.

Work performed for the ABA committee is uncompensated and confidentiality rules prohibit members from farming out any of the legwork to associates or paralegals.

Trimmier says about 60 hours of interviews are conducted for each inquiry. The committee requires that a minimum of 40 people-federal, state and local judges, U.S. Attorneys, public defenders, community leaders of all sorts, and opposing counsel-weigh in with their views about a nominee, and members often talk to many more than that in compiling their reports.

The nominee is informed of the start of the process, but usually is interviewed last, after any problems have arisen, so that he or she can explain any difficulties and suggest additional people to contact.

The reports, which form the basis of the ratings, are circulated among the committee members.

The other members then vote on the ratings-by telephone or U.S. mail, never by fax or e-mail. A member who has questions about a proposed rating may ask the chairman to convene a conference call of all members. (The committee normally meets in person only twice a year, at the ABA's two major annual meetings.)

Once all members have voted, the chairman tabulates the votes and forwards the result to the White House counsel, the Department of Justice, and all members of the Senate Judiciary Committee. Trimmier says the candidate is informed of his or her rating at the same time.

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After that, the rating becomes public, including the existence of a minority view among the members, if any.

Looking for Litigators

If there are several simultaneous nominees for the bench in one circuit, the committee member won't be able to keep up with the pace of investigations-especially since the panel wants each report finished within 30 days after the nominee returns a completed questionnaire.

Trimmier says he can ask a member from a different region to fill in for an overburdened member, but that won't work if everyone is busy. The only other people the committee may rely upon, for reasons of confidentiality, are former members.

"It's a very broad inquiry," Trimmier says. "We look for knowledge of the law, intellectual capacity, writing ability, judicial temperament, integrity, general reputation in the community, and more." Another key aspect of any probe centers on the nominee's trial experience. "Most of the people on the committee are litigators," says a lawyer familiar with the process. "There have been ratings of not qualified on the basis of lack of experience alone. There have been minority votes on that basis. These issues do come up, and there are those who feel very strongly about it."

While committee members declined to address specific cases, a lack of trial experience is widely believed to be the reason that a minority of the panel rated current Federal Circuit nominee Sharon Prost "not qualified" earlier this month. The majority voted Prost, chief counsel to the Republicans on the Senate Judiciary Committee and a legal aide to Sen. Orrin Hatch, R-Utah, for 12 years, "qualified."

Prost, 50, obviously has not been a litigator while on the Hill, though she had served as an attorney at the National Labor Relations Board.

David Carle, a spokesman for Sen. Leahy, announced last week that Leahy had scheduled a rare hearing during a congressional recess for Prost and for a district court nominee from South Carolina, Terry Wooten. That hearing is set for Aug. 27.

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Pauline Schneider, a partner at the Washington office of Hunton & Williams, is the Federal Circuit representative on the ABA committee who would have done the inquiry on Prost. She declines comment, referring questions to Trimmier.

Fred Fielding of Washington's Wiley, Rein & Fielding is the designated D.C. Circuit representative on the panel. He is responsible for evaluating nominees to both the D.C. Circuit and the U.S. District Court for the District of Columbia. Like Schneider, he refers questions about the committee's work to Trimmier.

Fielding apparently is working to wrap up his reports on Miller & Chevalier partner John Bates and D.C. Superior Court Judge Reggie Walton, both nominated June 20 for the District Court.

"I was contacted this week by Fred Fielding regarding Bates and Walton," says Mark Tuohey III, a former District of Columbia Bar president and partner in the Washington office of Vinson & Elkins. "In fact, I have been contacted by members of the committee from the Carter era through Bush II."

Tuohey says he has always been impressed with the "professionalism" of the ABA panel.

"They've always taken their job very seriously," Tuohey says. "It's never just a wink and a nod. And it's always been nonpartisan and objective."

But not all reports about the committee's work are so rosy. Two people who have been through the process as nominees say that although the investigators are thorough and show no political bias, they should keep the nominees better informed of their status.

"They never told me what my rating was. I never got an official letter that said it," says one.

"My overall impression was that this was just not a user-friendly process. I don't just mean the ABA, but the ABA did not communicate anything to me, even the rating," says another.

Judge On Hold Once More

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By Matthew Easley
The News and Observer
Tuesday, August 14, 2001

Federal Judge Terrence Boyle knows he's a lucky man. He just can't tell whether his luck is good or bad.

Boyle, the chief U.S. District Court judge in Eastern North Carolina, recently got a second chance to climb the judicial ranks to the 4th U.S. Circuit Court of Appeals. Politics thwarted his ascent in 1991 when Senate Democrats denied him a confirmation hearing after the elder President George Bush nominated Boyle, a conservative Republican.

Then, after voters last fall put George W. Bush in the White House and Republicans in charge of the Senate, Boyle got a second chance to move up to the 4th Circuit, based in Richmond, Va. In May, he was among Bush's first 11 nominees to federal appellate courts.

But two weeks later, Sen. Jim Jeffords of Vermont switched from Republican to independent, giving Democrats control of the Senate, and thus judicial appointments.

Now Boyle, 55, by most accounts a bright and brusque courtroom boss, is again at the mercy of Washington politics, and he can only bide his time.

"It's not fair for him to be caught up in this political thing; he was a victim before," said Bill Cobey, chairman of North Carolina's Republican Party. "They shouldn't expect a Republican president to nominate a liberal judge. They should look at his qualifications. He's a very distinguished jurist."

Lawyers who work in Boyle's court generally agree that he is a good choice for the 4th Circuit. "I think he's really one of the best trial judges I've ever appeared before," said Elizabeth City lawyer Everett Thompson, a Democrat. "He's a student of the law, he works hard, he's bright, he's fair. And I never saw him be political at all about anything."

Boyle won't talk publicly about his nomination. "Ethical considerations for judicial nominees preclude my participating in a press interview while the nomination is pending," he said.

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Actually, there are no rules requiring judicial nominees to stay mum, though many do, partly out of fear of offending the senators who will decide their fate. Out of courtesy to senators, White House nominees are asked not to comment to the public until after their hearings, White House spokeswoman Jeanie Mamo said.

Since Jeffords' switch, John Edwards has joined the Senate committee that screens judicial nominees. That might give him enough clout to insist that Bush also nominate a Democratic judge, such as James Wynn of the state appeals court, to let Boyle's nomination move forward.

Meanwhile, the Senate is being lobbied by conservative and liberal political groups that have taken an interest in Boyle and his 17-year record as a judge.

Critics perceive Boyle's conservative ideology in rulings ordering congressional redistricting, barring lawsuits against the state under a federal disability law and refusing to approve a settlement in a lawsuit over employment of female guards in state prisons.

"There are many aspects of Judge Boyle's record that are extremely troubling from a civil rights perspective," said Elliot Minberg, legal director for the liberal political group People for the American Way.

But Boyle also has upheld federal protection of red wolves over the objection of livestock farmers, halted an execution to allow psychiatric testing of a death-row inmate, allowed the production of generic forms of the antacid drug Zantac, and refused to block the moving of the Cape Hatteras Lighthouse. In the redistricting case, Boyle headed a three-judge panel that ruled 2-1 last year that North Carolina's 12th Congressional District, winding from Charlotte to Greensboro, was unconstitutionally drawn based on the race of voters. At the same time, the panel concluded that the 1st Congressional District in the state's northeast corner, which has a higher population of black voters, was not designed on a racial basis.

In April, the U.S. Supreme Court overturned the panel's ruling, saying the 12th District was OK on the new grounds that race can affect a district's shape as long as something else - in this case, partisan politics - is a bigger factor.

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Boyle's handling of that case could come in for criticism during a Senate confirmation hearing. For example, at first the panel unanimously agreed to skip a trial on the facts, but then the Supreme Court ordered a trial. But some legal scholars say Boyle and the judge who agreed with him reached a reasonable conclusion based on shifting Supreme Court rulings.

Criminal defense lawyers, some Democrats, say they like Boyle because he holds prosecutors to high standards and rewards defendants who help convict other offenders.

"He is a great friend of the Constitution," said Raleigh defense lawyer Wade Smith, a former chairman of the state Democratic Party who supports Boyle. "He rules fairly and impartially."

###

Life as a lawyer:

Boyle was born and reared outside the 4th Circuit in Passaic, N.J., just north of Newark and west of New York City. He graduated from Brown University, where he played football, and earned his law degree at American University.

From 1970 to 1973, he was counsel to the Republican minority on the U.S. House Subcommittee on Housing, Banking and Currency. Also in 1973, he worked as one of U.S. Sen. Jesse Helms' legislative assistants.

While in Washington, one day he walked into a congressional office elevator and met his future bride: Debbie Ellis, the daughter of Raleigh lawyer Tom Ellis, then Helms' political strategist.

They would marry and move in 1974 to a quaint northeastern North Carolina town about as unlike Washington as possible: the historic village of Edenton on the north shore of the Albemarle Sound, where they had friends.

Boyle went to work with a prominent law firm 25 miles northeast in Elizabeth City, the unofficial capital of the Albemarle region. Three years later, Boyle became a partner in LeRoy, Wells, Shaw, Hornthal & Riley, where he had a wide-ranging law practice.

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"He has always been a very pragmatic guy," said firm partner Tony Hornthal, past president of the N.C. Bar Association. "He had a way of cutting through the chaff and getting down to the heart of the matter."

But Boyle had such conservative fiscal views, Hornthal recalled, that his partners joked that he must bury his money in his yard.

"When we made money decisions about the firm," Hornthal said, "we ignored what Boyle said."

###

A demanding judge:

His brother-in-law, Hood Ellis, a lawyer in Boyle's old firm, said Boyle is shy and private and doesn't talk much about himself, even with family. "There's not too many people who crawl inside his inner ring," he said.

But Boyle also is competitive and loves tennis, football and jokes.

"He likes to win, but he's a good sport," Ellis said. "He has a very good sense of humor. And he has the greatest laugh of all time. Once you've heard him guffaw, you'll never forget it."

In 1984, President Reagan nominated Boyle as a federal trial judge at Helms' urging, and he was confirmed. His home office and court are in Elizabeth City, but he also hears cases in Greenville, New Bern, Wilmington and Raleigh.

In his courtroom, Boyle can be curt, combative, even insulting, some lawyers say. Others appreciate his direct style and firm courtroom command.

He can be hard on either side.

In a 1993 drug case against former Wake Forest Mayor Jimmy Ray, Boyle chewed out a federal prosecutor for negotiating a plea bargain he doubted was justified.

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"Was the indictment not factually grounded?" he demanded to know. "What right do you have to make him resign?"

But Boyle doesn't seem mean so much as given to intense intellectual and verbal sparring, like a tough college professor.

Boyle displays an intelligent, dry wit and can be very funny. But he can quickly shift from joking with lawyers in court to grilling them.

###

Professor Boyle's lectures:

During recent criminal sentencing hearings in New Bern, Boyle lectured defense lawyers and prosecutors on their jobs and gave a pointed speech on bank robbery and its proper punishment.

He criticized a prosecutor for failing to bring victims to a hearing and chided a defense lawyer for requesting a lighter sentence than normal. Then Boyle paused and asked the defense lawyer whether he wanted to ask for anything else. The lawyer politely said he did not.

"You don't want to provoke another speech like that, do you?" Boyle asked, and then smiled. "All right."

Later, just before sending a man to prison for six months for an air-rage scuffle, Boyle warned him to straighten out soon.

"Do you know why you're getting an active sentence?" he asked. "Give me some of the reasons.

But then before the man could answer, Boyle veered off on a tangent about the foolishness of airlines serving alcohol.

He then recounted the man's considerable criminal history and told him: "You haven't been an Eagle Scout. This thing's been coming. You keep this up, and you're going to be back in front of me, catching more time. We'll be doing this forever. That's the bad news."

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Unless, that is, Boyle goes to the 4th Circuit. Then he'll be reviewing the decisions of other trial judges, correcting their mistakes or applying their rulings to the circuit's five states: North Carolina, South Carolina, Virginia, West Virginia and Maryland.

The American Bar Association has given Boyle a "qualified" rating for the job, its middle ranking. Roger Gregory, a Democrat whom the Senate confirmed to the court last month, had the same rating.

Now it is up to Edwards, Helms, and 98 other senators to decide whether Boyle will make the cut.

"I don't want politics to stop us from having a judge on the 4th Circuit from North Carolina," said Smith, the Raleigh lawyer.

"I think he would happily rule against me and happily rule for me whether I'm a Republican or a Democrat. I think he makes his decisions on the facts, and that's the best we could ever hope. Give me judges like that."

White House Gloomy Over Judiciary Prospects

By Major Garrett

CNN

Tuesday, August 14, 2001

"Improper" delays engineered by Senate Republicans to thwart President Clinton's judicial nominees so poisoned relations with Democrats that President Bush may see only five of his own choices for the federal bench confirmed this year, White House Counsel Alberto Gonzalez said Tuesday.

"We are trying to work through some of the logjams, but there is a lot of bitterness," Gonzales told CNN. "This is a bit of a payback. I can't argue with some of their [the Democrats'] perceptions."

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Gonzales noted that some Republican senators placed "holds" on Clinton judicial nominees, denying them a Judiciary Committee hearing or a floor vote for as long as four years.

"That was wrong," he said. "That's not right. Part of this is based on the conduct of the Republican senators in the past. We had nothing to do with this problem. But it does affect us."

Gonzales was exceedingly gloomy about the prospects of winning approval for Bush judicial nominees, predicting Bush would win no more than five judicial confirmations this year.

Gonzales said each of the three previous presidents won confirmation for more than 40 judicial nominees in their first year in office.

"It's a major problem and it's going to get worse," he said. "Our best argument is that the partisanship over judicial nominations has historically been saved for the end of an administration and not at the beginning. We would expect the same kind of deference given to Reagan, Bush and Clinton."

Gonzales said Democrats are reluctant to do so, however, because they fear Bush will "stack the federal judiciary with conservatives."

Gonzales said those fears are overwrought and pointed to Bush's renomination of Roger Gregory, an African-American lawyer from Richmond, Virginia. Clinton nominated Gregory to the U.S. 4th Circuit Court of Appeals, but Senate Republicans stalled the nomination. Frustrated, Clinton gave Gregory a recess appointment to the bench, one that would have expired after one year unless Bush renominated him.

"We asked Roger Gregory the same questions and he gave us the answers we expected," Gonzales said.

"The answers were what you would expect from a good, solid, conservative judge. We don't ask potential nominees about abortion or affirmative action. We ask how you would render a decision."

Gregory is one of four federal judicial nominees to have won Senate confirmation. Overall, Bush

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has nominated 44 judges to the federal courts. Of those 22 are for the circuit court of appeals and 22 are for district court positions. Forty nominees await confirmation.

Interest Groups/Press Releases

The Federalist Society, From Obscurity To Power; The Right-Wing Lawyers Who Are Shaping The Bush Administration's Decisions On Legal Policies And Judicial Nominations

People For The American Way
August, 2001

<http://www.pfaw.org/issues/democracy/federalist.pdf>

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Cc: Schauder, Andrew
Subject: Judicial Media Review
Attachments: Judicial Media Review 8-09-01.wpd

[Today's media review is attached.](#)

Media Review - Judicial Nominations

Thursday, August 9, 2001

General Judicial Articles

- "Ashcroft Pushes Senate On Judicial Nominees; Speech Fuels Battle Over Confirmations," [2](#)
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Anne Gearan, *Associated Press*, August 8, 2001
- "Ashcroft Says Bush Judicial Picks Will Show 'Respect For The Law'," [5](#)
Jess Bravin, *The Wall Street Journal*, August 8, 2001
- "At Lawyers' Gathering, Ashcroft Defends Vetting Decision," [7](#)
Debbie Howlett, *USA Today*, August 8, 2001
- "Leahy Plans Recess Hearing On Judicial Nominees," [8](#)
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- "Ashcroft Asks ABA For Help," [10](#)
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Jerry Crimmins, *Chicago Daily Law Bulletin*, August 7, 2001
- "McConnell Says East Kentucky Judges Will Prove Capable," [14](#)
Mark Chellgren, *Associated Press*, August 8, 2001

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Tony Snow, *Fox News*, August 7, 2001
EXCERPT

General Judicial Articles

Ashcroft Pushes Senate On Judicial Nominees; Speech Fuels Battle Over Confirmations

By Dan Eggen

The Washington Post

Wednesday, August 8, 2001

Attorney General John D. Ashcroft urged the Senate yesterday to speed up confirmation of the Bush administration's nominees for the federal bench, complaining that the "process has moved slowly" and is contributing to backlogs in the federal courts.

In a speech to the American Bar Association in Chicago, Ashcroft said that only one of 11 judges nominated to U.S. circuit courts this year has had a hearing before the Senate Judiciary Committee. Eight of those positions have been classified as "judicial emergencies" because they have stood vacant for so long, he said.

"I know I don't need to tell you that judicial vacancies mean delays in the time it takes to have one's case heard," Ashcroft said at the ABA's annual conference. "Justice delayed is justice denied."

Ashcroft's statements marked another escalation in the war of words between the Republican administration and the Democratic-controlled Senate over judicial nominations, which are shaping up as a key battleground for the two parties.

Sen. Patrick J. Leahy (D-Vt.) and other leading Democrats, still smarting from Ashcroft's contentious confirmation in February, have vowed to block any judicial nominees seen as too ideologically extreme and accuse Republicans of hypocrisy for complaining about judicial nominations.

Leahy spokesman David Carle said that more than half of President Bill Clinton's nominees for circuit courts were not confirmed in the last two years of Republican control.

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Neil Lewis

"He knows about the delaying tactics of the past from his side of the aisle," Carle said of Ashcroft, a former Senate Republican. "Some Republican critics seem to be struggling mightily to keep straight faces while wrongly charging the Senate with delays."

Democrats also accuse the White House of causing its own delays by limiting the role of the ABA, which for half a century had secretly checked the backgrounds of potential federal judges before they were nominated. Bush officials stopped the practice, saying the group had a liberal bias in its grading system, but Democrats still rely on ABA grades issued after nominations.

In his first speech to the organization as attorney general, Ashcroft sidestepped the controversial move to end the ABA role. But, he said, "there are those who have called into doubt the impartiality of the ABA's judicial ratings." He cited a study alleging that Clinton nominees were 10 times more likely to get the group's highest rating than those in the first Bush administration.

In a separate speech yesterday in Chicago, Ashcroft urged Congress to close loopholes in laws that limit prosecutors' power to target money laundering and organized crime.

Ashcroft told an audience at a conference on organized crime that current laws severely limit the Justice Department's ability to confiscate large quantities of cash smuggled out of the country as part of the drug trade. The Justice Department is also considering asking Congress to expand the list of overseas crimes that can be prosecuted domestically if they involve bringing proceeds into the United States, he said.

Ashcroft Defends Bush To Lawyers

By Anne Gearan

Associated Press

Wednesday, August 8, 2001

Attorney General John Ashcroft said he is confident the American Bar Association will apply the same standards to its reviews of Bush administration nominees as it did when vetting Clinton nominees, and rate the Bush judges highly.

"I am heartened by the ABA's ratings thus far, and am confident that, judged by the same

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standards used to rate the last administration, the vast majority of President Bush's nominees will continue to receive" the ABA's highest "well-qualified" rating for judges, Ashcroft said Tuesday.

So far, the ABA has reviewed 17 of Bush's initial 44 choices for federal trial and appeals courts and found all either qualified or well-qualified.

Those reviews were done after the nominees' names were public, instead of beforehand as was done during the Democratic Clinton administration and for eight administrations before that.

Ashcroft addressed the first gathering of the American Bar Association since the Bush administration ended the 50-year policy of using the lawyer group to do behind-the-scenes investigations on White House choices for the federal bench.

Ashcroft did not discuss the White House decision, but did allude to a conservative suspicion that the ABA has a liberal bias and treats Republican judicial nominees more harshly.

"As you may know, there are some who have called into doubt the impartiality of the ABA's judicial ratings," Ashcroft said.

He cited a recent study by Northwestern University law professor James Lindgren, which claimed that the ABA was as much as 10 times more likely to give its highest ratings to Clinton administration choices than to nominees of President Bush's father.

"Professor Lindgren attributes this disparity to a political bias in favor of liberal judges," Ashcroft said, without offering his own view. "Undoubtedly, there are others who argue that no such bias exists. In any event, I think we can agree that no political bias should exist."

The Bush White House did not cite politics or ideology in booting the ABA in March, saying no outside group should have special control over a president's picks for lifetime judicial posts.

Ashcroft also used the speech to urge the Senate to speed up confirmation of judicial nominees. He noted that only one of 11 judges nominated to the U.S. circuit court this year has had a hearing before the Senate Judiciary Committee.

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"I know I don't need to tell you that judicial nominees mean delays in the time it takes to have one's case heard," Ashcroft said. "Justice delayed is justice denied."

Democrats have vowed to block any nominees seen as too extreme and point out that Republicans routinely blocked nominations when they controlled the Senate.

The ABA's weeklong annual meeting, which ends Wednesday, was dominated by discussion of a proposed overhaul to the 400,000-lawyer group's code of ethics.

The overhaul effort faltered Tuesday, as opponents argued to the ABA's governing body that it risked violating the trust between lawyers and clients.

Facing likely defeat in the ABA's policy-making House of Delegates, lawyers who backed the proposed changes withdrew the most contentious issue. The proposed change would have given lawyers more latitude to report wrongdoing by their clients, including fraudulent business deals and financial crimes.

The ABA was not expected to cast a final vote on the ethics rules until next year, but Tuesday's unexpectedly swift and decisive votes against key provisions may mean there is little left to fight about.

The ABA defeated another contested change that would have eliminated the veto power a client now holds over lawyers who want to switch sides in the middle of a dispute. The change would have allowed lawyers to join an opposing firm so long as the lawyer had nothing further to do with the case.

The delegates did back a proposed prohibition on lawyers having sex with their clients. Until now, lawyers and dentists were the only major professions without a strong policy against the practice, said Boston University law professor Nancy Moore, also a member of the panel that drew up the proposed changes.

The ABA's ethics recommendations are not law, but are used to write state laws governing lawyers.

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Ashcroft Says Bush Judicial Picks Will Show 'Respect For The Law'

By Jess Bravin

The Wall Street Journal

Wednesday, August 8, 2001

Attorney General John Ashcroft told the American Bar Association that President Bush's judicial nominees would display a "respect for the law," unlike judges he didn't name, who he said "manufactured 'rights' " for criminals and issued other decisions "usurping the legislative function."

Separately, the ABA, meeting here for its annual convention, rejected further changes to its ethics guidelines that would allow lawyers to reveal clients they believe are intent on committing financial fraud.

The Bush administration's nominations, 44 of which are pending, are the first selected without the confidential screenings the ABA has provided presidents since Dwight D. Eisenhower. The administration ended the ABA screenings in March, after years of conservative complaints that the 400,000-member lawyers' organization preferred liberal judges.

The ABA nevertheless has continued to rate nominees by having a 15-member committee interview and gather information about them, before adopting a rating of "well-qualified," "qualified" or "not qualified." Senate Democrats, who control the fate of the nominees, have said they won't consider any Bush appointments that haven't been evaluated by the ABA.

In his speech Tuesday, Mr. Ashcroft said the group has screened 17 Bush nominations already. Most have been rated well-qualified and none less than qualified. "I am heartened by the ABA's ratings thus far, and am confident that, judged by the same standards used to rate the last administration, the vast majority of President Bush's nominees will continue to receive 'well qualified' ratings," he said. He asked the ABA to urge the Senate to quickly confirm the nominees.

Mr. Ashcroft also cited critics of the ABA screenings, referring to an opinion article in Monday's Wall Street Journal, which contended the group was harsher on federal appeals-court nominees

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of former President George H.W. Bush than they were on those of former President Clinton. In the piece, Northwestern University law professor James Lindgren said "Clinton nominees had more than 10 times better odds of getting the ABA's highest rating than similarly credentialed Bush appointees" and suggested the group isn't objective.

Mr. Ashcroft neither embraced nor rejected that view, but said, "I think we can agree that no political bias should exist." He said President Bush "has unequivocally rejected any notion of an issue-specific or political litmus test" for his nominees.

The ABA's incoming president, Robert E. Hirshon of Portland, Maine, said it was "absolutely wrong" to suggest that the lawyers' group played political favorites. He said of more than 2,000 judicial nominees evaluated since 1960, only 26 were rated not qualified -- and only three of those had been named by Republican presidents.

Martha W. Barnett of Tallahassee, Fla., the ABA's outgoing president, said that, during previous administrations, "in the rare situations where there were problems with a candidate, we came up with information that may have been valuable for the president in deciding whether to go forward" with a nomination.

On Monday, the ABA's governing House of Delegates endorsed a proposal to let lawyers reveal privileged information about a client "to prevent reasonably certain death or substantial bodily harm." Tuesday, delegates turned down a similar provision involving financial fraud. Disheartened proponents withdrew a related change in ethics rules that would have permitted disclosures to prevent, mitigate or rectify financial injuries, saying they may try again at an ABA meeting in February.

Delegates did approve a new guideline barring lawyers from having sexual relations with a client, except those sexual relationships that "predate the client-lawyer relationship." The ABA's guidelines are nonbinding, but often are followed by courts and legislatures. Earlier in the day, Mr. Ashcroft proposed tightening money-laundering laws, such as allowing the government to seize shipments of "bulk cash" -- more than \$10,000 -- without having to prove the smuggler derived the funds from a crime.

At Lawyers' Gathering, Ashcroft Defends Vetting Decision

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By Debbie Howlett
USA Today
Wednesday, August 8, 2001

President Bush angered the American Bar Association in March when he put an end to its 50-year role in screening potential nominees to the federal bench.

On Tuesday, Attorney General John Ashcroft appeared at the bar association's annual convention here to spell out what Bush wants from nominees -- namely "judicial restraint."

Ashcroft's appearance "was his effort -- and ours -- to extend a hand across the political divide," said Martha Barnett, outgoing president of the group.

When Bush ended the quasi-official role of an ABA standing committee in vetting those being considered for judicial posts, he broke a tradition dating to 1950. Every president since then had considered the ABA's evaluations before announcing nominees.

But Bush was persuaded by conservatives who see a liberal bias in the bar association, especially after its evaluating panel split on ill-fated Supreme Court nominee Robert Bork in 1987.

Ashcroft, in his speech, broached the criticism by calling attention to a study underwritten by the Federalist Society, a conservative group concerned with legal issues. The study found that among nominees with similar legal experience, President Clinton 's were seven times more likely to get the top rating of "well qualified" than those of the first President Bush.

"There are others who would argue that no such bias exists," Ashcroft told the lawyers. "In any event, I think we can agree that no political bias should exist."

Barnett pointed out after the speech that of the 2,000 potential nominees vetted by the ABA since the early 1960s, only 26 have received "not qualified" ratings, and 23 of them were chosen by Democratic presidents.

The ABA still evaluates nominees but only after their names are made public. Leaders in the

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Democrat-controlled Senate say they will not confirm a nominee without the ABA's input.

Ashcroft's appearance before the ABA seemed to be a sign of improving relations with the group, which represents 400,000 of the nation's lawyers. Even so, he was clear about the administration's policy on appointees.

"The president has unequivocally rejected any notion of an issue-specific or political litmus test and insists that the only value that his nominees share is a dedication to the rule of law and an understanding of the proper role of a federal judiciary," he said.

Meanwhile, the ABA on Tuesday set aside a discussion of how to handle attorney-client privilege. A faction of the group wanted to loosen guidelines on when an attorney can reveal a client's intent to commit a crime.

Lawyers are expected to report an imminent danger of death or serious injury. Some here hoped to allow lawyers to step forward when there's less clear-cut potential for danger, economic damage or other harm.

The group will likely revisit the issue at its meeting in Philadelphia in six months.

Leahy Plans Recess Hearing On Judicial Nominees

By Noelle Straub

The Hill

Wednesday, August 8, 2001

In a rare move, Senate Judiciary Chairman Patrick Leahy (D-Vt.) will hold a confirmation hearing during the August recess for Bush administration judicial nominees.

Leahy's move is likely to hasten the process of confirming judges nominated by President Bush at a time when Republicans have questioned the slow pace of the confirmation process. Leahy signaled the move in an Aug. 2nd speech on the Senate floor in which he said:

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"I am considering holding another judicial confirmation hearing in August, during the Senate recess. No such hearing was held during any of the last six years. If we proceed, it may be the first time a judicial confirmation hearing was held during the August recess."

Leahy is expected to hold the hearing on Aug. 27, his press secretary, David Carle, said Tuesday.

According to Carle, no such recess hearings had been held in the Judiciary Committee at least since 1989.

Leahy had consulted with ranking member Orrin Hatch (R-Utah), before going ahead with his plans, Carle said.

According to Senate Historian Richard Baker, only one member of the Judiciary Committee needs be present to conduct a hearing, although 10 senators are required to report a nomination.

Spokesmen for half-a-dozen Judiciary Committee members contacted Tuesday said they had not yet been informed of the Aug. 27 hearing and could not say whether their members would attend.

Leahy has been considering the unusual move for several reasons, Carle said, including the length of time it took for the Senate to approve an organizing resolution after Sen. Jim Jeffords' (I.-Vt.) defection gave Democrats control of the Senate.

"This is a highly unusual year," Carle said. "The Senate has changed hands three times. The Senate and the committee were only permitted to organize five weeks ago. So the confirmation process for judicial nominees has only been under way since mid-year."

Carle said the committee has already pursued "a brisk confirmation hearing schedule," including prompt consideration of Bush's nominees for the heads of the Federal Bureau of Investigation, Drug Enforcement Administration and Immigration and Naturalization Service.

Bush sent another batch of judicial nominees to the Senate for consideration last week. Carle said the administration has now submitted 20 nominees for the U.S. Circuit Court of Appeals and 20 for various district courts.

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Carle said it has yet to be determined which of these nominees will be included in the hearing this month.

The pace of nominations has proved to be a subject of contention between Democrats and Republicans.

After Sen. Larry Craig (R-Idaho) last week complained on the Senate floor about a nominee awaiting a Judiciary hearing, urging Leahy to act faster, Majority Leader Tom Daschle (D-S.D.) immediately fired back.

"I feel I may need to call an ambulance. I think I just bit off my tongue," Daschle said. "I will say in all sincerity that I think he just gave the speech that I have repeated probably 25 or 30 times over the last six years, verbatim. I can't tell you how many people languished for not days or weeks but years. But I have said on this floor repeatedly that we will not engage in payback."

On July 30, Minority Leader Trent Lott (R-Miss.) complained to reporters that the Senate at that time had only confirmed three federal judges. (Two more have since been confirmed.)

"And that's all," he said. "So I would hope that we could make some progress this week on the floor of the Senate on nominations and can get some commitments to make even a lot more progress when we come back in September."

But Leahy said some vacancies should have been filled in the past several years but were left open by the Republican-controlled Senate. He also said this year's pace of confirmations compares "most favorably" with the last six years.

On Friday, Assistant Minority Leader Don Nickles (R-Okla.) admitted the White House was partly to blame for delays in the confirmation of judges. "We've got a lot of judges that are waiting, a lot of U.S. attorneys, a lot of marshals that have not been confirmed, that need to be confirmed," Nickles said. "They should have been confirmed, frankly, in many cases by now, but we haven't got the nominations yet from the administration. So I'm not just faulting the Judiciary

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Committee, except for some of the circuit courts, they've been kind of slow on [the] circuit court."

Ashcroft Asks ABA For Help

By Al Swanson
United Press International
Tuesday, August 7, 2001

U.S. Attorney General John Ashcroft Tuesday asked the American Bar Association for help to pressure the Senate to move forward and act on President Bush's 44 pending nominees for federal judgeships.

Ashcroft told the ABA House of Delegates "the American people deserve a federal judiciary operating at full strength and peak efficiency, providing equal access to speedy justice."

Ashcroft chided the Senate Judiciary Committee for holding just one hearing on 11 nominees for federal court vacancies made on May 9. Eight of them were nominated to vacancies that had been classified "judicial emergencies" by the Administrative Court of the United States.

"The administration is doing its part," he said. "Now the Senate and those organizations involved in the process, including the ABA, must join us in working for the prompt confirmation of the outstanding men and women the president has nominated to be federal judges."

The ABA has completed rating the qualifications of 17 of 44 Bush nominees to federal courts, finding them all either "qualified" or "well-qualified."

In March, Bush stopped using the ABA ratings of judicial nominees but the Senate, under Democratic leadership, has continued to use the evaluations.

He said delays in the Senate hearings had raised the specter of the old adage: "Justice delayed is justice denied."

Ashcroft called the Bush nominees models of judicial restraint.

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"Judicial restraint means if the Constitution says you have a right to compensation when the government takes your property, then a judge cannot create exceptions for property that the government really doesn't want to pay for, by letting the government so heavily regulate the property as to make it worthless."

The nation's chief law enforcement officer said an independent federal judiciary, insulated from the whims of electoral politics, was essential to settling disputes between the legislative and the executive and maintaining respect for the law.

"Judges who exercise judicial restraint understand the limit of their power," he told the audience of lawyers.

"Judicial restraint means judges refusing to create on their own a criminal justice system that lets clearly guilty criminals off on a technicality."

Ashcroft, a lawyer and former Republican governor from Missouri, was a member of the Judiciary Committee and chairman of the Constitution subcommittee during his years in the Senate.

"Academic discussions of judicial activism and restraint have done little to enlighten the American public," he said. "The decisions we will ask our federal judges to make -- the issues we will expect them to weigh -- will affect each and every one of us in ways large and small."

Earlier, Ashcroft told law enforcement officers at a conference on organized crime in Chicago that Congress should close loopholes in the law to make it more difficult for drug dealers, terrorists and other criminals to launder money.

The Justice Department may recommend tightening federal laws to halt smuggling of large amounts of cash by making transporting more than \$10,000 in cash proceeds from criminal acts across U.S. borders a federal offense. The money would be subject to confiscation.

Ashcroft Prods ABA To Quickly Vet Judge Nominees

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By Jerry Crimmins
Chicago Daily Law Bulletin
Tuesday, August 7, 2001

U.S. Attorney General John D. Ashcroft Tuesday called for prompt Senate action on President Bush's judicial nominees and urged the American Bar Association to quickly and thoroughly review the nominees.

"So far the confirmation process has moved slowly," Ashcroft told the ABA's House of Delegates in the Grand Ballroom of the Hyatt Regency Hotel.

"The administration is doing its part. Now the Senate and those organizations involved in the process, including the ABA, must join us in working for the prompt confirmation of the outstanding men and women the president has nominated to the federal bench."

He said the Senate should approve all 44 of Bush's nominees by the end of the year.

Ashcroft made no mention of the Bush administration's decision only five months ago to end the ABA's half-century role of advance vetting of prospective federal judges before the president makes the nominations public.

Since Bush took that action, Democratic senators have asked the ABA to evaluate judicial nominees before the U.S. Senate acts on them.

In his speech, Ashcroft also spoke out against judicial activism and against judges who release "clearly guilty criminals" on technicalities. This, he said, leads to increased crime.

The House of Delegates applauded one remark, when Ashcroft said "I think we can agree that no political bias should exist" in the nomination and confirmation of judges.

"As you know," Ashcroft told the delegates, "there are some who have called into doubt the impartiality of the ABA's judicial ratings."

The attorney general quoted a study by Northwestern University law Professor James Lindgren,

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who found that President Bill Clinton's judicial nominees "had more than 10 times better odds of getting the ABA's highest rating than similar credentialed former-President Bush's appointees." Lindgren's analysis appeared Monday in The Wall Street Journal.

"Professor Lindgren attributes this disparity to a political bias in favor of liberal judges," Ashcroft told the ABA delegates.

"Undoubtedly," Ashcroft added, "there are others who argue that no such bias exists. In any event, I think we can agree that no political bias should exist."

He said he was "heartened by the ABA's ratings thus far" of Bush's nominees and was "confident that, judged by the same standards used to rate the last administration, the vast majority of President Bush's nominees will continue to receive 'well qualified' ratings."

The ABA has reviewed 17 of Bush's judicial nominees and "rated every one of them qualified.... In fact, you have rated 70 per cent of these candidates 'well qualified,' the ABA's highest rating," the attorney general said.

"Currently, there is a serious number of vacancies on the federal courts, 108 vacancies out of 862 positions," Ashcroft said. "More than 12 per cent of the court is vacant. President Bush has recognized the urgency of this problem and has made it one of his top priorities. He has nominated judges at a record pace, 44 judicial candidates so far this year."

By comparison, Ashcroft said, President Ronald Reagan had made 13 judicial nominations before the end of August 1981; George H.W. Bush had made eight such nominations by the end of August 1989; and Clinton had made 13 before the end of August 1993.

Ashcroft said that in the first year of each of the past three presidential administrations, "all but one of the judicial nominees who were nominated before the end of the August recess were confirmed in the first year of the presidency.

"The one nominee who was not confirmed was rated 'not qualified' by the ABA. Consistent with that history, the Senate should move forward and act on all 44 of President Bush's nominations ... this year."

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Ashcroft noted that the Senate has a long way to go. He said Bush announced 11 judicial nominations on May 9, "two months before Presidents Reagan or Clinton made their first nominations." Eight of those 11 were nominated to judicial vacancies classified as "judicial emergencies" by the Administrative Office of the U.S. Courts, Ashcroft said.

The ABA found all of the first 11 nominations "to be either qualified or well qualified for judicial office ... yet only one of those 11 nominees has received a hearing in the Senate Judiciary Committee," the attorney general said.

He commended the Senate for acting promptly on non-judicial appointments, including in the last two weeks a new commissioner of the U.S. Immigration and Naturalization Service, a new head of the Drug Enforcement Administration, and a new FBI director.

Sen. Patrick Leahy, D-Vermont, chairman of the Senate Judiciary Committee, understands the urgency of acting on Bush's judicial nominees, said Ashcroft. He told the delegates, "I ask you to help him in ensuring that the rest of the Senate places as high a priority on these nominations as does the president."

Back in March, White House Counsel Al Gonzales pointed out that the ABA has done advocacy work on certain public policies such as support for abortion and a call for a death penalty moratorium. Gonzales said that, in that light, the ABA should not have "a preferential arrangement" whereby it got first crack at examining potential judicial nominees.

On the issue of judicial activism, Ashcroft quoted Supreme Court Justice Felix Frankfurter as saying, "The highest exercise of judicial duty is to subordinate one's personal will and one's private views to the law."

Judicial activism, said Ashcroft, deprives the voters of recourse to their legislature for policy decisions.

McConnell Says East Kentucky Judges Will Prove Capable

By Mark Chellgren

York Times

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Associated Press

Wednesday, August 8, 2001

The three nominees for federal judgeships in eastern Kentucky will prove capable jurists over the years, Sen. Mitch McConnell said Wednesday, though he acknowledged he does not know one of the nominees.

McConnell also dismissed any notion that personal relationships influenced the choices of any of the nominees. "That happens sometimes," McConnell said.

David Bunning, the son of U.S. Sen. Jim Bunning, is one of the nominees. Another is Karen Caldwell, a former U.S. Attorney for the eastern district who once dated McConnell. The third nominee is Danny Reeves, a Lexington lawyer.

McConnell said he personally knows only two of the nominees and Bunning knows only two. He refused to elaborate.

"You've got to pick people somehow," McConnell told the Louisville Forum. "I think we did a good job and I think the people in eastern Kentucky will discover that over the years."

If confirmed, federal judges hold lifetime jobs and can be removed only by impeachment in the Congress.

There has been some muted criticism of the nominees because they lack eastern Kentucky connections. The nominations by President Bush, which have yet to be considered by the Senate are to fill two vacancies and a new judgeship, including seats in London and Pikeville.

Bunning's qualifications have been questioned because he has been practicing law for only 10 years, all as an assistant prosecutor in the U.S. Attorney's office. The American Bar Association guidelines generally suggest a minimum of 12 years experience for a federal judge.

McConnell, who has been in the Senate for 17 years and will be running for re-election in 2002, fielded questions from forum members on a range of topics, from missile defense to a separate state for Palestinians.

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He answered pointedly on a couple of inquiries, especially one about his own legislative record.

McConnell said a question posed about what bills he has sponsored in three terms sounded like it came from an opponent, though the forum is officially neutral and nonpartisan.

McConnell said he has been primary sponsor on numerous important items, mostly appropriations initiatives in the area of foreign aid. McConnell said he would answer the question more fully during his campaign.

On the topic of drilling for oil in the Alaskan wilderness, McConnell said in some respects the issue boiled down to driving habits. McConnell said more people would be killed if fewer people drove large sport utility vehicles.

"Who's going to be willing to sacrifice a member of their family by getting into a smaller car?" McConnell wondered.

Transcripts/Members of Congress

Fox Special Report with Brit Hume

Tony Snow
Fox News
Tuesday, August 7, 2001

****EXCERPT****

SNOW: And we're back with Fred, Mort, and Mara.

Mort, an interesting speech John Ashcroft gave to the American Bar Association, in part because it was just taking it right to them in the sense of saying, "OK. We're going to try not to use litmus tests. Why don't you try to do the same?" Is he right?

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KONDRACKE: Well, you know, in this case, I -- I think that he -- this is a case of it all depends on what the meaning of the word "litmus" is because, clearly, George Bush and John Ashcroft have an idea.

He says, "We're not going to make any -- we're not going to have any political litmus tests," and I even think he said ideological litmus tests. On the other hand, they do have a judicial litmus test, and that is restraint...

LIASSON: Right.

KONDRACKE: ... you know, that you should not -- that a judge should not make law, should leave the process to the legislature and all that. Now he did -- what he did not say -- he did not point at the ABA and accuse them of -- of having a political bias, which this Northwestern University professor who he cited actually found, that the ABA was 10 times more likely to approve a judge nominated by Bill Clinton than George Bush's father.

BARNES: Yeah. You know, look, there is -- the -- this idea of a litmus test -- when they say there isn't one, they're really talking about *Roe v. Wade*, and -- and they do not ask these judicial nominees "Would you vote to overturn *Roe v. Wade*?" I mean, that's just a question that's not asked.

That's the -- that's the main litmus test they're talking about, to have a judicial conservative. They did not -- I mean, Bush has not appointed all judicial conservatives. As a matter of fact, he's appointed some Democrats and some more liberal judges.

Now the ones at issue, of course, with this Democratic Senate are the judicial conservatives, and he spoke out very strongly in favor of them, particularly, as you might guess in this administration that wants to win Latino votes, in favor of a man named Miguel Estrada, who's actually from -- born in Honduras, and has been nominated the -- to the...

SNOW: The U.S. Circuit Court of Appeals.

BARNES: ... Court of Appeals for the district and has gotten a well-qualified rating by the ABA. I mean, that's going to be a real test, and -- and he is a conservative.

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LIASSON: Right. And he might have the shortest stint, if he's -- if he's confirmed, on that Court of Appeals of anybody because he'll be on the top of the list to be elevated to the Supreme Court.

BARNES: He'd be a hard guy to block on any grounds other than the fact that he is a conservative.

SNOW: Let me ask you. This is a dumb question perhaps, but what's wrong with having that litmus test? I thought that's why you had presidents picking judges.

LIASSON: I think that's a good question, and that certainly is what Charles Schumer has suggested from the other point of view, is why not. Why shouldn't the Senate judge nominees on ideology? And if they don't like it, they should go vote against...

KONDRACKE: Well, you can be sure that there would be -- that this judicial restraint litmus test would apply to a Supreme Court justice nominated by -- by George Bush. He -- it might not apply to a...

SNOW: Why? It didn't apply to his father.

LIASSON: Well -- well, wait a minute. He...

BARNES: No, no. This is wrong, though. Look, advise and consent does not mean we have -- we in the Senate have a right to appoint and decide whoever we want. If something...

LIASSON: Well, they have a right to vote against the judge if they want.

BARNES: It doesn't mean -- it does not give the Senate the power to reject all judges whose philosophy is not Tom Daschle's and Pat Leahy's. That's just not the way our system works, has ever worked, and to -- if you say no conservatives can be nominated...

LIASSON: Well, I don't think that's what they're saying. Look, they -- they're going to confirm conservatives.

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SNOW: OK. We've got to go on that note. Thanks, panel.

But stay tuned, folks, for some titles you won't be seeing on the bestseller list.

(COMMERCIAL BREAK)

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Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, August 7, 2001 5:19 PM
To: Ciongoli, Adam; 'Bradford_A._Berenson@who.eop.gov%inetgw'; 'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan; 'Heather_Wingate@who.eop.gov'; Carroll, James W (OLP); Newstead, Jennifer; Ullman, Kristen A; Long, Linda E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe; 'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; O'Brien, Patrick; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw'; 'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet; Brinkley, Winnie; 'Ziad_S._Ojakli@who.eop.gov%inetgw'
Subject: FW: Initial Coverage of AG's Speech

-----Original Message-----

From: Elston, Michael
Sent: Tuesday, August 07, 2001 4:58 PM
To: Dinh, Viet
Cc: Newstead, Jennifer
Subject: Initial Coverage of AG's Speech

Ashcroft tells lawyers Bush has no litmus tests for judges
[from Chicago Tribune website]
By Anne Gearan
Associated Press Writer
Published August 7, 2001, 2:59 PM CDT

President Bush has no litmus tests for picking federal judges, Attorney General John Ashcroft assured the American Bar Association in a speech in Chicago today.

Ashcroft did not discuss the White House decision to end the lawyers' traditional role in vetting candidates for the bench. He strongly endorsed several core conservative themes, including the premise that judges should judge narrowly and not read rights into laws or the Constitution that are not written there.

"The president has unequivocally rejected any notion of an issue-specific or political litmus test," Ashcroft said, "insisting only that the only value his candidates share is a dedication to the rule of law and an understanding of the proper role of a federal judge - a role that leaves policy-making to the American people and their elected representatives."

Many conservatives have long viewed the ABA as liberal-leaning and biased in favor of judges who do not follow that model of judicial restraint. Congressional Republicans, in particular, have blamed a mixed ABA review of conservative Supreme Court nominee Robert Bork for his 1987 Senate defeat.

Since the Eisenhower administration, the ABA has conducted private background checks on people the president was considering for judgeships. Poor reports from the ABA scuttled some selections and damaged the Senate chances of others.

007104-003277

The Bush White House did not cite politics or ideology in booting the ABA in March, saying no outside group should have special control over a president's picks for lifetime judicial posts.

"As you may know, there are some who have called into doubt the impartiality of the ABA's judicial ratings," Ashcroft said.

He cited a recent study by Northwestern University law professor James Lindgren, which claimed that the ABA was as much as 10 times more likely to give its highest ratings to Clinton administration choices than to nominees of President Bush's father.

"Professor Lindgren attributes this disparity to a political bias in favor of liberal judges," Ashcroft said, without offering his own view. "Undoubtedly, there are others who argue that no such bias exists. In any event, I think we can agree that no political bias should exist."

The ABA has continued to rate judicial picks, but the investigations are now done after a nominee's name is public instead of beforehand. Senate Democrats, who took control of the body after Bush's decision, say they will not hold a hearing on a judge candidate until they get an ABA report.

Ashcroft said he is "heartened" by the ABA's high ratings for the first round of White House judicial nominees, and said he is confident that, "judged by the same standards used to rate the last administration, the vast majority of President Bush's nominees will continue to receive" high ABA marks.

Incoming ABA president Bob Hirshon, asked to comment on the Lindgren report, cited the 26 judicial candidates whose names have gone to the Senate with "not-qualified" ratings from the ABA.

Twenty-three were nominated by Democratic presidents, Hirshon said. "I just don't see the bias," he said.

Earlier today, Ashcroft said Congress should strengthen laws against money laundering. In a speech to a Chicago police conference on organized crime, Ashcroft said current laws are full of loopholes that make it difficult to combat organized crime groups smuggling dirty money in and out of the country. "Our money laundering laws have not changed significantly since they were enacted" in the 1970s, Ashcroft said in remarks prepared for a conference on organized crime.

New laws should target bulk cash smuggling, transporting cash proceeds from drug deals on highways or airplanes, and foreign criminals who smuggle money into the United States, Ashcroft said.

Newstead, Jennifer

From: Newstead, Jennifer
Sent: Monday, August 06, 2001 6:37 PM
To: Adam Ciongoli; Bradford_A._Berenson@who.eop.gov%inetgw;
Brett_M._Kavanaugh@who.eop.gov%inetgw; Dan Bryant; Jennifer Newstead;
Kristen Ullman; Linda Long; Lizette Benedi; Lori Rabjohns; Lori SharpeDay;
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Coniglio; Sheila Joy; Tim_Goeglein@who.eop.gov%inetgw;
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Cc: Schauder, Andrew
Subject: Judicial Media Review
Attachments: Judicial Media Review 8-06-01.wpd

[All --](#)

[Today's media review is attached.](#)

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EXCERPT

General Judicial Articles

Rebuffed By White House, ABA Finds It Still Has Role In Judicial Nominations Before Democratic-led Senate

By Anne Gearan

The Associated Press

Saturday, August 4, 2001

Three months into George W. Bush's presidency, the White House fired the American Bar Association from its job doing secret background checks on potential federal judges.

Losing that prestigious role after 50 years left many in the organization of 400,000 lawyers smarting and convinced still that the White House made a rash and largely political decision.

But lawyers gathered for the group's annual meeting said that for now, surprisingly little has changed.

The ABA continues to vet judges, and the newly Democratic-controlled Senate still relies on the ABA's recommendations. The difference is that the ABA does its work after the White House announces the name of a potential judge, instead of beforehand.

"The dynamic has changed, but we're still doing our work," said Bob Hirshon, who will become the ABA president during the six-day meeting.

Actually, the dynamic changed twice: in March when the White House gave the ABA the boot and then in May, when Vermont Sen. James Jeffords' defection from the Republicans gave Democrats control of the Senate.

In one sense, the Senate switch meant the ABA role was just as influential as before, Senate aides said. Democrats had said they would not confirm any Bush judge without an ABA rating, and after the switch they had the muscle to make the warning stick.

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Neil Lewis **New York Times**

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"It has been the committee's practice to (rely) on ABA ratings, and that has not changed," said David Carle, spokesman for Judiciary Chairman Sen. Patrick Leahy, a Democrat.

"There would have been a change if the Republicans were still in control. At least some Republicans were apparently willing to proceed without ABA ratings," Carle said.

In another sense, the ABA's role is fundamentally different. Before, most presidents quietly killed a nomination if the ABA found the candidate unqualified, and the name never became public.

That gave the ABA unparalleled veto power over White House decisions, said Leonard Leo, a vice president of the conservative Federalist Society.

Conservatives long have viewed the ABA with suspicion. Congressional Republicans, in particular, tend to perceive the organization as liberal-leaning, and blame a mixed ABA review of Robert Bork for defeat of the conservative nominated for the Supreme Court.

The ABA rejects the liberal label. The organization's leaders say there is a high wall between policy positions and its work evaluating judges. The ABA has lobbied for abortion rights and gun control.

"The decision by the White House cast a lot of light on the process, and caused people to think about the ABA's role," Leo said. "I think the jury is still out as to whether the role they play is valuable or not."

Many Federalist Society members are now advising Bush on judicial nominees, and several of its members were among Bush's initial crop of judicial picks.

The society's skeptical review of ABA activities, called "ABA Watch," this month includes a comparison of ABA ratings for Clinton administration appeals court nominees and those nominated by the first President George Bush.

The Federalist Society study found that when it came to nominees with similar legal experience,

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the Clinton choices were at least seven times more likely to win the highest "well-qualified" ABA rating.

Northwestern University law professor James Lindgren, who did the analysis, also looked at some of the first nominees from the current Bush administration, Leo said.

"We are seeing some of the same patterns, although the patterns are not as stark," Leo said.

The ABA has finished its investigations of 17 of Bush's first 44 nominees for federal trial and appeals courts, and has taken about the same time to prepare the reports as it did before, ABA leaders and Senate aides said.

So far, the ABA has rated each candidate "qualified" or "well-qualified."

"We may not know the answer to this question for awhile whether the information we receive when a name is in the public domain is the same versus the information we received the last 50 years," the ABA's Hirshon said.

The ABA maintains that so long as the potential nominee's name was not yet public, friends or co-workers can speak without risk of retribution and without publicly sullyng a nominee's reputation.

Although she was blindsided by the White House decision in March, current ABA president Martha Barnett now sounds sanguine about the change.

"This is one of those issues that created angst in the beginning, but has now worked out well and is a non-issue," she said.

United Senate Confirms Mueller To Head FBI; Selection: Unanimous Vote Cements Bush's Nomination. Bickering Over Nominees For Other Posts Gets Worse

By Eric Lichtblau
The Los Angeles Times
Friday, August 3, 2001

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Neil Lewis **New York Times**
June 26, 2001

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Despite partisan wrangling over a new batch of White House nominations, the Senate on Thursday gave quick and unanimous approval to one of President Bush's most closely watched picks as it confirmed San Francisco prosecutor Robert S. Mueller to lead the besieged FBI.

Mueller, 56, will take over an agency that has seen its reputation as the nation's premier law enforcement agency badly tarnished by recent episodes of espionage, witness intimidation, lost documents, missing weapons and other embarrassments within its ranks.

"We know he has a difficult job ahead of him," said Sen. Patrick J. Leahy (D-Vt.), chairman of the Senate Judiciary Committee, as he ticked off a list of recent blunders at the FBI.

But Leahy said Mueller, a veteran prosecutor credited with turning around the U.S. attorney's office in San Francisco after his appointment there in 1998, is the right man for the job. "I applaud President Bush for his appointment," the senator said.

Leahy's committee gave Mueller a unanimous vote of approval Thursday after two days of hearings earlier in the week that were marked by unstinting praise for Mueller and widespread condemnation of the FBI. Hours after the committee vote, the full Senate approved Mueller for the job on a 98-0 vote.

Mueller soon will undergo surgery for prostate cancer, and no date has been set for his takeover at the FBI, although Justice Department aides indicated it might not happen for several weeks.

Atty. Gen. John Ashcroft, who lobbied hard for the former Marine, said that Mueller "will serve with fidelity, bravery and integrity" and that his background in criminal law brings "an invaluable perspective to the Department of Justice."

Mueller's confirmation followed the Senate's approval earlier this week of Rep. Asa Hutchinson (R-Ark.) as head of the Drug Enforcement Administration and former Senate Sergeant-at-Arms James Ziglar as head of the Immigration and Naturalization Service.

But the votes came amid stepped-up political bickering Thursday over some of Bush's other nominations.

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Neil Lewis **New York Times**

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Democrats on the Senate Commerce Committee voted down Bush's pick of Mary Sheila Gall as head of the Consumer Product Safety Commission. And a new round of judicial nominations by the White House set off a round of political accusations.

The White House nominated 18 federal judges Thursday, including 15 for seats on district courts and three for the federal claims court.

The selections were concentrated in states that have two Republican senators, with four judges nominated in Oklahoma and three in Kentucky. In states such as California and New York, where both senators are Democrats and the effort to find acceptable candidates may prove more protracted, the White House does not expect to nominate judicial candidates until the fall.

Bush administration officials immediately warned Senate Democrats that they have become frustrated with what they consider unnecessary delays in considering the White House's judicial nominations, which now total 44.

Administration officials complained that, while they have been quick to nominate judges at a rate outpacing those of past presidencies, the Democratic-controlled Senate has approved only four judges so far and has not even scheduled hearings for many candidates. Many districts remain short of judges as a result, Bush advisors said.

"There's really in the administration's view no legitimate justification--given the vacancy crisis--for all these weeks to have passed without hearings," said a senior administration official who asked not to be identified. Bush "expects and is entitled to the same fair treatment for his nominees" as past presidents have received, the official said.

But Leahy said the Judiciary Committee has pushed through the nominations of Mueller and other candidates at a very quick pace, and his aides said the White House has slowed the process by limiting the American Bar Assn.'s traditional role in reviewing nominees.

One of Thursday's judicial nominations who could prove controversial is David Bunning, a 35-year-old assistant U.S. attorney in Kentucky tapped for the federal bench there. Bunning is the son of Sen. Jim Bunning (R-Ky.), and his nomination came a day after Bush nominated Strom

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Thurmond Jr., the 28-year-old son of the Senate's senior member, to be the U.S. attorney in South Carolina.

Bunning has been a lawyer for 10 years, two years less than the ABA generally recommends for a lifetime appointment to the federal bench.

Ralph Neas, head of People for the American Way, a liberal public-interest group that has criticized Bush for allegedly trying to pack the courts with "right-wing ideologues," said he wants the Bunning nomination to get a close look.

"Thirty-five years old is very young, and I think it's a legitimate issue to question whether this nominee has the qualifications needed to be a federal judge," he said.

But Bush administration officials said Bunning has a proven record as a prosecutor and is well qualified for the job.

Pitch Made For Approval Of Judicial Nominees

By Tom Brune

Newsday

Friday, August 3, 2001

President George W. Bush is "entitled" to have all of the judicial candidates he has nominated so far confirmed by the Democratic-controlled Senate by the end of the year, an administration official said yesterday.

The Bush administration official made that claim in announcing 16 new judicial nominations while blasting the Senate Judiciary Committee for failing to act more quickly on judicial candidates Bush has nominated in the past three months.

Administration officials also said they expect to nominate candidates to fill the more than 100 vacancies on the federal bench by the end of the year, which would put a distinctly Republican stamp on the federal judiciary.

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Neil Lewis **New York Times**

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Included among yesterday's nominees is the 35-year-old son of Sen. Jim Bunning (R-Ky.) to be a federal judge in Kentucky. On Wednesday, Bush tapped the 29-year-old son of Sen. Strom Thurmond (R-S.C.) to be U.S. attorney of South Carolina.

Since May, Bush has nominated 44 candidates for the federal bench, and the Senate has confirmed three nominees and appeared likely to confirm a fourth before going on a monthlong recess after today.

An aide to Senate Judiciary Chairman Patrick Leahy (D-Vt.) rejected criticism of the pace of the committee's confirmation hearings. "Any fair look at this committee's schedule for the past month shows how brisk it has been," said Leahy spokesman David Carle, noting that it had expedited hearings of the nominees for directors of the FBI and Drug Enforcement Agency.

Carle also refrained from making any promises that all of the Bush judicial nominees would be confirmed by year's end. "It depends on what nominees the president sends," he said.

Bush officials stepped up pressure on Senate Democrats to approve more judicial candidates yesterday after the Senate Commerce Committee, in a separate action, handed Bush his first defeat of a nominee - rejecting his choice for Consumer Product Safety Commission chairman.

"In the past three administrations, there has been a very long-standing bipartisan tradition of [judicial] nominees who were named prior to the August recess being confirmed in the first year of their presidency," said White House spokesman Ari Fleischer.

"Consistent with that bipartisan history, the president hopes and urges that the Senate will move forward and act on all 44 of his [judicial] nominations this year," he said.

Another administration official, speaking on the condition he not be named, however, went further, saying, "We expect and we are entitled to and we would be satisfied if the . . . judges were confirmed."

Most of those nominated yesterday were from states represented by two Republican senators.

Nominated for the First Circuit of Appeals was Jeffrey R. Howard, who came in third in the

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Republican primary for governor of New Hampshire last year and whose campaign consultant was cited by state officials for improper campaign activities. Howard is a former U.S. attorney and New Hampshire attorney general.

Nominated for the 10th Circuit of Appeals was Terrence L. O'Brien, who after retiring as a Wyoming state court judge won the Republican nomination for a congressional seat as a write-in candidate, but then withdrew before the general election last year.

Nominated for the Eastern District of Kentucky was David Bunning, who since 1991 has been a federal prosecutor.

Meanwhile, Sen. Charles Schumer (D-N.Y.) used a procedural maneuver to delay the nomination of Deborah Daniels as assistant attorney general for the Justice Department's Office of Justice Programs because he said she has not sufficiently answered questions about how she would manage the agency's gun programs. The committee may take up the Daniels nomination in September, when Congress returns from its August recess.

Three Nominees Likely To Win U.S. Judgeships, Lawyers Say Bunning's Son May Face Scrutiny On His Experience

By Tom Loftus
The Courier-Journal (KY)
Friday, August 3, 2001

President Bush's three federal judgeship nominees for Kentucky, including the son of U.S. Sen. Jim Bunning, are likely to win Senate confirmation, several prominent Kentucky attorneys said yesterday.

But the experience of David Bunning may get close scrutiny at Senate Judiciary Committee confirmation hearings. The 35-year-old son of the junior senator from Kentucky is a federal prosecutor in Covington.

If confirmed, David Bunning would be the youngest lawyer appointed a federal judge in Kentucky since the American Bar Association began evaluating nominees in 1948. The

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timetable for confirmation hearings is uncertain.

The other nominees were two Lexington lawyers: Karen Caldwell, 45, a former U.S. attorney who helped oversee the federal investigation of public corruption known as Operation BOPTROT; and Danny Reeves, 44, who has represented Ashland Oil and the Kentucky High School Athletic Association.

Appointments to federal judgeships are for life and are viewed as prize political plums. Traditionally, presidents closely follow the recommendations of the U.S. senators from their party in making appointments for a particular state.

The elder Bunning and fellow Republican Sen. Mitch McConnell announced the nominations in a statement that did not take note of the relationship between the Bunnings. It described the three as "talented and experienced Kentuckians. . . . We strongly support the president's choices, and are going to do all we can to push their speedy confirmation by the Senate."

Spokesmen for the senators said they had no immediate comment beyond the statement.

The Kentucky Democratic Party criticized Bush for the Bunning nomination.

"By appointing a U.S. senator's son to the federal bench, Bush seems to be polarizing and politicizing a position that should remain completely nonpartisan," party spokeswoman Susan Dixen said.

David Bunning did not return messages left at his office. Caldwell and Reeves said they were honored by the nominations and declined further comment.

One prominent Eastern Kentucky lawyer criticized all three choices.

"Not one of the three nominees is from Eastern Kentucky. These judgeships are for Ashland, Pikeville and London," said Ned Pillersdorf of Prestonsburg.

But Pillersdorf praised Caldwell's work as an attorney and a federal prosecutor. He said he did not know the younger Bunning, and he objected to the nomination of Reeves, with whom he

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clashed when Reeves represented Ashland Oil in litigation over environmental damage in an Eastern Kentucky oilfield.

The senators' statement described David Bunning as "a dedicated public servant" who as an assistant U.S. attorney has "accumulated significant courtroom litigation experience."

It said the younger Bunning is responsible for a "wide range of criminal litigation and appeals, and in 1998 he successfully prosecuted one of the first Internet fraud and harassment cases in the nation."

ABA guidelines recommend a minimum of 12 years of experience as a lawyer before someone is considered a qualified candidate for the U.S. District Court bench. Bunning has a decade of experience as an attorney.

It's unclear if the difference will pose a difficulty for confirmation.

Mimi Devlin, spokeswoman for Sen. Patrick Leahy, the Vermont Democrat who chairs the Senate Judiciary Committee, said the committee believes experience is important but that lacking some experience would not disqualify Bunning.

"Senator Leahy values the ABA's opinions on these matters, but this is only a guideline," Devlin said.

Joe Savage, a Lexington attorney and former president of the Kentucky Bar Association, said that although experience is important, "I know lawyers who have practiced five years who have gained a lot more experience than some who have practiced 15 years."

Savage, who said he does not know David Bunning, said he expected the experience issue would not be so serious as to block confirmation.

Edward Drennen, president of the Northern Kentucky Bar Association, said he expected Bunning would be conservative on the bench but also open-minded and fair. "He's always demonstrated in our dealings with him a willingness to listen to both sides," said Drennen, a Florence attorney.

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He also said it was unfair to attach nepotism to the nomination.

"His father doesn't try these federal cases, David does," Drennen said. "David writes these briefs to the Court of Appeals."

Mark Guilfoyle, a leading Northern Kentucky Democrat, Covington lawyer and former gubernatorial aide, called Bunning an outstanding pick.

Guilfoyle said too much has been made of Bunning's relative lack of experience. "He has lived in federal court for the last 10 years" trying a wide variety of cases, Guilfoyle said.

Although Guilfoyle said he disagrees with the nominee's father on most issues, he described the younger Bunning as a conservative who is in step with the values of most Kentuckians and "in no way, shape or form an ideologue."

Reno Lawyer Hicks Nominated For U.S. Judge Position

By Jane Ann Morrison
Las Vegas Review-Journal
Friday, August 3, 2001

Reno attorney Larry Hicks, a nominee for a federal judgeship under the first President Bush, lost his opportunity when Bush was defeated in the 1992 election. Now Hicks is a nominee again -- this time by the second President Bush. The White House announced the nomination Thursday and forwarded Hicks' name to the U.S. Senate for confirmation as a U.S. District Court judge.

Hicks, 57, was recommended for the lifetime post in May by U.S. Sen. John Ensign, R-Nev. Ensign submitted four names for two judicial vacancies but declined to say how he ranked them. Sources said Hicks and District Judge Jim Mahan were first in line, followed by Las Vegas attorney Walt Cannon and District Judge Mark Gibbons. Hicks' background investigation moved quickly because he already had undergone such a check nine years ago. Mahan's

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background investigation isn't complete, but one source said he might gain a presidential nomination in September. The two judgeships are based in Las Vegas.

Although federal judgeships are the top patronage appointment any senator makes, Ensign said he didn't base his decision on political cronyism or payback. Ensign said he didn't know Hicks or his other nominees when he selected them, but he used an informal committee of bipartisan advisers to make his choices. He described Hicks as having 'impeccable character' as well as being a distinguished attorney.

Hicks, a sportsman who enjoys duck hunting, was on a previously planned fishing trip in British Columbia but issued a statement saying he 'couldn't be more excited about the opportunity to serve my country' as a federal judge. A partner in the Reno law firm McDonald Carano Wilson McCune Bergin Frankovich & Hicks, he is a trial attorney with extensive courtroom experience, both prosecutor and as a civil attorney.

He started his legal career in 1971 as the chief criminal deputy district attorney in Washoe County, and was elected district attorney of Washoe County in 1973.

In 1979, he began his career as a partner in his current law firm, where he heads the firm's litigation section. For 16 years, he also has worked as a settlement judge for the Nevada Supreme Court. In an interview in May, Hicks said he represented Dow Chemical in a breast implant case, and as district attorney he investigated brothel owner Joe Conforte and his corrupt influence on elected officials in Northern Nevada. His law partner Thomas 'Spike' Wilson, a Democrat, said Hicks is 'known and respected by his peers' and has wide support in the legal community. When FBI officials interviewed Wilson, he said, he guessed they hadn't received any negative comments about Hicks.

'He works hard, he's diligent, detailed, careful, prepared and he knows the law. He considers factual and legal issues carefully,' said Wilson, a former state senator and former chairman of the Nevada Ethics Commission. Wilson predicted Hicks would win confirmation easily. Wilson described Hicks' politics as 'pretty moderate. I don't see him on either extreme. I think he'll be a mainstream judge who follows legal precedent.'

U.S. Sen. Harry Reid, D-Nev., issued a news release calling Ensign's pick 'a wise choice' and

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promised to do 'everything in my power as the majority whip' to get Hicks confirmed quickly. The two senators have agreed to share the judicial appointments no matter which party controls the White House, Ensign said.

He will nominate three judges and then give Reid the fourth choice. If the White House goes Democratic in 2004, Reid agreed to do the same with Ensign.

Bush Nominates Four As Judges, U.S. Attorney

By Christ Casteel
The Daily Oklahoman
Friday, August 3, 2001

Five months after receiving recommendations from Oklahoma's senators, the White House on Thursday nominated four people for federal judgeships in the state.

Also nominated was Robert G. McCampbell to be U.S. attorney for the Western District of Oklahoma, based in Oklahoma City.

President Bush sent to the Senate the following nominations:

- Joe L. Heaton, a former Republican leader in the state House of Representatives, to be a judge in the western district. Heaton is an assistant U.S. attorney and spent nine months as the U.S. attorney. He served seven years in the state House and practiced law with Fuller, Tubb & Pomeroy.
- Stephen P. Friot, an Oklahoma City attorney, to fill another vacancy in the western district. He has been in private practice since 1972. He is a partner in the firm of Spradling, Alpern, Friot & Gum. A 1987 book that ranked the top legal guns in the country included Friot among the Oklahomans.
- Claire V. Eagan to be a judge in the northern district, based in Tulsa. She has been a U.S. magistrate judge for three years in the northern district; for 20 years, she was a litigation attorney with Hall, Estill. During her time as magistrate, she has supervised the court's

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Neil Lewis **New York Times**
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settlement program.

- James H. Payne to be a judge sharing time in the northern district and eastern district, based in Muskogee. Payne has been a U.S. magistrate judge in the eastern district for 12 years. He spent 15 years in private practice, handling civil matters, and also served three years as an assistant U.S. attorney.

- McCampbell to be U.S. attorney. He is a partner with the law firm Crowe and Dunlevy in Oklahoma City. He served as an assistant U.S. attorney in the western district from 1987 to 1994. He is a graduate of Vanderbilt University and Yale Law School.

Oklahoma's senators applauded the nominations, which will be considered first by the Senate Judiciary Committee.

In regard to the judicial nominations, Sen. Jim Inhofe, R-Tulsa, said, "Senator Nickles and I recommended these individuals based on their superb professional experience and sound judicial philosophy. I am confident they will faithfully uphold the Constitution and serve our state and nation well."

Nickles, R-Ponca City, said McCampbell "is an outstanding individual who will serve the state and the country well."

Bush Is Ahead of Clinton Pace on Nominees

The New York Times

Monday, August 6, 2001

After half a year in office, President Bush has 52 nominees for executive branch positions awaiting Senate confirmation and 211 positions in his administration yet to be named, according to a running count by the Brookings Institution.

With Congress and the White House on vacation for a month, Brookings, a research group, projects that some appointees will not be in place until after Mr. Bush has been in office for a year.

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Even March 2002 would be optimistic, said Paul C. Light, vice president and director of governmental studies at Brookings. "At this point, people in the administration are going to be arriving as others in it are departing," Mr. Light said.

The White House puts a somewhat better face on the facts. "I think it's fair to say that even given the shortened transition that this administration has worked from, the personnel and the nomination process have worked exceedingly well from the White House end of Pennsylvania Avenue," said Ari Fleischer, the White House spokesman.

Mr. Fleischer said on Friday that Mr. Bush had nominated 443 people for Senate confirmation, counting not only the nominees for 360 cabinet and subcabinet posts, but also judges, top military officers and ambassadors, whom Brookings does not count in its survey. Brookings says the White House has made nominations for 321 out of 499 positions; 227 of the nominees have been confirmed. Only Mary Sheila Gall, the appointee for the Consumer Product Safety Commission, has been rejected. Since the Democrats took control of the Senate about six weeks ago, 128 nominees have been confirmed. In the Republican-controlled Senate, 99 were confirmed. On Friday the Senate confirmed 38 nominees before adjourning until September.

Compared with two previous presidents who took over the White House from the other party, Bill Clinton and Ronald Reagan, Mr. Bush is ahead of Mr. Clinton's pace but behind Mr. Reagan by 43 confirmations, according to Brookings.

In recent weeks, the new majority leader, Senator Tom Daschle of South Dakota, after meeting with Republican leaders and senior senators, has bypassed hearings for lower-level nominees, sending them directly to the floor for confirmation.

Op/Eds

Senate Says Vacation More Important Than Judicial Vacancies According To People For Common Sense Courts

PR Newswire

York Times

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Neil Lewis **New York Times**

June 26, 2001

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Friday, August 3, 2001

With one of every eight federal judgeships vacant and 40 judicial nominations pending, the United States Senate today took bold action -- and began a month-long vacation.

"Senate leaders showed their true colors today," said Oklahoma Gov. Frank A. Keating, national chairman of People for Common Sense Courts. "By abandoning Washington for a month, they abandoned any hope of resolving the growing judicial crisis any time soon. Obviously, their vacation is more important to them than maintaining a functioning legal system."

There are now 108 vacancies on the federal district and appeals courts, including 39 designated as emergencies because of the enormous number of cases pending. President Bush has nominated 44 individuals to fill these posts; the Senate has confirmed 4. "If the Oklahoma state courts were in this type of crisis and my response was to take a month-long vacation, the voters and the news media would never let me hear the end of it," Keating said.

"In the first years of the past three Administrations, all but one of the judges nominated before the Senate's August recess were confirmed that year," said Andrew R. Stephens, president of People for Common Sense Courts. "That looks increasingly unlikely this year. The Senate is scheduled to be in session for only another 22 days, and it has 40 nominations pending."

"When Democrats controlled the White House and Republicans controlled the Senate, Senate Democrats complained that 67 judicial vacancies was too many," Stephens noted. "Now that party control has changed, their response to 108 vacancies is to drag their feet." During the transition this spring from Republican to Democratic control of the Senate, incoming Judiciary Committee Chairman Patrick Leahy (D-Vt.) refused to schedule any judicial confirmation hearings -- even though other Senate committees were holding confirmation hearings.

Before the Senate returns from its August recess, at least one more federal appeals court judge is scheduled to retire -- from the 6th Circuit Court of Appeals, already suffering an emergency because of 6 vacancies. Another four federal judges have announced plans to retire by the end of the year -- in addition to any unexpected retirements, resignations, or deaths.

Yes, the ABA Rankings on Judicial Nominees Are Biased

York Times

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Neil Lewis **New York Times**

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By James Lindgren
The Wall Street Journal
Monday, August 6, 2001

With the American Bar Association meeting in Chicago today, it is an apt moment to look at the ABA's controversial judicial-evaluation process and consider whether it provides an objective, nonpartisan measure of a judicial nominee's qualifications.

That's what it says it does, a claim echoed by the Democrats on the Senate Judiciary Committee, who vow not to schedule a nominee's hearing until they have reviewed the ABA's rating. This faith persists despite the White House's decision not to call upon the ABA to pre-screen its judicial nominees, a system that had been used by presidents since the 1950s.

What does the evidence show? I've just completed a statistical study of the ABA's ratings of appointees to the U.S. Courts of Appeals during the Clinton and first Bush administrations and can report that the facts don't support the ABA's claim of objectivity. The ABA may once have been objective, but it's not anymore.

I analyzed the credentials of the 108 nominees who were ultimately appointed to the federal appeals courts during the Clinton and Bush-1 administrations. The results? The ABA applied measurably different and harsher standards during President George H. W. Bush's administration than it applied during President Bill Clinton's tenure. In short, the Bush appointees got lower ABA ratings than the Clinton appointees.

First a word on how the process works. The ABA's 15-member Standing Committee on the Federal Judiciary rates judges as "Well Qualified," "Qualified" or "Not Qualified."

George W. Bush's Nominees to the U.S. Courts of Appeals

NOMINEE	CIRCUIT	ABA RATING
Terrence Boyle	4th	Qualified

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Edith Brown Clement	5th	Well Qualified (majority) / Qualified (minority)
Deborah Cook	6th	Qualified
Miguel Estrada	D.C.	Well Qualified
Roger Gregory	4th	Qualified
Michael McConnell	10th	Well Qualified
Priscilla Owen	5th	Well Qualified
Barrington Parker	2nd	Well Qualified
John Roberts	D.C.	Well Qualified
Dennis Shedd	4th	Well Qualified (majority) / Qualified (minority)
Jeffrey Sutton	6th	Qualified (majority) / Qualified (minority)
Jeffrey Howard	1st	Not Yet Rated
Terrence O'Brien	10th	Not Yet Rated

Judicial temperament and integrity, two criteria that the ABA considers, are hard to measure. But many credentials can be measured empirically. My study considered six: judicial experience, an elite law school education, law review, a federal court clerkship, private-practice experience, and government-practice experience. The data on the professional qualifications of the 108 judges were collected by the Federalist Society from publicly available sources or directly from the judges. While my study found strong evidence of different treatment of nominees, this isn't a simple story of ABA bias in favor of Clinton nominees. Among nominees with the most important credential -- prior judicial experience -- Clinton and Bush-1 nominees both fared roughly equally.

Instead, the problem arose for nominees without prior judicial experience. Because these candidates lacked the most obvious credential for the job, the ABA evaluations could be more subjective. Here Clinton nominees fared strikingly better than Bush-1 nominees. Some 65% of Clinton appointees without judicial experience were unanimously rated "Well Qualified" compared with only 17% of the Bush-1 appointees. Controlling for credentials, my study found that Clinton nominees had more than 10 times better odds of getting the ABA's highest rating than similarly credentialed Bush appointees. In short, being nominated by Bill Clinton was a stronger positive variable than any other credential or than all other credentials put together.

A Clinton nominee with few of the six credentials I measured had a much better chance of getting the highest ABA rating than a Bush nominee with most of these credentials. For

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example: A nominee with an elite law school education, law review, a federal clerkship, and experience in both government and private practice would have only a 32% chance of getting the highest ABA

rating if he were a Bush appointee, but a 77% chance if he were a Clinton appointee. A Clinton nominee with none or just one of these five credentials would still have at least a 45% chance of getting the highest rating.

The differences in how the ABA treated Bush-1 and Clinton nominees reached even to the internal decision making of the ABA committee. The ratings committee split its vote between two ratings 33% of the time when evaluating Bush-1 appointees, but it split only 17% of the time when evaluating Clinton appointees.

If Clinton nominees had been subjected to the same credentials-driven approach as Bush-1 candidates, only 46% of Clinton's confirmed nominees would have been unanimously rated as "Well Qualified." Instead, 62% actually received that top rating. On average Bush-1 and Clinton nominees had almost identically strong measured qualifications, yet they were not rated similarly.

The data suggest that when Bill Clinton took office, the ABA softened its standards, possibly emphasizing credentials such as temperament and philosophy that are harder to measure than experience and educational success. Now the ABA is back to rating Republican nominees -- and apparently is also back to its old harsh ways. The ABA ratings of George W. Bush's first 11 appellate nominees were released this summer. While it is much too soon to reach any firm conclusions about Bush-2, the pattern so far is not encouraging.

Although 62% of Clinton's 66 confirmed appellate nominees got the ABA's highest rating of unanimously "Well Qualified," only five of the first 11 new Bush nominees -- 45% -- have received the highest ABA rating, the same percentage that confirmed nominees received under the administration of the elder Bush.

At the end of the day, one nagging question remains: Why hasn't the ABA itself noticed the large political differences in its evaluative processes and worked harder to understand, explain or eliminate them? Now that there are hard data that support the claims of its critics, it would be good to see fewer denials and more introspection and reform.

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Transcripts/Members of Congress

Stakeout with Senate Minority Leader Trent Lott (R-MS), and Senators Don Nickles (R-OK), Larry Craig (R-ID), and Pat Roberts (R-KS) Following Senate Republican Conference Meeting

Federal News Service
Friday, August 3, 2001

EXCERPT

You go ahead, and then we'll come back over here.

Q Okay. Can you talk about the upcoming fight over judicial nominations in the fall and what strategy you guys are going to use to get those through the Senate?

SEN. NICKLES: Well, let me just make a couple of comments. One, the leader gave me a little responsibility on trying to help shepherd some of the nominees through. And I will compliment Senator Reid and Senator Daschle; they have been cooperative. We've encouraged them to let's work together, see if we can't get some through. In the last couple of three weeks we've had some pretty good progress, and we want to continue that. It's not fair for this administration -- they're already --

Q But I'm talking specifically about judicial nominations.

SEN. NICKLES: I understand. I understand. It's not fair for this administration, they still have assistant secretaries that haven't been confirmed, and Cabinet secretaries are entitled to have their nominees confirmed.

Judges. The administration has just now sent -- they sent up the Circuit Court judges and they haven't been considered totally through the Judiciary Committee. Hopefully they will be. The

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administration is right now in the process of sending District Court judges through, and we're encouraging them to hurry up and get those, and they've been held up because of the FBI background checks and so on. But we hope and expect that the Judiciary Committee will work with all senators to get these judges in. We've got a lot of judges that are waiting, a lot of U.S. Attorneys, a lot of Marshals that have not been confirmed, that need to be confirmed. They should have been confirmed, frankly, in many cases by now, but we haven't got the nominations yet from the administration. So I'm not just faulting the Judiciary Committee, except for some of the Circuit Courts, they've been kind of slow on Circuit Court.

SEN. LOTT: Let me just give you some numbers, and be honest. First of all, I think that we should have had the U.S. Attorneys and U.S. Marshal nominees already pending before the Senate. They're not here, so you can't be critical of the Democrats for not moving that.

With regard to judges, I believe it's right that there have only been four federal marshals confirmed --

SEN. NICKLES: Judges.

SEN. LOTT: -- federal judges confirmed by the Senate.

SEN. NICKLES: Five.

SEN. LOTT: Did we do two yesterday?

SEN. NICKLES: Five. We did two yesterday.

SEN. LOTT: Okay, five. And we still have pending in the Judiciary Committee 26 maybe?

SEN. NICKLES: Twenty-something. Yeah.

SEN. LOTT: And several of them, about 10 or so, have been here since I believe May.

SEN. NICKLES: April, May, yeah.

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SEN. LOTT: I mean, so there could have been hearings. And I don't believe they've even had hearings on most of them.

Now, the administration I believe will be sending a block of probably 50 or 60 nominations here momentarily, in the next few days, and those will be pending. So we really need to start moving aggressively on having hearings and reporting out judicial nominees, both judges and U.S. attorneys when we come back in September.

SEN. NICKLES: And the great majority of these will not even be controversial.

SEN. LOTT: That's right.

SEN. NICKLES: The great majority of these will be supported by both senator from their home states, and we expect those can go through pretty quickly.

Q Senator Lott.

Q Senator Lott, you know, last week, President Bush has backed the sons of Senator Jim Bunning and also the son of Strom Thurmond for judicial nominations for judgeships. Is he trying to win influence with the Senate through appointing people's relatives?

SEN. LOTT: I can't believe a president would be trying to win influence with the Senate! Every president does that. But also, he is prepared to select good men and women for federal positions, even if they are the sons and daughters of senators or judges for that matter. I know Strom Thurmond Jr. This is a 28-year-old, extremely sharp, very intelligent young lawyers with prosecutory (sic) experience. I'd pick him. And there are others. You know, Justice Rehnquist's daughter has been selected for a position in the administration. She is, from all accounts, a brilliant person who will do an excellent job. I don't think that ought to guarantee you'll be nominated or confirmed, but neither should it be prohibitive.

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Neil Lewis **New York Times**

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Dinh, Viet

From: Dinh, Viet
Sent: Monday, August 6, 2001 12:06 PM
To: 'Michael McConnell'
Cc: 'Brett_M._Kavanaugh@who.eop.gov'; Newstead, Jennifer; Tucker, Mindy; 'Matthew_E._Smith@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Alberto_R._Gonzales@who.eop.gov'; 'Timothy_E._Flanigan@who.eop.gov'
Subject: RE: crazy proposal

(b) (5)

best,

Viet

-----Original Message-----

From: Michael McConnell [mailto:mcconnellm@law.utah.edu]
Sent: Monday, August 06, 2001 11:51 AM
To: Dinh, Viet
Subject: FW: crazy proposal

(b) (5)

Michael W. McConnell
University of Utah College of Law
332 S. 1400 East Room 102
Salt Lake City, UT 84112

-----Original Message-----

From: Robert F. Nagel [mailto:nagelR@spot.colorado.edu]
Sent: Tuesday, July 31, 2001 12:49 PM
To: mcconnellm@law.utah.edu
Subject: crazy proposal

Dear Michael,

We have having a conference here on October 19 and 20 on the topic "Conservative Judicial Activism." Lots of law professors of all stripes. I know that people in your delicate position are supposed to keep

007104-003303

their heads low, but I am still idealistic enough to wonder whether you would have any interest in coming to give a 15-20 minute luncheon talk on Saturday the 20th. You might even regard this as a good opportunity to reflect publically on an important issue. I would, of course, arrange things any way that you would find suitable and would also pay expenses as well as a \$1,000 honorarium. You could also participate in our informal roundtable discussions to whatever extent you wished.

What do you think?

Bob

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Thursday, August 2, 2001 6:36 PM
To: Newstead, Jennifer
Cc: Tucker, Mindy; Suit, Neal; Dinh, Viet; Matthew_E._Smith@who.eop.gov
Subject: Re: FW:
Attachments: PIC11425.PCX

Neal: Berenson is virtually certain that (b) (5) You may want to double-check that if you can. Thanks.

(Embedded image moved "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> to file: 08/02/2001 10:29:36 AM PIC11425.PCX)

Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

Subject: FW:

Matt --

Sorry to say, but you may want to make a few changes per Neal's email below. Brett, do you agree? Here are our points:

(b) (5)

007104-003305

(b) (5)

-- Finally, (b) (5)

(b) (5)

Please call me if you want to discuss --

Best regards

Jen

-----Original Message-----

From: Suit, Neal

Sent: Thursday, August 02, 2001 10:05 AM

To: Newstead, Jennifer

Subject: RE:

(b) (5)

I hope are right (i.e.

(b) (5)

-----Original Message-----

From: Matthew_E._Smith@who.eop.gov [mailto:Matthew_E._Smith@who.eop.gov]

Sent: Thursday, August 02, 2001 7:38 AM

To: Dinh, Viet

Cc: Newstead, Jennifer; Tucker, Mindy

Subject: Re:

I worked this up yesterday with Kavanaugh to send later today after Ari and right before our 3:00 p.m. presentation to the outside groups.

(See attached file: Judicial Nominations Summary 08-02-01.doc)

(Embedded

image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov> to file: 08/01/2001 07:08:53 PM PIC32749.PCX)

Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP

cc: "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

007104-003306

requester,
Subject:

Dear Matt,

Can you send this e-mail (b) (5)

(b) (5)

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Thursday, August 2, 2001 11:27 AM
To: Newstead, Jennifer
Cc: Tucker, Mindy; Suit, Neal; Dinh, Viet; Matthew_E._Smith@who.eop.gov
Subject: Re: FW:
Attachments: judges -- timing and number talking points 8 02. final.doc; PIC10431.PCX

Attached are slightly revised talking points to reflect that (b) (5)

(b) (5)

(Embedded
image moved "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>
to file: 08/02/2001 10:29:36 AM
PIC10431.PCX)

Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested), "Tucker, Mindy" <Mindy.Tucker@usdoj.gov>
(Receipt Notification Requested) (IPM Return Requested), "Suit, Neal"
<Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested)

Subject: FW:

Duplicative

007104-003308

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, August 1, 2001 7:17 PM
To: Dinh,
Viet; 'Heather_Wingate@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Rabjohns, Lori; Newstead, Jennifer
Subject: RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

Please disregard my previous message. Ari is on at 12:00 noon. So we can do our press backgrounder at 1:30, and go to the hill at 3:00. Brett, this 3:00 meeting conflicts with your coalition meeting. I recommend that you do hill and Brad do coalition, but obviously your call. Lori, can you set up the press briefing? thanks all.

Viet

-----Original Message-----

From: Dinh, Viet
Sent: Wednesday, August 01, 2001 6:32 PM
To: 'Heather_Wingate@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Rabjohns, Lori; Newstead, Jennifer
Subject: RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

Heather,

Would it be moving mountains to change the meeting time to either 2:00 or 4:30 tomorrow? The reason is that I want to schedule a press backgrounder with me and Brett here at DoJ at 3:00, right after Ari's press conference, and Jennifer has a conflicting meeting on Hill. (b) (5)

(b) (5)

(b) (5) Thanks,

Viet

-----Original Message-----

From: Heather_Wingate@who.eop.gov [mailto:Heather_Wingate@who.eop.gov]
Sent: Wednesday, August 01, 2001 12:54 PM
To: Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov
Subject: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

Viet, this is just to follow-up on our conversation yesterday re: meeting with a small group of

007104-003309

Republican Senate staff on Judicial Nominations. I spoke with John Mashburn and Makan this morning (and your scheduler). And 3:00 tomorrow (Thurs.) works for everyone. Makan would like to host it in his office. 242 Dirksen.

(b) (5)

(b) (5)

Thanks, Heather

Newstead, Jennifer

From: Newstead, Jennifer
Sent: Wednesday, August 1, 2001 3:20 PM
To: 'brett_M._kavanaugh@who.eop.gov'
Cc: Suit, Neal; Dinh, Viet
Subject: FW: vacancy numbers

Neal has tracked down the following additional information which you asked about yesterday. This comes from the AO. We don't have the specific date of the August recess for each year yet, so we have the raw numbers for August 1 and September 1. We'll send more information if we get it.

-----Original Message-----

From: Suit, Neal
Sent: Wednesday, August 01, 2001 2:12 PM
To: Newstead, Jennifer
Subject: vacancy numbers

Vacancies as of February 1 of first year in office:

Reagan I- 38
Bush I- 43 (Peter's memo says 41 and we should go with that since his number is based on January 21 date)
Clinton I- 115 (Sheila verified this number earlier today)

Vacancies as of August 1 of first year in office:

Reagan I- 54
Bush I- 51
Clinton I- 130

Vacancies as of September 1 of first year in office:

Reagan I- 59
Bush I- 53
Clinton I- 133

(b) (5)

Neal

007104-003311

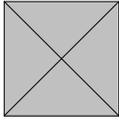
Suit, Neal

From: Suit, Neal
Sent: Wednesday, August 1, 2001 2:06 PM
To: Ciongoli, Adam; 'Bradford_A._Berenson@who.eop.gov%inetgw';
'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan;
'Heather_Wingate@who.eop.gov'; Newstead, Jennifer; Ullman, Kristen A; Long,
Linda E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe;
'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; O'Brien, Patrick;
Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw';
'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet;
'Ziad_S._Ojakli@who.eop.gov%inetgw'
Subject: useful numbers on hearings for Judicial Confirmation Working Group
Attachments: hearing during reorg.wpd

Attached is a mem (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Hope this is useful.

Neal

Neal Suit
Office of Legal Policy
United States Department of Justice
Phone: 202-514-6131
Fax: 202-353-9164



U.S. Department of Justice

Office of Legal Policy

August 1, 2001

Washington, D.C. 20530

Memo to: Judicial Confirmation Working Group

For the period between June 5th (the day Senator Jeffords defected from the Republican Party) until June 29th (the day the reorganization agreement was finalized), Senator Leahy alleged that no hearings could be held pending the final reorganization agreement. However, the facts prove that Senator Leahy's claim was incorrect.

For this interim period Senator Leahy held three full committee hearings (Charitable Choice, Oversight of FBI, and Effective Assistance of Counsel in Death Penalty Cases) and two subcommittee hearings (Racial and Geographic Disparity in Death Penalty Cases and The Role of Ideology in the Judicial Nomination Process), yet no confirmation hearings were held for any judicial nominees. Further, the other 9 Senate Committees held 16 confirmation hearings on 44 nominees during this same interval.

Below are the committee hearings by date, and the nominees that received a hearing during the period between 06/05-06/29.

Date	Committee	Nominees
June 7	Armed Services	Susan Livingstone (Undersecretary of Navy); Jessie Roberson (Assistant Secretary of Energy for Environmental Management); Thomas Christie (Director of Operational Test and Evaluation for the Department of Defense)
June 13	Banking, Housing and Urban Affairs	Roger Ferguson, Jr. (Board of Governors for Federal Reserve)
June 13	Indian Affairs	Neal McCaleb (Assistant Secretary of the Interior for Indian Affairs)
June 13	Veterans' Affairs	Gordon Mansfield (Assistant Secretary of Veterans Affairs for Congressional Affairs)
June 20	Energy and Natural Resources	Patricia Scarlett (Assistant Secretary of the Interior for Policy, Management and Budget); William Myers III (Solicitor of the Interior Department); Bennett Raley (Assistant Secretary of the Interior for Water and Science)

June 21	Banking	Angela Antonelli (CFO of HUD); Jennifer Dorn (Federal Transit Administrator); Ronald Rosenfeld (President of Government National Mortgage Association)
June 21	Finance	William Lash III (Assistant Secretary of Commerce); Allen Johnson (Chief Agricultural Negotiator, USTA); Brian Roseboro (Assistant Treasury Secretary); Kevin Keane (Assistant Secretary of HHS)
June 21	Foreign Relations	William Farish (Ambassador to the UK and Northern Ireland); Howard Leach (Ambassador to France); Alexander Vershbow (Ambassador to the Russian Federation)
June 21	Governmental Affairs	Kay James (Director of Office of Personnel Management); Othoneil Armendariz (member of the Federal Labor Relations Authority)
June 26	Banking	Donald Powell (member and chairman of board of directors of the FDIC)
June 26	Commerce	Samuel Bodman (Deputy Secretary of Commerce); Allan Rutter (Administrator of the Federal Railroad Administration); Kirk Van Tine (General Counsel of Transportation); Ellen Engleman (Administrator of Research and Special Programs Administration at Transportation)
June 26	Foreign Relations	Margaret Tutwiler (Ambassador to Morocco); David Welch (Ambassador to Egypt); Robert Blackwill (Ambassador to India); Wendy Jean Chamberlin (Ambassador to Pakistan); Daniel Kurtzer (Ambassador to Israel)
June 27	Armed Services	Dionel Aviles (Assistant Secretary of the Navy for Financial Management and Comptroller); Reginald Brown

		(Assistant Secretary of the Army for Manpower and Reserve Affairs); Steven Cambone (Deputy Undersecretary of the Defense Department for Policy); Michael Montelongo (Assistant Secretary for the Air Force for Financial Management and Comptroller); John Young Jr. (Assistant Secretary of the Navy or Research, Development and Acquisition)
June 27	Energy and Natural Resources	Vicky Bailey (Assistant Energy Secretary for International Affairs and Domestic Policy); Frances Mainella (Director of the National Park Service); John Walton Keys III (Commissioner of the Bureau of Reclamation)
June 27	Foreign Relations	Pierre-Richard Prosper (Ambassador At-Large for War Crimes Issues); William Eaton (Assistant Secretary for Administration at State); Frances Xavier Taylor (Coordinator for Counter-terrorism at State)
June 27	Foreign Relations	Clark Randt Jr. (Ambassador to China); Douglas Hartwick (Ambassador to Laos)

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, August 1, 2001 2:06 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Newstead, Jennifer
Subject: RE: talking points

Brett,

Nice. Vacancy crisis: 108 out of 862 Art. III positions. Below are the (b) (5)

(b) (5)

(b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, August 01, 2001 1:57 PM
To: Newstead, Jennifer; Dinh, Viet
Subject: talking points

Comments on the attached are welcome (soon if you can)

Viet: The binders may not be ready by 4; we are waiting for the last few of the short-form resumes that DOJ prepares and that are included.

(See attached file: judges -- timing and number talking points 8 02.2.doc)

007104-003316

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, August 1, 2001 1:39 PM
To: 'Heather_Wingate@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Newstead, Jennifer
Subject: RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

Yes to all questions.

-----Original Message-----

From: Heather_Wingate@who.eop.gov [mailto:Heather_Wingate@who.eop.gov]
Sent: Wednesday, August 01, 2001 12:54 PM
To: Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov
Subject: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

Duplicative

007104-003317

Newstead, Jennifer

From: Newstead, Jennifer
Sent: Monday, July 30, 2001 8:03 PM
To: Ciongoli, Adam; 'Bradford_A._Berenson@who.eop.gov%inetgw';
'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan; Newstead, Jennifer;
Ullman, Kristen A; Long, Linda E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori
Sharpe; 'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal;
Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw';
'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet; Martinson, Wanda S;
'Ziad_S._Ojakli@who.eop.gov%inetgw'
Cc: Schauder, Andrew
Subject: Judicial Media Review
Attachments: Judicial Media Review 7-30-01.wpd

[Today's edition is attached.](#)

Media Review - Judicial Nominations

Monday, July 30, 2001

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Dana Bradford Best Choice For Opening On Federal Bench

York Times

June 26, 2001 **oad to Federal Bench Gets Bumpier in Senate**
Neil Lewis New York Times
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate
Neil Lewis 1

The Tampa Tribune
Friday, July 27, 2001

The federal trial court that includes Tampa - the Middle District of Florida - extends from Jacksonville southwest through Orlando to Naples. It's one of the largest and busiest in the country.

Currently there is one judicial vacancy on the court - in Jacksonville. Two residents from Duval County, a magistrate and a Jacksonville lawyer, are among the three names submitted to President Bush, who will make the appointment.

Yet it appears the president is leaning toward a close ally of his brother Jeb, Tallahassee lawyer Kenneth W. Sukhia.

Three months ago, at President Bush's urging, Gov. Bush and Florida's senior Republican House members, U.S. Rep. C.W. "Bill" Young of Largo and U.S. Rep. Clay Shaw of Fort Lauderdale, appointed a nominating panel to choose finalists for federal judicial vacancies and U.S. attorneys. Sukhia, U.S. Magistrate Timothy Corrigan and lawyer Dana Bradford are the first judicial candidates recommended to President Bush from the Middle District.

Democrats have fretted that Florida's two senators, both members of the Democratic Party, were not consulted in the process. But this is hardly surprising in that the president is a Republican. In a disingenuous attempt to appear high-minded, the Democrats have used all of the familiar platitudes in asserting that the judicial selection process was more bipartisan under President Clinton.

But even if that claim has merit, it's only because Republican Connie Mack was then in the Senate, and Florida was lucky that Mack and Sen. Bob Graham got along and decided to make joint recommendations.

Certainly the nominating panel knows that either Graham or Sen. Bill Nelson could, under Senate rules, hold up a judicial appointment. Likewise, the Senate Judiciary Committee would make it difficult for a purely ideological appointee to emerge from the committee. So the Florida Democratic Party is simply making a lot of noise over nothing.

York Times

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Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

Indeed, any of the three men nominated would almost certainly make a fine judge. What is perplexing, however, is that Sukhia seems to be the front-runner and he doesn't even live in the district.

Sukhia played a role for the Bush team during the election recount last year and is a law partner of J.M. "Mac" Stipanovich, a confidant of Jeb Bush. As the Tribune's David Wasson pointed out recently, Sukhia's ties to the governor "stretch across a decade."

But why bring in someone from Tallahassee, which is in the Northern District, when there are two exceptional candidates who live in Jacksonville? After all, the usual practice is to make a selection from within.

Corrigan was selected by the district's judges nearly five years ago to serve in Jacksonville. He is well-regarded.

A Distinguished Resume

And Bradford, who Tribune readers may recall served as the lawyer for one of the trustees of the Hugh F. Culverhouse Trust during the fight over the late Bucs owner's estate in the 1990s, has a distinguished resume, including a stint as chairman of the Florida Board of Bar Examiners. Bradford has made political contributions to candidates from both parties. On the merits, he deserves the appointment.

Sukhia, a former U.S. attorney appointed by the first President Bush and respected even by his opponents in the bar, would probably make a good judge, but we doubt he would be the front-runner if Jacksonville were not already a stronghold for Jeb Bush.

Nevertheless, others throughout the state, even and most especially supporters of the brothers Bush in the Middle District, have expressed concerns about the political consequences of appointing the Tallahassee lawyer. The president should heed that viewpoint. He should appoint Dana Bradford.

Transcripts/Members of Congress

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Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

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Senator Patrick Leahy and Fred Barnes

Brit Hume
Fox News Sunday
Sunday, July 29, 2001

EXCERPT

HUME: Senator, let's move on to the judicial nominees issue, which is so important.

Senator Schumer has raised an interesting question about what the standards should be and what role ideology should play in the judgments made by your committee and by the full Senate. Let's listen to a little bit of what the senator had to say on that issue.

(BEGIN VIDEO CLIP)

SEN. CHARLES SCHUMER (D), NEW YORK: But if the president sends countless nominees who are of particular ideological cast, Democrats will likely exercise their constitutionally given power to deny confirmation so that such nominees do not reorient the direction of the federal judiciary.

(END VIDEO CLIP)

HUME: Now, countless nominees aside -- he may not get to nominate countless judges -- the senator went on to say that he thinks that there should be open consideration of ideology, and that it should be and could be a legitimate basis for denial of confirmation. What is your view of that matter?

LEAHY: Well, I think, you know, every senator, under advice and consent, every senator has the right to make up their mind and base their advice and consent based on their own standard. And that is something Republicans did, obviously, during the Clinton era...

HUME: Right.

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Neil Lewis **New York Times**
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LEAHY: ... and others do. And that's right. I happen to agree with that. We're elected to make those kinds of decisions.

Obviously, if somebody was sent up solely on their ideology, not on their competence, well, they're not going to go anywhere. They wouldn't go anywhere...

(CROSSTALK)

HUME: Well, if there were a man of Antonin Scalia's stripe that were nominated today -- very conservative, very brilliant, very highly regarded -- would such a nominee be acceptable to you?

LEAHY: I voted for Justice Scalia, as you know.

HUME: Would you do so again?

LEAHY: I don't know if I would, because now I would go back and I would look at the concerns in the last presidential election.

But ideology is not the thing. We just put through the Judiciary Committee in the past two weeks several people both for judicial nominations and for Department of Justice who are very, very conservative. Strongly backed, for example, in one case, by the Federalist Society. They went through -- and in fact, to demonstrate that this was not a question that was going to hold them up, I asked for a roll call vote, and it was unanimous. All Democrats, all Republicans voted for them.

HUME: Fred?

BARNES: But, Senator, hasn't, historically, the reorientation of the direction of the federal judiciary been done by presidential election? In other words, it's not left up to the Senate Judiciary Committee to block any reorientation. That happens when a new president comes in. And he will send it in one direction, then there'll be a president of the other party to send it in another direction.

LEAHY: Well, not necessarily. I mean, the constitution doesn't say "nominate and rubber

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stamp." It says "nominate and have advice and consent." And what we're trying to do is make sure we have the advice and consent.

For example, the last couple of years, I think over half of President Clinton's nominees for the court of appeals were never even given a vote, were not even allowed to be voted on by the Republican majority. Now, they have their right to do that. I happen to disagree with them on it, especially on a number of them, but they had the right.

The point is, what I'm suggesting to the White House -- and they're actually, I'm pleased they're taking my advice on this in a number of states -- work with the senators from their states. Whether they're Republicans or Democrats, do some work with them vetting some of these people first, because we have to rely on these senators. We don't know who most of these people are. If somebody is nominated for the Third District in Illinois, I have no idea who this person is, but I am going to talk to Senator Durbin and Senator Fitzgerald, one a Democrat, one a Republican, who is this person?

BARNES: One other nominee, Robert Mueller to be the FBI director, are you satisfied that he's qualified? And will you vote to confirm him?

LEAHY: Well, I'd kind of like to have the hearing first. You know, it's a...

(CROSSTALK)

HUME: But do you see any problems?

LEAHY: I do not see any problems. And we're going to start his hearing tomorrow, at 1 o'clock. But I have talked -- I spent a lot of time with Mr. Mueller already, and I've spent a lot of time with Attorney General Ashcroft, talking about it.

As you know, I started a series of hearings -- we have several more to go -- on the FBI, a number of the mistakes in the FBI, what happened at Ruby Ridge, what happened in Waco, what happened most recently in the loss of the guns and the computers and so on. And there are some real problems there, as several whistle-blowers from the FBI told us this past week in hearings.

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Neil Lewis **New York Times**

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Neil Lewis

And I'm asking Mr. Mueller, and Republicans and Democrats are asking him the same question: With these problems, what will you do to correct it? Because you've gone -- unfortunately, what's happened with the FBI, you've gone from a well-respected culture of independence to now almost a culture of arrogance at some levels, where you don't admit mistakes and improve from them, where you cover them up. And I think Mr. Mueller will take a different attitude on that.

I've told Attorney General Ashcroft, who has started his own background in this, that I'll work very closely with him. I don't think there'll be any daylight between the two of us on this.

HUME: Mr. Chairman, one final question. As one who served on the Senate Intelligence Committee, do you believe that Congressman Gary Condit, given the circumstances that obtain now, should step down from that committee?

LEAHY: Well, that's something I don't know what the House rules are on that. I assume the speaker could ask him do that if he wants him to.

I think a couple of things in the Condit case you should look at. I remember he sent this letter he gave to the press telling President Clinton you should come forth, tell the public everything about your private life -- advice he probably should have followed himself. His political career as a practical matter, I assume, is gone.

But I also look at that time from the point of view of the young woman's parents. If my child, any one of my three children, were missing, I'd be going out of my mind wondering where they were. As a former prosecutor, I think I'd be asking the police, why did you take five or six weeks to do some of the things you should have done to begin with?

And I think, in all of this, we lose sight of the fact that you have parents who are very worried about their daughter, justifiably, just as thousands of other parents around this country are worried about sons or daughters who disappear. And I'm told that kids who disappear, the numbers are increasing all the time. We ought to be asking ourselves as a society, why is that?

Senator John Kyl with Fred Barnes and Morton Kondracke

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Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

The Beltway Boys
Saturday, July 28, 2001

EXCERPT

BARNES: Welcome back to THE BELTWAY BOYS.

Democrats on the Senate Judiciary Committee have promised to make President Bush's judicial nomination hearings anything but a walk in the park. Will they be able to block the president's picks?

Joining us to discuss his role on the Judiciary Committee is Republican Senator Jon Kyl of Arizona. Welcome, senator.

REP. JONATHAN KYL (R), ARIZONA: Thank you, good to be with you.

BARNES: Now, here's my first question, that is, are you satisfied that Democrats and Judiciary Committee chairman Patrick Leahy in particular, will treat Bush judicial nominees fairly and expeditiously?

KYL: No.

BARNES: That's not a loaded question.

KYL: In a word, the answer is no. They've already demonstrated a propensity to delay these nominations, and by holding the hearings which you alluded to, to provide a new basis for voting down or not confirming the president's nominations.

BARNES: Well, let me ask you about that new basis. Now, listen to a statement made the other day by Chuck Schumer of New York, the liberal senator. Now, listen to this.

(BEGIN VIDEO CLIP)

SEN. CHARLES SCHUMER (D), NEW YORK: But if the president sends countless nominees

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June 26, 2001 **oad to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

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who are of a particular ideological cast, Democrats will likely exercise their constitutionally given power to deny confirmation so that such nominees do not reorient the direction of the federal judiciary.

(END VIDEO CLIP)

BARNES: Is that no -- is that a legitimate ground for opposing conservative nominees, that it might reorient the balance on the, on the federal judiciary?

KYL: No, it's not. There's always been a political dimension to the confirmation process, no question about it. But there's always been an attempt to give the president some leeway, to give deference to his nominees, and only to vote against them if there's some other factor about them that you can point to, a lack of qualification, lack of judicial temperament, or clearly being way outside the mainstream.

And for somebody like Chuck Schumer to define the mainstream is, I think, not quite appropriate.

The bottom line here is that what they're talking about is political ideology. We've never used that as the primary basis. And it would be unprecedented.

KONDRACKE: Well, no, the Democrats say that this is only payback time for the way you treated judges at the end of the, the Clinton administration, where any number of appellate court judges were just not processed, and, and lots of vacancies were left over. And, and, and that's one point.

And the second point is, if, if you guys ever get back in control again, will you apply the Schumer standard to Democratic nominees if a Democratic president get reelected?

KYL: Well, the best evidence is what, what we've done so far, Morton. The Republicans did vote for the two Clinton nominees to the U.S. Supreme Court. I think they were both confirmed unanimously. We knew that they were not going to be particularly conservative, and they certainly haven't been. But they were qualified, and therefore Republicans voted to support them.

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In terms of the total nominees confirmed by Republicans and the vacancies left at the end of the Clinton term, the numbers are almost identical to previous administrations. I think they were within five -- we were within five of confirming the number that were confirmed for Ronald Reagan, which was a record.

And there was about 60 -- were about 60 remaining at the end of the term, which is approximately average. There are now well over 100, and this administration has, has been sending nominations up, but the Judiciary Committee has only passed out four from committee, and the Senate has only confirmed...

KONDRACKE: Senator...

KYL: ... three judges in the entire Bush term so far.

KONDRACKE: Senator, let me ask you about immigration. You, you live in a state that borders on, on Mexico. The president is thinking about some sort of an amnesty program, even though probably he won't call it that, that might allow in, or allow to become resident aliens about 3 million illegal immigrants. Now, how, how will Arizona and how will you react if he does such a thing?

KYL: We've got to be very careful about how we do this. First of all, I don't think the president's talking about any kind of a blanket amnesty. So you'd be talking about some kind of conditions for a guest worker program under which people who are here illegally today could sign up for that program and perhaps get a legal status by then working here in the United States for a period of time.

One of the key aspects to look at here is whether we have the will to enforce the law that would prohibit employers from employing other people who are illegal and would enforce the law against people entering the country illegally.

What we have found in the past is, that whenever there's been some kind of an amnesty, that there is a rush of illegal immigration into the country because people would like to take advantage of what they figure will be the next amnesty. And we've got to be very careful we don't adopt a program that would provide that kind of incentive to folks.

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BARNES: Yes, senator, how would you characterize the performance as Senate majority leader of Tom Daschle?

KYL: Tom Daschle reminds me a lot of his mentor, George Mitchell. He's tough, he knows what he wants, and he's tough enough to go get it. And the question, I think, is whether the Republican leadership can adopt - - or adapt to a minority status. We've been in the majority long enough that we kind of tend to continue to act as a majority. We're not, and if we're going to get back in the majority, we're going to have to begin to really want it and act like we want it.

BARNES: Well, it sounds like you're suggesting that Senator Lott, the Republican leader, is not aggressive enough. I note that you had to step in on the floor and force Democrats to release from the Interior Committee Interior Department nominees so they could have a vote on the Senate floor.

KYL: Well, I did do that. And I think in politics it's just a matter of both sides are going to be pushing against the other. And if you're not willing to push back, then you're going to get pushed around.

BARNES: I know, but shouldn't that be something that Senator Lott, as leader, should have done?

KYL: Well, you know, each senator has various prerogatives, and sometimes it's better for somebody else to take the lead on something because, after all, Senator Lott has to work with Daschle every day. But at some point, he has to play that role as well, yes.

KONDRACKE: Thanks, Senator Kyl.

Interest Groups/Press Releases

New Naral Poll: Americans Want Thorough Senate Questioning of Judicial Nominee Ideology

NARAL

York Times

June 26, 2001 **oad to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

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Friday, July 27, 2001

A majority of Americans believe that Senators should thoroughly question presidential judicial nominees about specific policy matters and should not vote to confirm nominees who disagree with their position on important issues of the day, including abortion, according to a new NARAL poll released today.

"Federal judges hold their seats for life and Americans want to know where prospective judges stand on key issues, including a woman's right to choose," said NARAL President Kate Michelman. "They want and expect the Senate to thoroughly review the President's judicial nominees to ensure they will not roll back our fundamental constitutional freedoms.

"Many of the President's nominees for the lower court embrace an ideology not shared by the majority of Americans. NARAL's new poll shows that Americans expect Senators to explore the fundamental constitutional views of the President's judicial nominees and reject nominees who do not share their values."

Among the poll's other findings:

Americans consider it appropriate for Senators to ask about the following issues when questioning a judicial nominee:

Affirmative action	83%
Death Penalty	79%
Abortion Rights	75%
Campaign Finance Reform	70%

Seventy-six percent (76%) agree with the statement, "No one should be put on the bench if that person holds a position on an important issue that a Senator thinks is simply wrong."

Conducted 7/10-16/01 by Hickman-Brown Research (D); surveyed 700 regis. voters; margin of

York Times

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Neil Lewis **New York Times**

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error +/- 3.7% (release, 7/27).

As A General Matter, Should The Senate Always Confirm Nominees The President Submits, Give The Benefit Of The Doubt And Usually Confirm Nominees The President Submits, Not Vote For Someone When They Have Doubts About The Nominees The President Submits, Or Always Vote Not To Confirm Nominees The President Submits?

All GOP Dem Ind

Always confirm 13% 15% 11% 14%

Usually confirm 25 35 18 21

Reject if doubts 48 38 57 49

Always reject 1 1 2 2

Which Of These Two Statements Do You Agree With More?

All GOP Dem Ind Senators should give important weight to the nominees' views on particular issues, and vote not to confirm otherwise qualified nominees if the Senator thinks the nominees' views on important issues are wrong 53% 45% 60% 53%

If someone is nominated to be a federal judge and has the basic legal credentials/experience for the job, Senators should vote to confirm the person the President nominates, even if the Senator thinks the nominees' views on important issues are wrong 34 40 29 33

Are The Following Things That Senators Should Ask When Questioning Nominees To The Federal Bench?

Yes No

Their views on civil rights and affirmative action 83% 12%

Their views on the death penalty 79 16

Their views on abortion rights 75 21

Their views on if there should be limits on spending by political candidates 70 23

Even If You're Not On That Side Of The Argument, Do

York Times

June 26, 2001 **oad to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

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Neil Lewis

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You Think The Following Arguments Are Persuasive?

Yes No

The views of nominees on specific issues should be taken into account. Senators are expected to have a point of view by the people who elect them and not to simply rubber-stamp the nominees a President sends to the Senate 77% 20% The views of nominees on specific issues should be taken into account since federal judges serve for life and are not elected by the people. No one should be put on the bench if that person holds a position on an important issue that a Senator thinks is wrong 77 21 Once they are on the bench, judges can enforce basic rights or roll them back. Senators therefore should hold hearings which reveal a nominee's basic commitment to essential rights 76 18 The views of judicial nominees on issues of justice are part of a nominee's judicial temperament and are the proper subject of Senate hearings 72 22

York Times

June 26, 2001 **Road to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

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Neil Lewis

14

Dinh, Viet

From: Dinh, Viet
Sent: Monday, July 30, 2001 12:27 PM
To: 'Bradford_A._Berenson@who.eop.gov'; Brinkley, Winnie
Cc: Ciongoli, Adam; Bryant, Dan; Newstead, Jennifer; Ullman, Kristen A; Long, Linda E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe; Tucker, Mindy; Suit, Neal; Coniglio, Peter J; Joy, Sheila; Martinson, Wanda S; 'Brett_M._Kavanaugh@who.eop.gov'; 'Matthew_E._Smith@who.eop.gov'; 'Tim_Goeglein@who.eop.gov'; 'Timothy_E._Flanigan@who.eop.gov'; 'Ziad_S._Ojakli@who.eop.gov'
Subject: RE: Judicial Confirmation Working Group Meeting

I agree, but I am working on some thing that is critical to the Pres, so ask your indulgence if we need to cancel.

-----Original Message-----

From: Bradford_A._Berenson@who.eop.gov
[mailto:Bradford_A._Berenson@who.eop.gov]
Sent: Monday, July 30, 2001 9:46 AM
To: Brinkley, Winnie
Cc: Ciongoli, Adam; Bryant, Dan; Newstead, Jennifer; Ullman, Kristen A; Long, Linda E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe; Tucker, Mindy; Suit, Neal; Coniglio, Peter J; Joy, Sheila; Dinh, Viet; Martinson, Wanda S; Brett_M._Kavanaugh@who.eop.gov; Matthew_E._Smith@who.eop.gov; Tim_Goeglein@who.eop.gov; Timothy_E._Flanigan@who.eop.gov; Ziad_S._Ojakli@who.eop.gov
Subject: Re: Judicial Confirmation Working Group Meeting

I will be there. I think we should try hard not to postpone -- it's been a couple weeks since we have gotten together on this.

(Embedded
image moved "Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov>
to file: 07/30/2001 08:56:15 AM
PIC25108.PCX)

Record Type: Record

007104-003333

To: See the distribution list at the bottom of this message

cc:

Subject: Judicial Confirmation Working Group Meeting

All -

We are planning to hold the next meeting of the Confirmation Working Group this afternoon at 4 pm at DOJ, Room 4637 (Associate AG's conference room).

Please note that due to another urgent matter it may be necessary for us to postpone the meeting until later this week. If so we will send a further email at the earliest possible opportunity today.

Thanks

Jennifer Newstead

Message Sent

To: _____

Adam Ciongoli <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Dan Bryant <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Jennifer Newstead <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Kristen Ullman <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Linda Long <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Lizette Benedi <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Lori Rabjohns <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Lori SharpeDay <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Mindy Tucker <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Neal Suit <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Peter Coniglio <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Sheila Joy <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Viet Dinh <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

007104-003334

Wanda Martinson <Wanda.S.Martinson@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested)
Bradford A. Berenson/WHO/EOP
Brett M. Kavanaugh/WHO/EOP
Matthew E. Smith/WHO/EOP
Tim Goeglein/WHO/EOP
Timothy E. Flanigan/WHO/EOP
Ziad S. Ojakli/WHO/EOP

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, July 26, 2001 4:29 PM
To: 'Helgard_C._Walker@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'; 'Robert_W._Cobb@who.eop.gov'; 'Noel_J._Francisco@who.eop.gov'; 'Rachel_L._Brand@who.eop.gov'
Cc: Newstead, Jennifer; 'Alberto_R._Gonzales@who.eop.gov'; 'Timothy_E._Flanigan@who.eop.gov'; 'Kyle_Sampson@who.eop.gov'
Subject: RE: Jeff Howard, NH/CA1

(b) (5)

-----Original Message-----

From: Helgard_C._Walker@who.eop.gov
[mailto:Helgard_C._Walker@who.eop.gov]
Sent: Thursday, July 26, 2001 3:18 PM
To: Courtney_S._Elwood@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
Bradford_A._Berenson@who.eop.gov;
/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+
DOJ/A=TELEMAIL/C=US/; Robert_W._Cobb@who.eop.gov;
Noel_J._Francisco@who.eop.gov; Rachel_L._Brand@who.eop.gov
Cc: Newstead, Jennifer; Dinh, Viet; Alberto_R._Gonzales@who.eop.gov;
Timothy_E._Flanigan@who.eop.gov; Kyle_Sampson@who.eop.gov
Subject: Jeff Howard, NH/CA1

The news story in today's main NH paper (b) (5)

(b) (5)

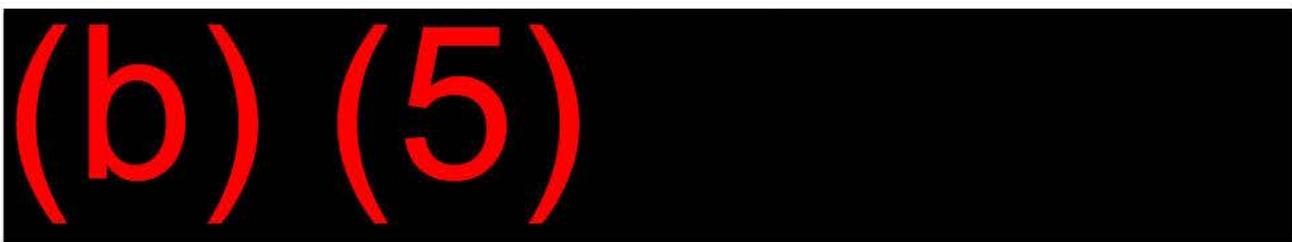
(b) (5)

http://www.theunionleader.com/articles_show.html?article=4171

007104-003336

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Thursday, July 19, 2001 11:04 AM
To: Rachel_L._Brand@who.eop.gov
Cc: Bryant, Dan; Newstead, Jennifer; Dinh, Viet;
Bradford_A._Berenson@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
Noel_J._Francisco@who.eop.gov; Tim_Goeglein@who.eop.gov;
Courtney_S._Elwood@who.eop.gov; Helgard_C._Walker@who.eop.gov; Tucker,
Mindy; James_R._Wilkinson@who.eop.gov; Daniel_J._Bartlett@who.eop.gov;
Alberto_R._Gonzales@who.eop.gov; Tucker_A._Eskew@who.eop.gov
Subject: Re: Judicial Nominee Questionnaire Controversy
Attachments: PIC19498.PCX; PIC29696.PCX



Rachel L. Brand 07/19/2001 10:45:16 AM
(Embedded image moved to file: PIC19498.PCX)

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message bcc:
Subject: Re: Judicial Nominee Questionnaire Controversy (Document link not
converted)



Bradford A. Berenson

07/19/2001 10:32:34 AM

Record Type: Record

To: viet.dinh@usdoj.gov @ inet, jennifer.newstead@usdoj.gov @ inet,
dan.bryant@usdoj.gov @ inet

cc: See the distribution list at the bottom of this message Subject: Judicial Nominee Questionaire
Controversy



----- Forwarded by Bradford A. Berenson/WHO/EOP on 07/19/2001 10:26 AM -----

(Embedded
image moved Makan_Delrahim@judiciary.senate.gov (Makan
to file: Delrahim)
PIC29696.PCX) 07/19/2001 09:43:25 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Judicial Nominee Questionaire Controversy

From Today's Roll Call

July 19, 2001
Leahy Move Sparks Fight
By Mark Preston and Paul Kane

By Mark Preston and Paul Riech

Marking a potentially dramatic change in how nominees' backgrounds are handled, Senate Democrats are trying to make the criminal histories and campaign contributions of President Bush's choices for the federal bench and Justice Department part of the public record.

In addition to the new public questions on political activities and criminal convictions, Democrats also want to ask all nominees about past illegal drug use in a portion of the questionnaire that would remain private.

For years the FBI has done complete background checks on nominees, including criminal matters. That information has remained sealed, though, and only a handful of staffers on the Judiciary Committee has had access to it.

Now, however, Judiciary Democrats are pushing for a comprehensive edit of the eight-page public questionnaire that all nominees must fill out - a rewrite that would require nominees to spell out every crime they had been convicted of and list almost every political contribution they have ever made.

"We should have a somewhat different questionnaire," said Judiciary Chairman Patrick Leahy (D-Vt.), who is spearheading the questionnaire overhaul effort. "I don't want to make it more intrusive. I want to make it more simple." Republicans charge that Leahy and Senate Democrats are trying to make it more difficult for Bush to persuade qualified applicants to leave lucrative private-sector jobs to serve in the federal government. By making arrest records public, nominees could be embarrassed over somewhat minor infractions they committed decades ago, Republicans said.

"He wants to make it more stringent," griped Sen. Orrin Hatch (R-Utah), the ranking Republican on the Judiciary Committee. "It is far too inclusive and far too voluminous." "You'll have people afraid to serve," added Sen. Jeff Sessions (R-Ala.), ranking member on Judiciary's administrative oversight and the courts subcommittee. "If it's going to be blasted all over the world, good people may decide not to serve." The move by Democrats comes just weeks after Sen. Charles Schumer (D-N.Y.), chairman of the courts subcommittee, said the full committee should openly consider nominees' political and ideological backgrounds. This prompted the GOP to denounce the "politicization" of the judiciary.

It also comes less than two months after the panel's bruising battle over the nomination of Solicitor General Theodore Olson, who was confirmed, but only after a tight 51-47 vote. Democrats claimed Olson wasn't completely forthcoming in detailing the legal and political work he did for conservative groups, such as the right-wing American Spectator magazine.

Republicans are not particularly worried about the proposed changes to the questionnaire dealing with financial contributions to political candidates, since donations of more than \$200 are already public record. But the criminal records should remain sealed, they say, hinting that many Clinton administration nominees - plenty of whom were eventually confirmed - would be completely humiliated if their crimes were now revealed.

"This is a changing of the ground rules," one senior GOP aide said. "Want to go back [to the Clinton administration]? Let's expose them all." But Schumer, who indicated the Democrats have had trouble with similar information in the past, said any nominee for higher office or the federal bench should have his or her criminal record exposed to the public.

"I think those are legitimate questions that we should get to the bottom of," he said. "I think that the public should know." The Senator declined to specify which nominees have troubling criminal backgrounds. "All I will say is, I think it's legitimate for public knowledge."

Without this change, criminal matters would remain part of the FBI file on a nominee. It is illegal for Senators or staff to leak information from a confidential FBI file.

Sessions said there is still an easy way for Senators to express their dismay with a nominee's personal background without publicly exposing his or her past. "If somebody comes up with a problem in their personal background check, you can vote against them," he said.

Leahy and Hatch agree that the current questionnaire is outdated, but arriving at a final draft is proving to be difficult. So far Democratic and Republican Judiciary staffers have failed to reach an agreement on whether to include these questions, and there does not appear to be a solution in sight. While this disagreement is not likely to put the skids on Bush's nominees in the short term, it exposes

yet another rift in the already strained relationship that exists between Democrats and Republicans who serve on the committee. Now that they have been relegated to the minority, Hatch and other Republicans are openly complaining that Democrats are taking their time walking Bush's nominees through the confirmation process.

Unless the Senate starts to expeditiously approve Bush's judicial nominees, Hatch said, "It is going to be the biggest mess we have ever seen ... a plethora of injustice. Every week there is a delay, it is going to make it very difficult for the administration to do its job." Hatch suggested that Democrats should have held nomination hearings during the Senate reorganization after they were vaulted into power early last month.

However, Leahy contends that once the reorganization was finalized, he announced a nomination hearing "10 minutes" after the agreement between Democrats and Republicans was inked.

David Carle, a spokesman for Leahy, defended the pace the Judiciary Committee has taken to address the pending nomination hearings.

"Few if any committees have scheduled or maintained as brisk a confirmation schedule as has the Judiciary Committee," Carle said.

"Republicans know that without the committee being formed and members knowing their committee assignments confirmation hearings were going to have to wait for the Senate organizing resolution and that process was unfortunately strung out for four long weeks." As for the questionnaire, Leahy said he is not asking anything more than what other committees, such as Governmental Affairs, seek from nominees who must be approved by their panels and that the information can be ascertained by combing through public records.

For example, the committee would not be privy to a nominee's criminal history if charges had been dismissed, expunged from the record or sealed by the court, according to Democrats.

As for revealing past political activity, the Judiciary questionnaire already asks nominees to explain what positions they have held or roles they played in political campaigns. But Leahy wants to take this one step further by asking nominees to list their financial contributions to political candidates - another piece of information that can be obtained through public-record searches.

"A number of Republicans have been asking these questions for six years," the Vermont Senator said of the Clinton years. "If they felt it was important then, I don't want to deny them the opportunity to continue asking."

But one question where Leahy said he draws the line is how a particular nominee votes.

Commenting on the illegal drug usage question, Carle said he believes the current one is ambiguously worded. The final question on the questionnaire reads, "Please advise the Committee of any unfavorable information that may affect your nomination." "It is vague and problematic both to nominees and to members of the committee," Carle said. "It makes sense to seek clarity, and this would be in the confidential part of the questionnaire."

Message Sent

To: _____

Stewart_Verdery@aml.senate.gov (Stewart Verdery)
Christopher_Rosche@hatch.senate.gov (Christopher Rosche)
Sharon_Prost@judiciary.senate.gov (Sharon Prost)
mark_rodgers@src.senate.gov
lincoln_olinhant@mc.senate.gov

007104-003340

Lincoln_Oliphant@rpc.senate.gov (Lincoln Oliphant)
Kyle Sampson/WHO/EOP
Rena_Johnson@judiciary.senate.gov (Rena Johnson)
John_Mashburn@lott.senate.gov (John Mashburn)
Stephen_Higgins@judiciary.senate.gov (Stephen Higgins)
Ed_Haden@judiciary.senate.gov (Ed Haden)
Dave_Hoppe@lott.senate.gov (Dave Hoppe)
Alex_Dahl@judiciary.senate.gov (Alex Dahl)
chris_myers@src.senate.gov
Bradford A. Berenson/WHO/EOP
(b)(6) Barbara Ledeen Senate email
bcomstock@rnchq.org
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BOlson@bgrdc.com
Brett M. Kavanaugh/WHO/EOP
Cesar Conda/OVP/EOP
Christine C. McCarlie/OMB/EOP
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dan.bryant@usdoj.gov
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eGeorge@brownwoods.com
Hunter_Bates_at_MCCONNELL-DC@IMAEXC2.senate.gov (Hunter Bates)
Jade_West@rpc.senate.gov (Jade West)
jSchmitz@pattonboggs.com
Julie_Dammann_at_BOND-DC@IMAEXC2.senate.gov (Julie Dammann)
Kristen.A.Ullman@usdoj.gov
mark_disler@bm.com
rbork@aei.org
Timothy E. Flanigan/WHO/EOP
Ziad S. Ojakli/WHO/EOP

Message Copied

To: _____

Brett M. Kavanaugh/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Tim Goeglein/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
mindy.tucker@usdoj.gov

James R. Wilkinson/WHO/EOP@EOP
Daniel J. Bartlett/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Tucker A. Eskew/WHO/EOP@EOP

Message Copied

To: _____

viet.dinh@usdoj.gov @ inet
jennifer.newstead@usdoj.gov @ inet
dan.bryant@usdoj.gov @ inet
brett m. kavanaugh/who/eop@eop
noel j. francisco/who/eop@eop
tim goeglein/who/eop@eop
courtney s. elwood/who/eop@eop
helgard c. walker/who/eop@eop
mindy.tucker@usdoj.gov
james r. wilkinson/who/eop@eop
daniel j. bartlett/who/eop@eop
alberto r. gonzales/who/eop@eop
tucker a. eskew/who/eop@eop

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, July 19, 2001 8:29 AM
To: 'Heather_Wingate@who.eop.gov'
Cc: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: tort reform PIG

Great idea. I (b) (5)

(b) (5)

-----Original Message-----

From: Heather_Wingate@who.eop.gov [mailto:Heather_Wingate@who.eop.gov]
Sent: Wednesday, July 18, 2001 8:50 PM
To: Dinh, Viet
Cc: Brett_M._Kavanaugh@who.eop.gov
Subject: RE: tort reform PIG

Hi, Viet. Hey I know I came into the meeting late today, but just a (b) (5)

(b) (5)

Anyway, let me know your thoughts; I just think that it's hard to communicate effectively with numbers only.

007104-003343

Benedi, Lizette D

From: Benedi, Lizette D
Sent: Wednesday, July 18, 2001 4:13 PM
To: Dinh, Viet; Newstead, Jennifer; Suit, Neal; Ullman, Kristen A; Joy, Sheila; Day, Lori Sharpe; Bryant, Dan; Tucker, Mindy; Rabjohns, Lori; 'Timothy_E._Flanigan@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Ziad_S._Ojakli@who.eop.gov'; 'Tim_Googlein@who.eop.gov'; 'Matthew_E._Smith@who.eop.gov'
Subject: Nomination Stats

These numbers were calculated based on a list given to us by a staffer on the Senate Judiciary Committee. The list included only those nominees that actually received a hearing (400) and listed the number of days that elapsed between nomination and hearing.

- Number of Nominees that received a hearing during Clinton's 1st term = 236
 - 106 received a hearing within 60 days
 - Average number of days between nomination and hearing for Clinton's 1st term was 81.25 days.

- Number of nominees that received a hearing during Clinton's 2nd term = 164
 - 56 received a hearing within 60 days.
 - Average number of days between nomination and hearing for Clinton's 2nd term was 106.18 days.

Lizette D. Benedi
Counsel
United States Department of Justice
Office of Legal Policy
950 Pennsylvania Ave., NW
Washington, DC 20530
(202) 514-3824

Bryant, Dan

From: Bryant, Dan
Sent: Monday, July 16, 2001 9:21 PM
To: 'Bradford_A._Berenson@who.eop.gov'; 'Kyle_Sampson@who.eop.gov'
Cc: Newstead, Jennifer; Dinh, Viet; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Re[2]: Fwd:Markup Notice and Tentative Agenda: Thurs., July

Judicials? Yes. DOJ? No. We're pushing them for next week.

-----Original Message-----

From: Bradford_A._Berenson@who.eop.gov
[mailto:Bradford_A._Berenson@who.eop.gov]
Sent: Monday, July 16, 2001 11:38 AM
To: Kyle_Sampson@who.eop.gov
Cc: Bryant, Dan; Newstead, Jennifer; Dinh, Viet;
Brett_M._Kavanaugh@who.eop.gov
Subject: Re: Re[2]: Fwd:Markup Notice and Tentative Agenda: Thurs., July

What about confirmation hearings this week? Too much to hope for?

Kyle Sampson
07/16/2001 11:32:55 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP

cc:
Subject: Re[2]: Fwd:Markup Notice and Tentative Agenda: Thurs., July

FYI

Dahl is Hatch's nominations counsel.

----- Forwarded by Kyle Sampson/WHO/EOP on 07/16/2001 11:32 AM -----

-

.. . . .

007104-003345

(Embedded
image moved Alex_Dahl@judiciary.senate.gov (Alex Dahl)
to file: 07/16/2001 11:02:49 AM
PIC23032.PCX)

Record Type: Record

To: Kyle Sampson/WHO/EOP

cc:

Subject: Re[2]: Fwd:Markup Notice and Tentative Agenda: Thurs., July

Right -- in fact I suspect he'll wait two execs or more. He's already skipped last Thursday's. Now he's given a one-week deadline for the submission of questions (in this case, COB Wednesday), so the nominees won't have time to answer by this Thursday. He's also allowing two weeks for them to respond --

(b) (5)
(b) (5)

Reply Separator _____ Subject: Re: Fwd:Markup Notice and
Tentative Agenda: Thurs., July 19t Author: Kyle_Sampson@who.eop.gov Date: 7/16/01 10:39 AM
Thanks. (b) (5)

(b) (5)

(Embedded
image moved Alex_Dahl@judiciary.senate.gov (Alex Dahl) to file: 07/16/2001 10:21:13
AM PIC20454.PCX)

Record Type: Record

To: Kyle Sampson/WHO/EOP

cc:

Subject: Fwd:Markup Notice and Tentative Agenda: Thurs., July 19th a

Kyle it looks like we'll try again on Boyd and McCallum, but Gregory, Cebull & Haddon are not on here.

Forward Header Subject: Markup Notice and
Tentative Agenda: Thurs., July 19th at 10 Author: Jane Butterfield Date: 7/13/01 12:59 PM 7/13/01
10:30am July 13, 2001

An executive business meeting has been scheduled by the Committee on the
Judiciary, for Thursday, July 19, 2001, at 10:00 a.m., in the Senate Dirksen
Building, Room 226.

Senator Leahy will preside.

By order of the Chairman

Received: from mailsims2.senate.gov ([156.33.203.11]) by mailexch.senate.gov
with SMTP

(IMA Internet Exchange 3.13) id 00236BD3; Mon, 16 Jul 2001 10:43:28 -0400 Received: from
eop2.eop.gov (eop253.eop.gov) by mailsims2.senate.gov (Sun Internet Mail
Server sims.3.5.1999.07.30.00.05.p8) with ESMTP id <0GGK0061VMQ4QI@mailsims2.senate.gov> for
Alex_Dahl@judiciary.senate.gov; Mon,
16 Jul 2001 10:54:06 -0400 (EDT)

Received: from conversion.EOP2.EOP.GOV by EOP.GOV (PMDF V5.2-33 #37157) id
<01K5ZV11M6LS984IJM@EOP.GOV> for Alex_Dahl@judiciary.senate.gov; Mon, 16 Jul 2001 10:40:22 -
0500 (EST) Received: from mhub2.eop.gov ([198.137.241.10]) by EOP.GOV (PMDF V5.2-33 #37157)
with ESMTP id <01K5ZV0CVBE0984IE9@EOP.GOV>

for Alex_Dahl@judiciary.senate.gov; Mon, 16 Jul 2001 10:39:53 -0500 (EST) Received: from
sgeop02.eop.gov ([165.119.1.34]) by mhub.eop.gov (PMDF V5.2-33 #37157) with SMTP id
<01K5ZUXH1K2971U2M@mhub.eop.gov> for Alex_Dahl@judiciary.senate.gov; Mon, 16 Jul 2001
10:39:25 -0500 (EST) Received: by sgeop02.eop.gov (Lotus SMTP MTA SMTP v4.6 (462.2 9-3-1997)) id
85256A8B.00508216 ; Mon, 16 Jul 2001 10:39:21 -0400 Date: Mon, 16 Jul 2001 10:39:15 -0400 From:
Kyle_Sampson@who.eop.gov Subject: Re: Fwd:Markup Notice and Tentative Agenda: Thurs., July 19th
a To: Alex_Dahl@judiciary.senate.gov (Alex Dahl) Message-id: <85256A8B.005074B1.00@sgeop02
.eop.gov> MIME-version: 1.0 Content-type: MULTIPART/MIXED; BOUNDARY="Boundary_(ID_e62Y9C
uPLIFCaTt2kNjacA)"

X-Lotus-FromDomain: EOP

Newstead, Jennifer

From: Newstead, Jennifer
Sent: Monday, July 16, 2001 6:02 PM
To: 'Bradford_A._Berenson@who.eop.gov'; Bryant, Dan; Ciongoli, Adam; Joy, Sheila; Rabjohns, Lori; Day, Lori Sharpe; Suit, Neal; Tucker, Mindy; Ullman, Kristen A; 'Timothy_E._Flanigan@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Ziad_S._Ojakli@who.eop.gov'; 'Tim_Goeglein@who.eop.gov'; 'Matthew_E._Smith@who.eop.gov'; Benedi, Lizette D
Cc: Dinh, Viet; Schauder, Andrew
Subject: Judicial Media Review 7-16
Attachments: Judicial Media Review 7-16-01.wpd

[Here's the latest media review on judges.](#)

Media Review - Judicial Nominations

Monday, July 16, 2001

General Judicial Articles

NONE

Members of Congress/Transcripts

Senator Trent Lott and Fred Barnes _____ [1](#)
_____ Tony Snow, *Fox News Sunday*, July 15, 2001

Op/Eds

"How Should We Judge Judges?," [3](#)
Gara LaMarche, *The Los Angeles Times*, July 15, 2001

"Two-for-one Deal," [6](#)
The Chronicle (Duke University), July 15, 2001

"Bush Must Stand up to Liberal," [7](#)
Deroy Murdock, *Scripps Howard News Service*, July 15, 2001

Members of Congress/Transcripts

Fox News Sunday
July 15, 2001

York Times

June 26, 2001 **oad to Federal Bench Gets Bumpier in Senate**
Neil Lewis New York Times
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate
Neil Lewis 1

Senator Trent Lott & Fred Barnes
Tony Snow

York Times

June 26, 2001 **Road to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

2

(EXCERPT)

BARNES: Will Republicans, led by you, impede Senate business if necessary to get Bush nominees on the Senate floor for a vote? Senator Kyl has already done this.

LOTT: Well, surely, Senator Kyl and Senator Larry Craig, both. Senator Craig was particularly focusing on Interior Department nominees. We had one person there.

BARNES: I'm referring to judicial nominees.

LOTT: For judicial nominations, yes, we'll do that. You know, the Democrats did that when they were in the minority during the Clinton administration. I hope it doesn't come to that.

Just this past week because of the efforts of John Kyl of Arizona and Larry Craig of Idaho, and the resulting cooperation from the Democrats when they saw that we were going to hold up the Interior appropriations bill or the energy and water appropriations bill, we confirmed 54 nominees last week. So that does work. That's fair. You know, to move forward on the bill, it takes unanimous consent.

SNOW: What about the case of Miguel Estrada, who's been nominated for judgeship here in Washington, D.C., in the First U.S. Circuit Court of Appeals?

SNOW: There seems to be some hesitancy about bringing his name forward.

LOTT: I don't know the specifics of that case, but I've looked at the nominees that President Bush has sent up and they look extraordinarily well qualified. They're young, they're well educated, they've got great experience. And I presume that one should -- is this the one from Maryland?

BARNES: He's from D.C. He's a Latino immigrant who is from Honduras, 39 years old, a conservative.

LOTT: I'd have to get into -- well, you know, he's conservative. I'm sure the Democrats won't like that, but he's sounds outstanding to me.

York Times

June 26, 2001 **Road to Federal Bench Gets Bumpier in Senate**

Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

SNOW: Well, let me ask you this. There was this long negotiation to get some sort deal with Patrick Leahy, who's chairman of the Senate Judiciary Committee. Are you satisfied that the president's nominees will make it through the Judiciary Committee and there won't have to be a fight?

LOTT: I'm concerned about it because of some of the comments from Senator Leahy and Senator Schumer and others. They're talking about a litmus test now based on ideology. That is a real concern. We didn't have that same kind of litmus test when we were in the majority. I mean, I voted for Justice Ginsburg even though I knew clearly she would be, you know, extremely liberal in Supreme Court. Lo and behold she has been, but she was qualified otherwise.

All right, Senate Minority Leader Trent Lott, thanks for joining us.

Op/Eds

How Should We Judge Judges?

By Gara LaMarche
Sunday, July 15, 2001
The Los Angeles Times

Gara LaMarche is director of U.S. programs for the Open Society, Institute

The confirmation process for federal judges could well become a free-for-all this year. Even before they gained control of the Senate, Democrats, empowered by the closeness of the election and fearing that the president would try to pack the courts with right-wing ideologues, had vowed to scrutinize each Bush nominee closely. And without the advance vetting of nominees traditionally done by the American Bar Assn. (ABA), no official, independent evaluation will have been performed in advance of the president announcing his selections.

The first 11 Bush judicial nominees, sent to the Senate last month, include both staunch

York Times

June 26, 2001 **Road to Federal Bench Gets Bumpier in Senate**
Neil Lewis **New York Times**
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

conservatives and an African American judge first picked by former President Clinton. They do not as a group lend themselves to easy caricature as right-wing zealots bent on imposing their moral agenda on the nation. Still, the Senate needs to carefully consider a question that has been debated since the Robert H. Bork Supreme Court nomination battle: What is the proper standard by which senators should measure prospective judges?

It's remarkable, given the degree of contention over this issue during the last 15 years, that we still haven't come to a consensus about what qualities make a good judge and how to best assess those qualities. The Senate--and the country--would be immeasurably aided by some common, publicly articulated understanding of how prospective judges should be judged.

One question is whether independent assessment of a judicial nominee's qualifications should be an intrinsic part of the process. Since the Eisenhower administration, this has been provided by the ABA. The last eight presidents supplied the names of prospective nominees to a special bipartisan ABA committee before reaching a final decision. The committee then conducted reviews leading to a rating of "well qualified," "qualified" or "not qualified." It was only after reviewing the ABA findings that the president finalized nominations and sent them to the Senate. The Bush administration put a stop to this longstanding arrangement.

In recent years, the ABA's policymaking arm, the House of Delegates, has become more outspoken on a number of public issues, including the adequacy of representation in death penalty cases and legal services for the poor. Many on the right, led by the Federalist Society, have argued that this compromises the ABA's ability to carry out its screening role impartially, that the ABA has itself become an ideological partisan. There's no evidence that the positions of the ABA's House of Delegates would have any impact on its screening panel, but eliminating the panel's role in judicial nominations presented Bush with an excellent opportunity to shore up his conservative base.

There's virtually no possibility that this White House will restore the ABA to its previous role in judicial nominations, which leaves a gap. If the conservative Federalist Society has, in effect, stepped into the ABA's role with respect to the White House, there is nothing to stop the Senate from refusing to confirm any nominees who have not come through some kind of independent screening process. Meanwhile, the Senate majority has agreed to consult the ABA panel before taking action on any nominations.

York Times

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Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

Even so, the ABA doesn't assess a number of critical issues pertaining to a nominee's values and judicial philosophy. A critical question remains: What is fair game to consider in these areas when assessing the suitability of a nominee for a lifetime appointment to the federal bench? Legal competence and personal integrity are prerequisites, of course, and the most-likely capacities and qualities to be examined by a screening panel. Judicial philosophy and temperament are much more subjective and therefore tougher to measure.

It's important here to revisit the debate over President Reagan's 1987 nomination of Bork to the Supreme Court, particularly since Bush, in introducing his first batch of judicial nominees, made a plea for "civility," a thinly veiled effort to preempt opposition to his choices. A split ABA panel ultimately gave Bork it's highest ranking of "well qualified." But he was rejected by the Senate over concerns about his ideological convictions and their potential impact on his judicial rulings.

Bork's personal character was never in question (unlike in the cases of later nominees who were "borked" after reports of smoking marijuana or hiring illegal nannies). Rather, the Bork fight was waged entirely on the grounds of his judicial philosophy. Bork's lifetime of writings provided ample evidence of his basic hostility to the role of the Supreme Court as a guardian of fundamental rights and a check on the excesses of temporary political majorities. His writings in the years since have reinforced the wisdom of the Senate's vote rejecting his nomination. (Bork, writing in *The Wall Street Journal* in May, urged President Bush to hold firm on his judicial appointments, lest a Democratic successor "complete the liberal politicization of the courts.")

Bork was an easy case. Rarely does a nominee have such a pronounced history of opposition to the role of the court he or she seeks to join. But what is to be done when, as is increasingly the case, judicial nominees don't have that kind of well-documented philosophy? I suggest two criteria that can be explored by the Senate without a need for ideological litmus tests.

The first standard involves core values. A nominee should have a firm commitment to equal justice, and it should not be just a rhetorical one. Someone about to take a lifetime seat on the federal bench should have a demonstrated commitment to civil rights and the fair administration of justice. For some, this will have been demonstrated by involvement in a legal aid society or in providing pro bono representation for the appeal of an indigent death row inmate. For others, it

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may be evident from the past provision of free legal advice to a faith-based social service organization.

The second criterion is independence of mind. The best judges are those whose decisions cannot be entirely predicted by their previous political commitments, as with the courageous Eisenhower-appointed federal judges from the South who played a critical role during the 1960s in ending racial segregation throughout the region. Many judges don't demonstrate such independence until they reach the federal bench--that's what life tenure was meant to foster. But whatever signs can be found of a propensity for independent thinking--for having disappointed a political patron or having been willing to state an unpopular but reasoned view--may indicate the kind of quality we need most on the federal bench.

The criteria I suggest will strike some as too unrestrictive--even some Federalist Society members might be considered well qualified. But I think they are the best bet for getting judges that, like the best in our history, will surprise their patrons by exercising the independence the Constitution provides.

Two-for-one-Deal

Editorial
Sunday, July 15, 2001
The Chronicle

From The Chronicle, the student newspaper at Duke University, an editorial says Sen. John Edwards' proposal on federal judges makes sense.

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President Bush nominated U.S. District Court Judge Terrence Boyle to the U.S. 4th Circuit of the Court of Appeals in May. Supported by Republican Sen. Jesse Helms but opposed by Democratic Sen. John Edwards, Boyle awaits Senate confirmation. Although Edwards has no formal power to block the nomination single-handedly, Senate tradition would allow the practice.

But Edwards has proposed a compromise that would benefit North Carolina and the 4th Circuit - pairing Boyle for approval with black N.C. Judge James Wynn.

No lifetime appointee among the 13 appellate court members has been black, a stunning fact given that the court's jurisdiction has the largest black population among the appellate circuits. Furthermore, the court, which covers Maryland, North Carolina, South Carolina, Virginia and West Virginia, does not include any North Carolinians. Although all judges should certainly remain impartial, diverse backgrounds can offer unique and needed perspectives.

Both senators would favor judges with views similar to their own, but fighting to the bitter end would be self-defeating when a mutual compromise can be made. Wynn, who was nominated by President Clinton only to be rejected by the Republican-controlled Senate, is that compromise. Pairing Boyle with Wynn would allow the state to have two qualified judges on the court. Both senators would have successfully pushed through a judge he supported, and the 4th Circuit would finally have a black person as a permanent member.

Still, even after the proposed pairing, two judicial vacancies from the appellate court would remain. Historically, the court has never seated the full 15 judges allotted, but reappointing Roger Gregory and pairing him with a conservative as well may provide another mutually beneficial compromise. Last December, Clinton gave Gregory, the first black man ever to sit on the 4th Circuit, a non-permanent, recess appointment to the court.

With an ever-aging court, judicial vacancies must be filled so that justice can be served in a timely manner. Pairing two judges from North Carolina is something the state's senators can and should agree upon.

Bush Must Stand Up To Liberals

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Road to Federal Bench Gets Bumpier in Senate

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By Deroy Murdock
Sunday, July 15, 2001
Scripps Howard News Service

George W. Bush can do only one thing to satisfy the NAACP: Resign.

President Bush "has selected nominees from the Taliban wing of American politics," NAACP chairman Julian Bond told the civil rights group's New Orleans convention on July 8. "He has appeased the wretched appetites of the extreme right wing. And he has chosen Cabinet officials whose devotion to the Confederacy is nearly canine in its uncritical affection."

That's the thanks Bush gets for numerous decisions that should have pleased America's so-called black leaders:

He appointed America's first black secretary of state, Colin Powell.

Condoleezza Rice, also black, is national security adviser. Earth to Bond: Black people run U.S. foreign policy.

Bush's education secretary, Rod Paige, is black, too. While the president should have prevented Congress from transforming his education initiative into a spending bonanza, Bush's critics cannot realistically accuse him of defunding ghetto schools and defenestrating minority students.

Bush reappointed Roger Gregory -- a black, Democratic Clinton nominee -- to the federal appellate court. Conservatives complain that Bush should have embraced Gregory only after Democrats greenlighted several Bush candidates. Still, what kind of pro-Confederate president would give a black Democrat a federal judgeship?

Bush hosted the all-Democratic Congressional Black Caucus in the Cabinet Room on Jan. 31. "They had a warm meeting," White House assistant press secretary Anne Womack told me. "It was scheduled for 30 minutes and actually lasted nearly an hour."

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Bush instructed Attorney General John Ashcroft to find a way to end racial profiling (without, one hopes, preventing cops from legitimately pursuing crooks of color).

Bush acceded to the demands of the Revs. Jesse Jackson and Al Sharpton that the Navy end live-ammunition training at Puerto Rico's Vieques Island. Pro-military Republicans angrily denounced this obvious pander to black and Hispanic liberals. They, in turn, screamed more loudly than ever to stop the bombing NOW! -- not in 2003, as Bush proposed.

To promote his faith-based initiative, Bush has visited black congregations across America. He spent the Fourth of July at a church-sponsored block party in downtown Philadelphia, where he hugged gospel singers and played touch football with black children.

These actions seem rather generous for an administration supposedly plotting to resurrect Jim Crow. Alas for Bush, the only way to appease the black left is to exile himself to his Texas ranch and play horseshoes in silence.

Bond's broadside highlights the yawning gap between Bush's snarling critics and a president with a touching, if futile, commitment to cooling Washington's political rhetoric.

"I've tried to speak in a tone that brings us together and unites us in purpose," Bush told the NAACP in taped remarks. "I believe that even when disagreements arise, we should treat each other with civility and with respect." Bush addressed the NAACP last summer. It later ran TV campaign ads tying Bush to James Byrd's 1998 truck-dragging death in Jasper, Texas.

Wouldn't it be lovely if American politics adopted the gentility of high tea at Harrods? Who wouldn't hold hands with Newsweek's Eleanor Clift to secure a century of freedom and prosperity?

But today's liberals are loathe to cooperate with Bush. They want him humiliated, paralyzed and vanquished.

Where was the decency among Senate and House Democrats, the vast majority of whom snubbed an April 30 White House unity luncheon to celebrate the Bush administration's 100-day

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10

relationship with the 107th Congress?

Where was Robert Redford's courtesy when Interior Secretary Gale Norton last May invited him to join her in releasing several endangered California condors into the wild? "You have compiled an abysmal record of capitulation to big businesses at the expense of the nation's public health, public lands and wildlife," Redford rebuffed Norton in a public RSVP.

Where was California Gov. Gray Davis' civility when he met President Bush on May 29? Even before Bush left California, Davis announced he would sue him in federal court over electricity prices.

Where is the Democrats' bipartisanship in delaying confirmations of subcabinet officers, thus leaving Cabinet secretaries "home alone" to implement Bush's agenda with little, if any, top-level assistance?

President Bush can turn the other cheek until he develops whiplash. By pleading for politeness when he and his administration get clocked, Bush may purify his soul, but he shrinks as a leader. He must push his agenda -- constantly, energetically and ubiquitously -- with a toughness that subdues his opponents. He can do so with a smile, but also with a spine.

In short: Less Gandhi. More Reagan.

New York commentator Deroy Murdock is a columnist with the Scripps Howard News Service and a senior fellow with the Atlas Economic Research Foundation in Fairfax, Va.

York Times

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Neil Lewis **New York Times**

June 26, 2001

Road to Federal Bench Gets Bumpier in Senate

Neil Lewis

11

Dinh, Viet

From: Dinh, Viet
Sent: Monday, July 2, 2001 7:49 PM
To: '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'
Cc: 'Brett_M._Kavanaugh@who.eop.gov@inetgw'
Subject: RE: JGR

(b) (5)

-----Original Message-----

From:
/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
[mailto:/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/]
Sent: Monday, July 02, 2001 6:23 PM
To: Dinh, Viet
Cc: Brett_M._Kavanaugh@who.eop.gov@inetgw
Subject: JGR

(b) (5)

007104-003360

Dinh, Viet

From: Dinh, Viet
Sent: Monday, July 2, 2001 3:41 PM
To: 'Rachel_L_Brand@who.eop.gov@inetgw'
Cc: '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'; 'Bradford_A_Berenson@who.eop.gov@inetgw'; 'Stuart_W_Bowen@who.eop.gov@inetgw'; 'Robert_W_Cobb@who.eop.gov@inetgw'; 'Courtney_S_Elwood@who.eop.gov@inetgw'; 'Noel_J_Franzisco@who.eop.gov@inetgw'; 'Brett_M_Kavanaugh@who.eop.gov@inetgw'; 'Helgard_C_Walker@who.eop.gov@inetgw'; 'Timothy_E_Flanigan@who.eop.gov@inetgw'; 'Alberto_R_Gonzales@who.eop.gov@inetgw'
Subject: RE: July 11 hearing

Brilliant suggestion--we will be discussing today at 4:00 who should be on our "wish list." But rather than putting that out from the administration and thereby prioritizing our candidates directly, this indirect method seems the proper way to get the job done.

-----Original Message-----

From: Rachel_L_Brand@who.eop.gov@inetgw
[mailto:Rachel_L_Brand@who.eop.gov]
Sent: Monday, July 02, 2001 2:59 PM
To: Dinh, Viet
Cc:
/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/; Bradford_A_Berenson@who.eop.gov@inetgw;
Stuart_W_Bowen@who.eop.gov@inetgw; Robert_W_Cobb@who.eop.gov@inetgw;
Courtney_S_Elwood@who.eop.gov@inetgw;
Noel_J_Franzisco@who.eop.gov@inetgw;
Brett_M_Kavanaugh@who.eop.gov@inetgw;
Helgard_C_Walker@who.eop.gov@inetgw;
Rachel_L_Brand@who.eop.gov@inetgw;
Timothy_E_Flanigan@who.eop.gov@inetgw;
Alberto_R_Gonzales@who.eop.gov@inetgw
Subject: July 11 hearing

Viet --

Hi. I know you guys are on top of the July 11 hearing, but I wanted to pass along a tidbit from Ed Haden.

(b) (5)

RLB

007104-003361

Dinh, Viet

From: Dinh, Viet
Sent: Friday, June 8, 2001 8:40 AM
To: 'Bradford_A._Berenson@who.eop.gov@inetgw'
Cc: 'Brett_M._Kavanaugh@who.eop.gov@inetgw'
Subject: RE: Laurel Pressler

B&B,

Thanks for the intro. (b) (5)

(b) (5)

best,

viet

-----Original Message-----

From: Bradford_A._Berenson@who.eop.gov@inetgw
[mailto:Bradford_A._Berenson@who.eop.gov]
Sent: Thursday, June 07, 2001 1:10 PM
To: Dinh, Viet
Cc: Brett_M._Kavanaugh@who.eop.gov@inetgw
Subject: Laurel Pressler

Brett and I just had lunch with Laurel Pressler, Mike Dewine's Chief of Staff. (b) (5)

(b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, June 7, 2001 10:33 AM
To: 'Brett_M._Kavanaugh@who.eop.gov@inetgw'
Cc: 'Courtney_S._Elwood@who.eop.gov@inetgw'; 'Noel_J._Francisco@who.eop.gov@inetgw'
Subject: RE: Garner on "while"

I am definitely a purist. Perhaps it is because English is my second language (did I mention that I came over on a boat?!?), but the biggest drag-out fights I have had on degradation of language have been with Eugene Volokh. But then again, maybe Eugene is just confused.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov@inetgw
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, June 07, 2001 10:06 AM
To: Dinh, Viet
Cc: Courtney_S._Elwood@who.eop.gov@inetgw;
Noel_J._Francisco@who.eop.gov@inetgw
Subject: Garner on "while"

Garner says that the "purists" insist on using "although," but he claims that "while" is permissible usage. We are "purists," I gather.

007104-003364

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, June 6, 2001 6:42 PM
To: 'Brett_M._Kavanaugh@who.eop.gov@inetgw'; 'Rachel_L._Brand@who.eop.gov@inetgw'
Cc: Bryant, Dan; Newstead, Jennifer; 'Bradford_A._Berenson@who.eop.gov@inetgw'; 'Tim_Goeglein@who.eop.gov@inetgw'; 'Matthew_E._Smith@who.eop.gov@inetgw'; 'Matthew_A._Schlapp@who.eop.gov@inetgw'; 'Timothy_E._Flanigan@who.eop.gov@inetgw'; 'Courtney_S._Elwood@who.eop.gov@inetgw'; 'Jason_B._Torchinsky@who.eop.gov@inetgw'; 'Brent_D._Greenfield@who.eop.gov@inetgw'
Subject: RE: (b) (5)

(b) (5)

(b) (5) Tim Goeglein and Dan Bryant: I will call you tomorrow to speak about the project and ask for your help, but please keep Monday 4:00 free if possible.

For the time being, (b) (5)

(b) (5)

Many thanks,

Viet

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov@inetgw
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, June 06, 2001 3:39 PM
To: Rachel_L._Brand@who.eop.gov@inetgw
Cc: Bryant, Dan; Newstead, Jennifer; Dinh, Viet;
Bradford_A._Berenson@who.eop.gov@inetgw;
Tim_Goeglein@who.eop.gov@inetgw; Matthew_E._Smith@who.eop.gov@inetgw;
Matthew_A._Schlapp@who.eop.gov@inetgw;
Brett_M._Kavanaugh@who.eop.gov@inetgw;
Timothy_E._Flanigan@who.eop.gov@inetgw;
Courtney_S._Elwood@who.eop.gov@inetgw;
Jason_B._Torchinsky@who.eop.gov@inetgw;
Brent_D._Greenfield@who.eop.gov@inetgw
Subject: Re: (b) (5)

(b) (5)

Rachel L. Brand 06/06/2001 03:38:00 PM
(Embedded image moved to file: PIC27490.PCX)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message bcc:
Subject: Re: (b) (5)
(Document link not converted)

(b) (5)

Brett M. Kavanaugh
06/06/2001 03:35:15 PM

Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message bcc:
Subject: Re: (b) (5)
(Document link not converted)

(b) (5)

(b) (5)

Rachel L. Brand 06/06/2001 03:27:36 PM
(Embedded image moved to file: PIC00823.PCX)

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message bcc:
Subject: Re: (b) (5)
(Document link not converted)

(b) (5)

As I said in my e-mail last week, (b) (5)

(b) (5)

RLB

Bradford A. Berenson
06/06/2001 03:24:46 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message Subject: (b) (5)
(b) (5)

(b) (5)

(b) (5)

Message Sent

To: _____

Tim Goeglein/WHO/EOP@EOP
Matthew E. Smith/WHO/EOP@EOP
Matthew A. Schlapp/WHO/EOP@EOP
jennifer.newstead@usdoj.gov @ inet
viet.dinh@usdoj.gov @ inet
dan.bryant@usdoj.gov @ inet

Message Copied

To: _____

Brett M. Kavanaugh/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Jason B. Torchinsky/WHO/EOP@EOP
Brent D. Greenfield/WHO/EOP@EOP

Message Copied

To: _____

tim goeglein/who/eop@eop
matthew e. smith/who/eop@eop
matthew a. schlapp/who/eop@eop
jennifer.newstead@usdoj.gov @ inet
viet.dinh@usdoj.gov @ inet
dan.bryant@usdoj.gov @ inet
brett m. kavanaugh/who/eop@eop
timothy e. flanigan/who/eop@eop
courtney s. elwood/who/eop@eop
jason b. torchinsky/who/eop@eop
brent d. greenfield/who/eop@eop

Message Copied

To: _____

bradford a. berenson/who/eop@eop
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matthew e. smith/who/eop@eop
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brent d. greenfield/who/eop@eop

Message Copied

To: _____

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courtney s. elwood/who/eop@eop
jason b. torchinsky/who/eop@eop

Drent a. greentield/wno/eop@eop